



## **Response to Treasury consultation on proposed Reforms to the Payment Systems (Regulation) Act 1998**

Google welcomes the Government's progress in pursuing its reform agenda to establish a fit-for-purpose payments regulatory framework. With respect to the proposed changes to the Payments System Regulation Act (1998) we broadly support the proposed changes and have provided specific recommendations in this response.

For our part, we continue to constructively engage with the Government on topics related to payments and digital wallets. In addition to appearing at the Parliamentary Enquiry into mobile payments and digital wallets, we have provided submissions to the Farrell Review and given our views on various stages of the development of the Government's Strategic Plan.

We look forward to continued engagement to support this important policy development.

### **Updating definition of "Payment System" and "Participant"**

We are supportive of the need for the Government to update the definition of Payment System and Payment System Participant to ensure they are fit for purpose and flexible, provided that the exercise of powers under the legislation are subject to appropriate guard-rails and only exercised where it is necessary to address a particular policy issue that is unable to be addressed under existing legislation (some of which are discussed below).

As we have noted in previous submissions, "digital wallets" are not uniform in the services that they may provide the users and or how they may interact with the payment system and it is important that in any determination or designation differences between participants which provide similar products are taken into account. For example, unlike some digital wallets that have "stored value" facilities, Google is not involved in the money flow nor involved in the authorisation of a transaction which rests solely with the issuing bank. Google Pay as a technology platform partially facilitates these transactions through the transmission of electronic bank information. The separately supporting arrangements under which Google Pay becomes a participant in the communication between cardholders and their payment providers is facilitated by contracts with financial institutions, merchants (for online) and with the card schemes. It is also just one type of digital wallet that is available for use on the Android operating system.

### **Ministerial designation powers in the "National Interest"**

We welcome and support the Treasury's proposal to limit the Minister's powers only to "designating" a payment system and to providing directions to appropriate regulators to develop and implement policies to address particular areas of concern. We are also supportive of the proposed guardrails to the exercise of the Minister's powers, which include that:

- The Ministerial power can only be exercised if satisfied that the RBA's existing power to designate a payment system in the Public Interest is insufficient.
- The Minister must be satisfied that the use of the PSRA's powers are appropriate, taking into account the existence and scope of other regulatory frameworks that could be used to address a particular issue.



- The directions that the Minister made under the PRSA to a regulator would be limited only to PSRA powers, require consultation with the regulator and would not affect or invoice the use of powers in other regulatory frameworks.
- The Minister would be precluded from directing a Treasury regulator on enforcement of regulatory rules, specific implementation mechanisms or directing operators of payment systems or participants directly.

Given the breadth of matters that can be considered in the “national interest”, and the number of other regulatory powers or regimes that are directed at addressing those matters economy wide (for example, the Competition and Consumer Act and the Security of Critical Infrastructure Act), we believe these guardrails are crucial in preventing the creation of duplicative, confusing or inconsistent powers across numerous regulatory regimes.

That said, we have identified the following additional areas for improvement of these designation provisions:

**(1) Greater clarity as to how the “national interest” test is to be applied**

Broadly speaking, we agree the factors identified in the consultation paper (such as national security, consumer protection, data-related issues, accessibility, innovation, and cyber-security) are all factors that would ordinarily be considered as something that is in the national interest.

However, the concepts are, in-and-of themselves, broad and would likely arise for any or all participants in the payments system irrespective of their actual or real impact on the safety and stability of the payment system. To ensure powers are exercised only in special or extraordinary circumstances (which we understand is Treasury’s intention), we consider it necessary that the Minister is also satisfied that the potential harm is of sufficient magnitude or seriousness so as to justify regulatory intervention (which we understand is Treasury’s intention).

For example - one option may be that the Minister must be satisfied that one or more of those matters is likely to have a “**serious or critical impact**” on the stability or operation of the Payment System and/or those that are users of that system. Factors that could be taken into account in assessing the ‘serious or critical impact’ include:

- the nature of the service provided and consequences to the system and user if it fails;
- the extent to which the service can or is provided by one or more participants in the system; and
- the extent to which existing systems, controls or regulations are insufficient to address or control the risk identified (including under the existing RBA powers to designate if it is in the public interest).

Providing clarification in the legislative instrument itself will provide greater transparency and clarity for all participants (which is substantially expanded from the existing definition) as to when and in what circumstances they may be designated.



For example, under the UK *Financial Services (Banking Reform) Act 2013 (UK Act)*, the Treasury may only designate a payment system if satisfied that:

*“any deficiencies in the design of the system, or any disruption of its operation, would be likely to have serious consequences for those who use, or are likely to use, the services provided by the system.”*

The UK Act requires that the Treasury consider a number of factors including:

- the number and value of transactions that the system presently processes;
- the nature of the transactions processed;
- whether the transactions could be handled by another payment system; and
- relationship with other payment systems.

**(2) *“National Interest” should be defined within the legislation, and any additional guidance provided in policy guidance developed by the Ministry.***

We understand the Treasury is considering whether it is necessary for “national Interest” to be defined within the legislative instrument itself, or be left to policy guidance developed by the Ministry.

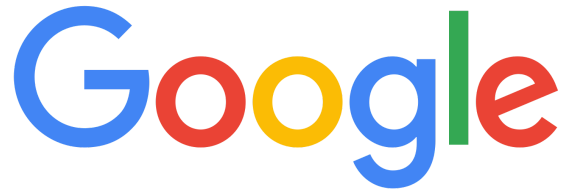
In our view, it is preferable that “national interest” is defined within the legislative instrument, including by reference to the factors to be taken into account and thresholds that must be met. If necessary, this can then be supported by detailed policy guidance. We consider this a preferable approach in circumstances where:

- The concept of “national interest” is broad, discretionary and open to interpretation. Codification as to what is meant by “national interest” will provide both certainty and transparency to participants as to when and in what circumstances the power will be exercised.
- As acknowledged in the consultation papers, there is an overlap between matters that are in the “public interest” and matters that are in the “national interest” - in practice, nearly all matters that are in the public interest will also be in the national interest. Clear guidance as to what is in the ‘national interest’ or in the ‘public interest’ will also avoid confusion in the exercise of the RBA and ministerial powers.

**(3) *Consultation with affected parties required before exercise of Ministerial designation powers***

We understand Treasury is not at this stage, proposing to require consultation with impacted parties before the Minister exercises their powers to designate a participant of a payment system, although it anticipates that in practice the Minister will consult with affected parties.

While we acknowledge that designation does not itself create regulation for affected parties, and affected parties will have an opportunity to consult on the development of any proposed regulation arising from the designation, we nonetheless believe it is important for affected parties to have an



opportunity to consult or make submissions before any decision is made to designate a payment system.

Given the broad range of areas considered to be in the “national interest”, consultation with affected parties ensures:

- The Minister, in performing a risk-based and proportionate assessment, is provided with all relevant information and facts upon which a decision can be made. This is particularly important when considering how new technology interacts with the payment system more broadly.
- It will provide an opportunity for issues identified by the Minister and RBA to be addressed voluntarily without the need for regulatory intervention.

### **Further reforms for testing**

With respect to Treasury’s further reforms for testing:

- *Scope of powers to impose regulatory obligations:* It is unclear as to what additional regulatory powers under the PSRA the Government is considering, and how those powers fit with existing regulatory framework. Further clarity should be given in this regard.
- *Information gathering and disclosure powers:* We agree with the Government that, to the extent information and disclosure powers of confidential information received by participants are to be extended, it needs to be subject to clear guidance as to what is in the public interest, and rights of participants to make submissions as to why certain information is confidential. In our experience, if it is unclear as to how a regulator will use information provided by participants under disclosure obligations, it encourages distrust and a participant is less inclined to be open with the regulator.

### **Conclusion**

We thank the Treasury for the opportunity to review and comment on the proposed changes to the Payment Systems Regulation Act and look forward to continuing to work with the Government to achieve its stated policy objectives.

ENDS