

Libra - currency of the future?

LIBRA AND CALIBRA

Recently, Facebook announced that by 2020, users will be able to pay for goods or services online with "Libra", a new global currency. These services include Uber and Spotify, which, together with other payment service providers, are partnering with Facebook to bring this to life. A Facebook subsidiary, "Calibra", will offer the "crypto wallet" to hold Libra, and manage the blockchain systems to send Libra between users and to use Libra as any other currency.

With America still reacting to what this new development might mean (including the President's view that Facebook should be subject to banking regulations), it seems timely to consider how Libra would fit into New Zealand's financial regulatory environment.

NZ REGULATORS ARE READY

The key New Zealand regulators, the Reserve Bank of New Zealand (RBNZ) and the Financial Markets Authority (FMA), have already signalled their strong interest in digital currencies.

RBNZ

The RBNZ is currently keeping an "open mind" to Libra, while noting the key question and the touchpoint for regulation would be how the Libra system (and value within the Libra system) would link back to the existing banking system.¹ While the RBNZ has announced that it does not intend to issue a digital currency at this stage,² in line with the RBNZ's focus on monetary policy and financial stability it has been focussed for some time on private cryptocurrencies and how the public reacts to these.³ The view in June 2018 was that "globally, the current demand for private crypto-currencies has been too small to pose any threat to the transmission of monetary policy"⁴ – with Facebook's current estimated 1.56 billion daily active users,⁵ Libra may very well change that view.

The payment systems infrastructure that back such currencies is another area of focus. The RBNZ has already announced it intends to enhance its oversight for financial market infrastructure (including such payment systems), with a long-signalled exposure draft of the framework expected imminently. Among other changes, it is expected that this will include information gathering, investigative and enforcement powers for the RBNZ.

FMA

The FMA issued guidance in 2017 that highlights where cryptocurrencies may touch on New Zealand's regulatory regime for financial products and financial services, including fair dealing and anti-money laundering requirements.⁶ Under this guidance, Libra is likely to be a financial product under the Financial Markets Conduct Act 2013 and Calibra (being a provider of wallets to hold Libra) is likely to be operating a value transfer service. Whether or not this is actually the case for Libra and Calibra, and whether these are the only regulatory requirements, would depend on the exact features of Libra and

¹ <https://www.rnz.co.nz/national/programmes/middayreport/audio/2018700545/rbnz-watching-facebook-s-digital-currency-plans>

² <https://www.rbnz.govt.nz/research-and-publications/speeches/2018/speech2018-06-25>

³ <https://www.rbnz.govt.nz/research-and-publications/reserve-bank-bulletin/2018/rbb2018-81-03>, <https://www.rbnz.govt.nz/research-and-publications/reserve-bank-bulletin/2018/rbb2018-81-05> and <https://www.rbnz.govt.nz/research-and-publications/reserve-bank-bulletin/2018/rbb2018-81-07>

⁴ See page 14 at <https://www.rbnz.govt.nz/-/media/ReserveBank/Files/Publications/Bulletins/2018/2018jun81-07.pdf?revision=4af0082f-d31c-4e91-b56f-1cf6f02ac611>

⁵ For the month of March 2019. <https://newsroom.fb.com/company-info/> as accessed on 2 July 2019.

⁶ <https://www.fma.govt.nz/compliance/cryptocurrencies/>

what services Calibra would be offering. For example, it is not clear whether Calibra's activities may even amount to operating an exchange in New Zealand.

Unlike some other jurisdictions, New Zealand does not have a regulatory sandbox. However, one of the FMA's objectives is to promote innovation and flexibility in New Zealand's financial markets. The FMA has the ability to designate products and grant certain exemptions, and its guidance on cryptocurrencies emphasised their willingness to play their part in making these markets work.

CONSUMER PROTECTION AND COMPETITION

In addition to these financial regulations, the use of Libra raises other legal questions. Given the media and the regulators' focus on data protection and privacy, even with Facebook's assurance that Calibra's financial data would be held separately, this is an area that needs to be carefully considered. New Zealand's privacy legislation is currently under review, with the new legislation expected to come into force on 1 March 2020. In its latest form, the new Privacy Bill includes increased requirements for cross-border data transfers.

In addition, Libra is being launched with the support of large corporate partners (including Visa, Mastercard and Paypal) and is proposed to run on a decentralised ledger, maintained by a limited number of private companies. It remains to be seen what effect this currency will have on overall payment systems and banking markets, but if successful and Libra becomes a 'must have' currency, then the concentration of payments through one single enterprise, run by only a few self-selected entities who are themselves competitors, may well become a focus for antitrust regulators and disaffected competitors alike.

PUTTING INTO PRACTICE

While Facebook has emphasised that it is not looking to be a bank, with the move towards open banking in many countries (including New Zealand), the traditional categorisation and regulation of financial institutions seems more and more outdated. In the recent Reserve Bank Act review, one of the proposals is for a more flexible regulatory perimeter, allowing the RBNZ to bring unregulated entities or activities under its remit and prudential regulation.

Of particular interest is that Libra would be a "stable coin", fully backed by central government-issued or fiat currency. The system would not create any new money but the fiat currency would sit "in reserve" as Libra is traded on the internet. How will this operate in practice for Libra to be "pegged" to a number of real world currencies and, when one trades in NZ\$1 for the relevant number of Libra, what happens to that NZ\$1 and how does one get it back? Given the early stages of Libra, these and other questions will need to be answered before it truly becomes a new global currency.

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