



ISBN 978-1-99-101255-5

Project no. 45837

Retail Payment System Act 2022

Guidance on the initial pricing standard

Date of publication: 15 December 2022

Contents

1. Overview of this guidance	3
2. Context for this guidance.....	5
3. Overview of the Retail Payment System Act.....	9
4. Legal framework for the IPS.....	12
5. Participants required to ensure compliance with the IPS.....	18
6. Total interchange fee caps under the IPS.....	24
Appendix 1 – Relevant definitions under the network rules	39

Glossary

Term	Definition
1 April 2021 fees the Act	Interchange fees per transaction as at 1 April 2021 Retail Payment System Act 2022
ATM transactions the Commerce Act	ATM cash withdrawal transactions using credit or debit cards Commerce Act 1986
consumer	A person that acquires goods or services from a merchant, as defined in s 7 of the Act
CCPP	Commercial credit payment product
fee caps	The total interchange fee caps applying to the initial designated networks under the IPS
initial designated networks	The Mastercard and Visa credit and debit networks which have been designated under subpart 2 of Schedule 1 of the Act
interchange fee	Has the meaning under cl 1 of Schedule 1 of the Act
IPS	Initial pricing standard under cl 7 of Schedule 1 of the Act
Mastercard	Mastercard International Incorporated
Mastercard Rules	Mastercard Rules dated 11 December 2020 (as updated from time to time)
maximum rates	The maximum interchange fees prescribed by a scheme that can be charged by issuers on that scheme's network, depending on the interchange fee category
merchant	A supplier (within the meaning of the Fair Trading Act 1986) of goods or services to consumers, as defined in s 7 of the Act
Minister	Minister of Commerce and Consumer Affairs
MSF	Merchant service fee
net compensation	Has the meaning under cl 7(4) of Schedule 1 of the Act
network	Retail payment network, as defined in s 7 of the Act
network operator	A person that (a) is wholly or partially responsible to participants for the network rules; and/or (b) operates or manages the network or the core infrastructure of the network, as defined in s 7 of the Act
participant	A network operator or service provider of the network, as defined in s 7 of the Act
payment or transaction	Any transfer of monetary value
retail payment	A payment by a consumer to a merchant for the supply of goods or services, as defined in s 7 of the Act
schemes	Visa and Mastercard
service provider	A person that provides or facilitates the provision of payment services in the network (excluding a merchant), as defined in s 7 of the Act
total interchange fee	The sum of the interchange fee plus any net compensation that can reasonably be attributed to a transaction, as defined in cl 7(4) of Schedule 1 of the Act
Visa	Visa Worldwide Pte. Limited
Visa Rules	Visa Core Rules and Visa Product and Service Rules dated 17 April 2021 (as updated from time to time)

1. Overview of this guidance

Purpose of this guidance

- 1.1. This guidance is intended to support participants in meeting their obligations under the initial pricing standard (the **IPS** or the **standard**) contained in subpart 3 of Schedule 1 of the Retail Payment System Act 2022 (**the Act**).¹
- 1.2. This guidance explains the scope and applicability of the IPS, how we interpret certain key provisions of the IPS, and the information we will require to assess compliance with the IPS.
- 1.3. This guidance has been prepared following consultation on draft guidance published 7 September 2022.² Submissions received on the draft guidance are available on our website.³ This guidance may be revised from time to time to reflect changes in best practice, the law, the standard itself or our developing experience in monitoring and enforcing compliance with the IPS.
- 1.4. In the event of any inconsistency between the IPS and any part of this guidance, the IPS takes precedence.

Who will be interested in this guidance

- 1.5. The guidance will be of interest to participants in the Visa and Mastercard credit and debit networks (**initial designated networks**), in particular the network operators, issuers, and acquirers and switches of those networks.
- 1.6. We will continue to engage with participants to understand the processes participants follow to ensure compliance with the IPS and any issues they encounter.
- 1.7. Ultimately, participants remain responsible for ensuring they comply with the IPS. We expect all participants who have a role in the setting, processing and charging of interchange fees to take steps to familiarise themselves with the requirements of the IPS and take steps to ensure that they are not responsible for a breach of the IPS requirements. We recommend you seek legal advice if you are unsure of your obligations.

¹ The Act can be viewed at: <https://www.legislation.govt.nz/act/public/2022/0021/latest/whole.html#LMS528139>. All statutory references within this guidance are to the Act unless otherwise stated.

² [Commerce Commission, Retail Payment System Act 2022 – Draft guidance on the initial pricing standard \(7 September 2022\)](#).

³ <https://comcom.govt.nz/regulated-industries/retail-payment-system>.

Structure of this guidance

- 1.8. The rest of this guidance is provided in the following chapters:
- 1.8.1 **Chapter 2 – Context for this guidance** provides some context on the retail payment system and interchange fees
 - 1.8.2 **Chapter 3 – An overview of the Act and our role** describes the purpose of, and our key functions under, the Act
 - 1.8.3 **Chapter 4 – Legal framework for the IPS** sets out the provisions and definitions within the Act of relevance to this guidance.
 - 1.8.4 **Chapter 5 – Participants required to ensure compliance with the IPS** describes the participants with compliance obligations under the IPS and uses scenarios to illustrate those obligations.
 - 1.8.5 **Chapter 6 – Total interchange fee caps** sets out our approach to determining the applicable fee caps under the IPS, the elements required to establish net compensation, the transactions which are not subject to the fee caps under the IPS, and our expectations in respect of inadvertent contraventions.

2. Context for this guidance

- 2.1. The Act was passed on 13 May 2022 and introduces a new regulatory regime for the retail payment system, including the IPS which regulates the level of interchange fees on the schemes' networks. The IPS came into force on 13 November 2021. Interchange fees are generally the largest component of merchant service fees (**MSFs**), which are charged by acquirers to merchants for processing certain payments.
- 2.2. The Act was introduced as a result of the Ministry of Business, Innovation and Employment's review of MSFs and the broader retail payment system.⁴ That review identified a lack of efficient competition in aspects of the system, leading to poor outcomes for merchants and consumers. Of particular note to this guidance, the review found that MSFs were high relative to international comparisons.⁵
- 2.3. We discuss the retail payment system and interchange fees below, both of which are integral to this guidance.

Retail Payment System

- 2.4. The retail payment system facilitates the transfer of monetary value from consumers (including businesses) to merchants in exchange for goods and services.
- 2.5. The retail payment system is comprised of various "retail payment networks" – which include the participants, arrangements, contracts, and rules that enable a class of retail payments to be processed.⁶
- 2.6. Retail payment networks are operated by different providers (for example, Visa and Mastercard) and each network has its own standards and rules that govern how it operates.
- 2.7. A retail payment network includes all payment methods and products within that network. For example, the Visa and Mastercard credit networks are mainly used with physical credit cards but other payment methods, such as tokenised credentials in a mobile app, are included within the network.
- 2.8. The focus of this guidance is the Visa and Mastercard credit and debit networks, as they are subject to the IPS.

⁴ See, in particular, Ministry of Business, Innovation and Employment "Issues Paper: Regulating to reduce Merchant Service Fees" (December 2020). Accessed at: <https://www.mbie.govt.nz/dmsdocument/12383-issues-paper-regulating-to-reduce-merchant-service-fees-pdf>.

⁵ [Ministry of Business, Innovation and Employment, Retail Payment System \(16 May 2022\)](#).

⁶ s 7, definition of "retail payment network".

- 2.9. The key parties within each of those networks, for the purpose of this guidance, are:
- 2.9.1. The **consumer** who uses a card (or other product) on the network to purchase goods and services.
 - 2.9.2. The **merchant** which sells goods and services in return for payment.
 - 2.9.3. The **issuer** (usually a bank) which issues cards and provides credit and debit facilities to consumers.
 - 2.9.4. The **acquirer** (usually a bank) which enables the merchant to access the retail payment system by processing retail payments.
 - 2.9.5. The **scheme** which operates the network, and develops technology and products and on-sells these to issuers and acquirers (who may only operate on the network if approved by the scheme) to facilitate retail payments in accordance with the schemes' published rules. For the purposes of the IPS (and this guidance), the relevant schemes are Visa and Mastercard.
 - 2.9.6. The **switch** operates the switch infrastructure that route transaction data between merchants on one end, and those financial institutions that issue and process card payments for consumers on the other end.
- 2.10. We discuss issuers, acquirers, schemes and switches further in Chapters 4 and 5.
- 2.11. The following is an example of the Visa credit network in action: when a consumer purchases a product from a supermarket (a merchant), they may use a credit card provided by their finance provider (the issuer) on the Visa network (the scheme network). Payment is then transferred to the merchant's bank (the acquirer) who makes it available to the merchant after the deduction of fees.
- 2.12. A number of fees are involved in the payment process described above, but the most relevant to this guidance is the interchange fee.

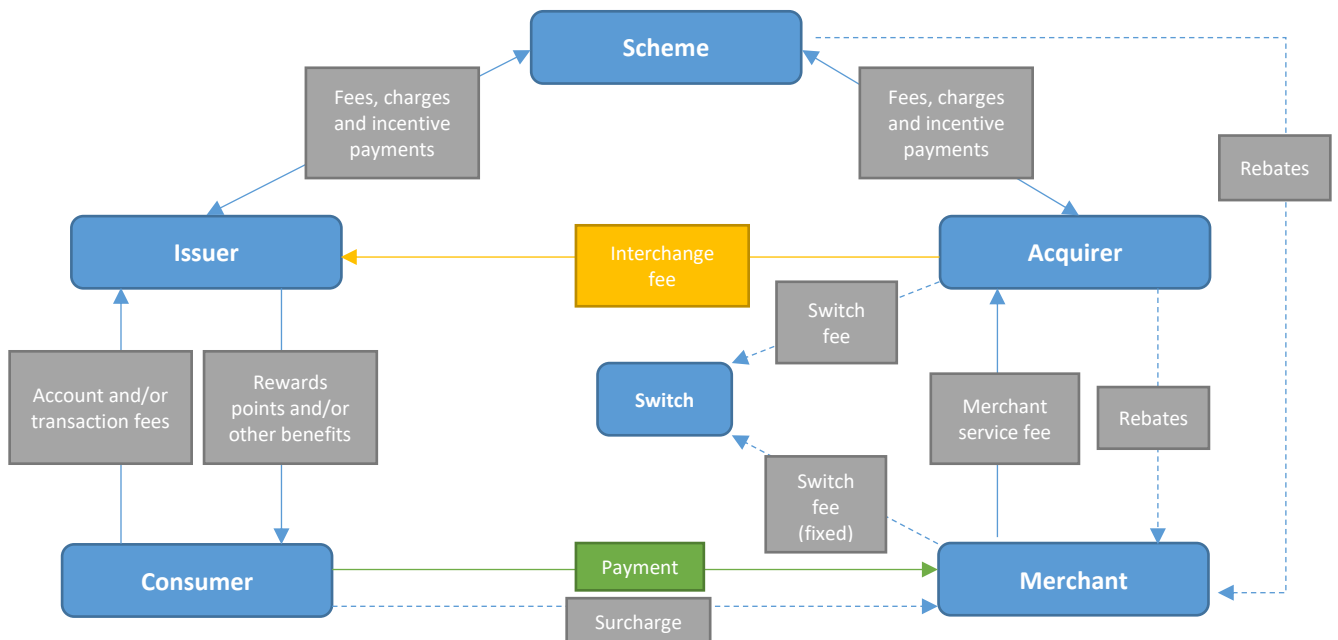
Interchange fees

- 2.13. The IPS sets caps on interchange fees for Mastercard and Visa credit and debit transactions.
- 2.14. An interchange fee is a fee paid by the acquirer to the issuer for a transaction.⁷ The interchange fee is generally a percentage of the value of the relevant transaction.

⁷ See Chapter 5 for information on how interchange fees are set and charged in practice.

- 2.15. We understand that the interchange fee is intended to cover the costs associated with accepting, processing and authorising certain transactions (for example, fraud costs). Visa and Mastercard also contend that the interchange fee acts as a mechanism to balance the interests of, and maximise the value delivered to, participants within the network.⁸
- 2.16. Interchange fees are only payable on certain transactions – such as credit card transactions, and contactless, card-not-present (eg, online), and international scheme debit transactions. Those transactions are processed using a ‘switch-to-acquirer’ model. Put simply, this means the transaction is routed by the switch to the acquirer first, then the issuer.
- 2.17. In comparison, ‘switch-to-issuer’ transactions are routed by the switch directly to the issuer. This includes EFTPOS transactions or where a debit card is inserted or swiped (ie, contacted-in-person), which take place over the EFTPOS network and do not attract interchange fees. Accordingly, the focus of this guidance is on ‘switch-to-acquirer’ transactions.
- 2.18. The fees and inducements in a switch-to-acquirer transaction are illustrated in Figure 1 below, with the interchange fee highlighted in yellow. Note, however, that not all flows shown below are applicable in all situations. The bold lines represent ‘core’ flows, while the dotted lines represent ‘secondary’ flows.

Figure 1: Fees and inducements in switch-to-acquirer transactions



⁸ See Visa “Response to Economic Development, Science and Innovation Committee on the Retail Payment System Bill” at [16] and Westpac “Understanding Interchange” at: <https://www.mastercard.co.nz/en-nz/business/overview/support/interchange.html#:~:text=Interchange%20is%20a%20small%20fee,when%20they%20accept%20electronic%20payments>.

- 2.20. Acquirers pass on the cost of interchange fees to merchants through MSFs.⁹ Certain larger merchants are classified as strategic merchants by the schemes. Transactions processed for strategic merchants attract lower interchange fees, and therefore a lower MSF, than transactions processed for small businesses.
- 2.21. Our understanding of how interchange fees are set and processed is set out in Chapter 5 below.

⁹ The MSF charged by an acquirer generally also includes pass-through of other fees, such as scheme fees, switch fees, merchant servicing costs and float costs, and the margin retained by the acquirer.

3. Overview of the Retail Payment System Act

3.1. This chapter describes the purpose of, and our key functions under, the Act.

Purpose and principles of the Act

3.2. The purpose of the Act is to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers (including businesses) in New Zealand.¹⁰ Our powers and functions must be exercised for that purpose.¹¹

3.3. In addition, in exercising our functions and powers we must take into account, to the extent relevant, the principles that:¹²

3.3.1. merchants and consumers should pay no more than reasonable fees for the supply of payment services; and

3.3.2. the retail payment system provides a reasonable degree of transparency.

Our functions under the Act

3.4. The core functions of the Commission under the Act are:¹³

3.4.1. Regulation-making;

3.4.2. Compliance and enforcement; and

3.4.3. Market monitoring and information dissemination.

Regulation-making

3.5. The Act includes a designation regime, under which any retail payment network (other than cash) may be designated by Order in Council by the Governor-General on the recommendation of the Minister, after receiving a recommendation from the Commission.¹⁴

¹⁰ s 3.

¹¹ s 4(1).

¹² s 4(2) provides that the Commission must take into account those principles, to the extent it considers them relevant, when deciding whether to exercise, or in exercising, any function or power under the Act.

¹³ The Commission has other associated functions such as co-operation with other law enforcement and regulatory agencies that carry out a role in relation to the retail payment system (see, in particular, s 6(d)).

¹⁴ ss 10(1), 11, and 12(1). Note the Minister may either accept or reject the Commission's recommendation, request the Commission reconsider any matter, or make any other decision the Minister considers is in the public interest.

- 3.6. After a network is designated the Commission may:
- 3.6.1. Issue network standards in respect of the designated network, which may relate to information disclosure, pricing or access;¹⁵ and
 - 3.6.2. Give directions about the network rules of the designated network, which may require:¹⁶
 - 3.6.2.1. The network operator to set, amend, notify amendments to, or obtain the Commission's approval for substantive amendments to, the network rules; or
 - 3.6.2.2. Any participant to comply with the network rules.
- 3.7. The Commission may also issue merchant surcharging standards applying to merchants utilising any payment network (not just those that are designated) to ensure that surcharges for payment services reflect the cost to the merchant of the payment services used for accepting retail payments.¹⁷ Merchant surcharging standards may relate to the disclosure of information, representation of surcharges, limits on surcharges or record keeping.¹⁸
- 3.8. In addition to these processes, the Act provides for the regulation of interchange fees from 13 November 2022 by:
- 3.8.1. designating the Visa and Mastercard credit and debit networks;¹⁹ and
 - 3.8.2. setting a network standard contained in Schedule 1 of the Act (that is, the IPS),²⁰ which regulates interchange fees which may be charged on transactions within the Visa and Mastercard credit and debit networks.

Compliance and enforcement

- 3.9. The Commission is responsible for the enforcement of obligations arising under or in connection with the Act.

¹⁵ s 17.

¹⁶ s 24.

¹⁷ s 29 and 30.

¹⁸ s 32.

¹⁹ Subpart 2 of Schedule 1.

²⁰ Subpart 3, Schedule 1 of the Act.

- 3.10. Potential remedies the Commission may seek in cases of breach of a network standard vary depending on the nature of the breach. However, they include pecuniary penalties, injunctions restraining conduct or requiring action to be taken, and compensation orders.
- 3.11. We discuss our enforcement powers in more detail in Chapter 4 below.
- 3.12. For further information on our approach to enforcement, refer to the following documents on our website:
- 3.12.1. [Transparency Statement](#)²¹ – information on how we gather information to prevent, investigate and respond to regulatory non-compliance;
 - 3.12.2. [Enforcement Criteria](#)²² – setting out the criteria we apply when making decisions on whether to open an investigation, and what enforcement action we will take at the end of an investigation; and
 - 3.12.3. [Enforcement Response Guidelines](#)²³ – outlining the way in which we exercise our enforcement discretion, including the factors we will take into account when deciding what enforcement response to use.

Market monitoring and information dissemination

- 3.13. The Commission has a market monitoring function, under which the Commission:²⁴
- 3.13.1. May monitor competition and efficiency in the retail payment system;
 - 3.13.2. May conduct inquiries, reviews and studies into any matter relating to the retail payment system in New Zealand; and
 - 3.13.3. Must make available reports, summaries and information relating to its monitoring activities described above.
- 3.14. The Commission must also make available information with respect to its functions and powers under the Act, and the purposes and provisions of the Act.²⁵

²¹ Accessed at: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/transparency-statement#:~:text=to%20detect%2C%20investigate%20and%20prosecute,respond%20to%20regulatory%20non%E2%80%91compliance>.

²² Accessed at: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria>.

²³ Accessed at: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-response-guidelines>.

²⁴ s 6(a), (b) and (c).

²⁵ s 38(e), which imports s 25 of the Commerce Act with all necessary modifications.

4. Legal framework for the IPS

Initial pricing standard

- 4.1. The IPS sets caps on interchange fees which may be charged for Mastercard and Visa credit and debit transactions. Interchange fees are generally the largest component of MSF, and therefore by capping interchange fees the IPS is intended to reduce costs to merchants.²⁶ The IPS came into force on 13 November 2022.
- 4.2. Subpart 3 of Schedule 1 sets out the IPS, under which cls 7(2) and (3) provide:

Limits on interchange fees

- (2) This standard requires that total interchange fees for credit retail payment networks ... must not exceed the lower of—
- (a) 0.80% per transaction:
 - (b) the interchange fees per transaction as at 1 April 2021.
- (3) This standard requires that total interchange fees for debit retail payment networks ... must not exceed the lower of:
- (a) the interchange fees per transaction as at 1 April 2021:
 - (b) whichever of the following applies:
 - (i) in the case of any contacted-in-person payment method, 0.00% per transaction:
 - (ii) in the case of any contactless-in-person payment method, 0.20% per transaction:
 - (iii) in the case of any online or other payment method, 0.60% per transaction:
 - (c) if a contactless-in-person debit card interchange fee is charged by the cents (for example, a flat fee rather than a percentage of the transaction value), 5 cents per transaction.

Definition of total interchange fees

- 4.3. The IPS requires that the “total interchange fees” for a transaction within the initial designated networks must not exceed the applicable cap under the IPS.

²⁶ See Hon Dr David Clark “Retail Payment System Bill – First Reading” (26 October 2021) and Retail Payment System Bill 2022 (80–2) (select committee report) at 2.

- 4.4. The “total interchange fee” means the sum of the following two components:²⁷
- 4.4.1. The interchange fee; and
 - 4.4.2. Any net compensation that can be reasonably attributed to a transaction (for example, by dividing net compensation for a period by the number or value of relevant transactions during the same period).

Interchange fees

- 4.5. Interchange fee is defined by reference to the relevant network rules.²⁸ The interchange fee definitions from the Visa and Mastercard Rules are set out in Appendix 1.
- 4.6. For the purpose of interpreting and applying the legislation, we consider that the relevant interchange fee is the amount set by the issuer to be charged by it to the acquirer for the relevant transaction. These relationships are discussed further below in Chapter 5.

Net compensation

- 4.7. Net compensation is defined under cl 7(4) of Schedule 1 as:
- ...the net value of any payments, rebates, incentives, or other means of monetary and non-monetary compensation that are made after the date on which this Act receives the Royal assent and that have a purpose of compensating an issuer for the effect of this standard.
- 4.8. We discuss the elements required to establish net compensation in Chapter 6.

Participants of the initial designated networks

- 4.9. The IPS applies to the initial designated networks:
- 4.9.1. Mastercard credit;
 - 4.9.2. Mastercard debit;
 - 4.9.3. Visa credit; and
 - 4.9.4. Visa debit.

²⁷ Cl 7(4) of Schedule 1.

²⁸ Cl 1 of Schedule 1.

- 4.10. Although the Act provides for the regulation of networks, it is the participants within those networks which must comply or ensure compliance with any regulation (eg, the IPS):
- 4.10.1. Network standards may either impose requirements on participants or require participants to ensure compliance with those standards.²⁹
 - 4.10.2. Directions require participants to take a specified action in accordance with the direction.³⁰
- 4.11. The Act defines the participants of a network to mean the network operators and service providers of that network:³¹
- 4.11.1. *Network operator* – means any person that is or does one or more of the following:
 - 4.11.1.1. is wholly or partly responsible to the participants (or any of them) for the network rules.
 - 4.11.1.2. operates or manages the network or the core infrastructure of the network.
 - 4.11.2. *Service provider* – means any person that provides or facilitates the provision of payment services in the network (for example, a payment or an infrastructure service provider), but does not include a merchant.³² Other examples of service providers include issuers, acquirers, switches, terminal providers, and payment gateways within the Visa and Mastercard networks.
- 4.12. These definitions mean that “participants” are all of the parties who have a role in the operation of a retail payment network, except merchants and consumers.

Network operators

- 4.13. There may be more than one operator of a network, but a designation of a network must specify at least one operator.³³

²⁹ s 17(2).

³⁰ s 24.

³¹ s 7, definition of “participant”.

³² s 7, definition of “service provider”.

³³ s 14(1)(b).

4.14. The initial designations provide:³⁴

4.14.1. Mastercard International Incorporated is a network operator of the Mastercard credit and debit networks.

4.14.2. Visa Worldwide Pte. Limited is a network operator of the Visa credit and debit networks.

Service providers

4.15. Issuers, acquirers and switches are three categories of service providers who have a role in relation to the IPS.

Issuers

4.16. The Act defines an issuer by reference to the relevant network rules.³⁵ The definitions from the Visa and Mastercard Rules are set out in Appendix 1.

4.17. It follows from those definitions, that an issuer is a participant that issues cards (physical or otherwise) and provides credit and/or debit facilities to customers.

4.18. For example, a bank or other organisation that issues Mastercard debit and credit cards is an issuer within the Mastercard debit and credit networks.

Acquirers

4.19. The Act defines an acquirer by reference to the relevant network rules.³⁶ The definitions from the Visa and Mastercard Rules are set out in Appendix 1.

4.20. It follows from those definitions, that an acquirer is a participant that enables the merchant access to the payment system by processing retail payments.

4.21. For example, a bank or other organisation that acquires transactions for a merchant from both Visa and Mastercard credit and debit cards is an acquirer in both the Visa and Mastercard credit and debit networks.

4.22. A single legal person, usually a bank, may operate as both an issuer and an acquirer, to the extent that they issue cards and provide facilities to consumers and also offer acquiring services to merchants. In some cases, that single legal person may act as both the issuer and acquirer for the same transaction.

³⁴ Cls 3 to 6 of Schedule 1.

³⁵ Cl 1 of Schedule 1.

³⁶ Cl 1 of Schedule 1.

Switches

- 4.23. The Act does not set out a definition for a switch, however, we consider a switch to be a key service provider of the designated networks because of the payment services it provides. These services are outlined above at 2.9.6.
- 4.24. The role of switches is discussed further in Chapter 5 below.

Contraventions of the IPS

Commission's enforcement powers

- 4.25. In respect of any contravention of the IPS, the Commission has the power to:
- 4.25.1. bring proceedings in the High Court for pecuniary penalties;³⁷
 - 4.25.2. apply to the High Court for compensation orders;³⁸
 - 4.25.3. bring proceedings in the High Court for injunctions, which can:³⁹
 - 4.25.3.1. restrain a person from engaging in conduct that constitutes or would constitute a contravention of the Act; or
 - 4.25.3.2. require a person to do an act or thing if (a) that person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do that act or thing; and (b) the refusal or failure was, is, or would be, a contravention of the Act; and
 - 4.25.4. accept undertakings and bring proceedings in the High Court to enforce undertakings.⁴⁰
- 4.26. The Commission may also issue warnings and compliance advice letters and enter into settlements.

Liability for contraventions of the IPS

- 4.27. The pecuniary penalty provisions in s 39 apply where a person has:⁴¹
- 4.27.1. Contravened the IPS; or
 - 4.27.2. Been involved in the contravention of the IPS.

³⁷ s 39.

³⁸ An application for a compensation order under s 45 may also be made by an aggrieved person.

³⁹ s 47.

⁴⁰ s 46.

⁴¹ s 39(1).

- 4.28. S 42 provides that a person has been “involved in a contravention” where the person:
- (a) has attempted to contravene any of those provisions; or
 - (b) has aided, abetted, counselled, or procured any other person to contravene any of those provisions; or
 - (c) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any of those provisions; or
 - (d) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any of those provisions; or
 - (e) has conspired with any other person to contravene any of those provisions.
- 4.29. Accordingly, depending on the facts and circumstances of the particular contravention, more than one person may be liable for a contravention of the IPS (either on a principal or secondary basis).
- 4.30. The amount of a pecuniary penalty for a breach of the IPS may be up to:
- 4.30.1. In the case of an individual, \$500,000 for each act or omission; and
 - 4.30.2. In any other case, \$5 million for each act or omission.

5. Participants required to ensure compliance with the IPS

- 5.1. This chapter describes the participants of the initial designated networks which we consider are responsible for ensuring compliance with the obligations under the IPS.
- 5.2. Note that this chapter is concerned with *responsibility* for compliance, as opposed to legal liability that is a separate (but related) issue.

Summary

- 5.3. The IPS caps the total interchange fee that may be charged for a particular credit or debit card transaction that is covered by the IPS. As explained below, the designated network operators (Mastercard and Visa), issuers, acquirers and switches of the initial designated networks, are the parties most closely involved in the setting, processing and charging of interchange fees.
- 5.4. We consider that these participants each have a key responsibility for ensuring compliance with the IPS.
- 5.5. However, depending on the particular facts and circumstances, other participants may be involved in the setting, processing and charging of interchange fees and may therefore have a responsibility for ensuring compliance.
- 5.6. We expect all participants who have a role in the setting, processing and charging of interchange fees to take steps to familiarise themselves with the requirements of the IPS and ensure that they are not responsible for a breach of the IPS requirements.

Context

- 5.7. Below we describe how an interchange fee is set and charged to assist in understanding which participants are responsible for ensuring compliance with the IPS.
- 5.8. The descriptions below are simplified and do not seek to cover all circumstances and/or processing models. The intention is to illustrate participants that are generally involved in the setting, processing, and charging of interchange fees. If a breach of the IPS occurs, we will consider the practical realities of how the specific non-compliant interchange fee was set, processed, and charged.

How is an interchange fee set?

- 5.9. The schemes have a key role in setting interchange fees because they each prescribe a schedule of interchange fees for each network which set out the:
- 5.9.1. List of interchange fee categories, which depend on a combination of the following:
- 5.9.1.1. The type of merchant the transaction is being processed for. Transactions processed for most merchants are subject to standard interchange fees, however, certain merchants are categorised by the schemes as ‘strategic merchants’ with different strategic merchant interchange fee category rates applied. Government, insurance, charity, and utilities payments may also be subject to different interchange fee categories;
 - 5.9.1.2. The type of payment product used and funding source – for example, a standard card or a premium card;
 - 5.9.1.3. The payment method used – for example, card-present or card-not-present, contactless or inserted; and
 - 5.9.1.4. Certain technology or processing factors – for example, if the transaction was tokenised.
- 5.9.2. Maximum interchange fees that can be charged by issuers on that scheme’s network for each interchange fee category (**maximum rates**).
- 5.10. Each issuer is bound by the interchange fee categories set by the relevant scheme but is able to set (or bilaterally agree with an acquirer) its interchange fees subject to the maximum rates set by the scheme.
- 5.11. In practice, we understand that issuers customarily adopt the maximum rates set by the schemes.

How is an interchange fee charged/processed?

- 5.12. We understand that interchange fees are generally assigned and charged as follows:
- 5.12.1. Following the authorisation of the transaction, usually at the end of the day in the case of a terminal-based payment and more frequently in the case of a card-not-present payment. The merchant’s switch sends certain information to the merchant’s acquirer about the transaction (such as the payment amount, method and card number) along with all other transactions for the time period.

- 5.12.2. The acquirer, using information about the transaction received from the switch, alongside the merchant's interchange category assigns an indicator to the transaction. The indicator is then sent to the scheme to initiate the exchange of interchange between the acquirer and issuer.
 - 5.12.3. The scheme allocates the interchange fee rate for the particular interchange fee category, based on the indicator, which determines the applicable interchange fee amount.
 - 5.12.4. The scheme then determines the net position for issuers and acquirers for transactions during the period, accounting for the interchange fees payable by the acquirer and the payment amounts owed by the issuer. Settlement of the net positions then occurs through the normal inter-bank settlement system. The result of which is that the acquirer receives the value of the transaction minus the interchange fee amount along with the value of all other transactions minus the interchange fee amounts for the period. We refer to this as the **net settlement** process below.
 - 5.12.5. The scheme has oversight to ensure the interchange fee charged by the issuer is the correct interchange fee being deducted from the issuers amount owed to the acquirer (based on the acquirer applying the correct interchange fee category).
- 5.13. We note this is a simplified explanation of how interchange fees are charged/processed in the switch-to-acquirer model. In practice, this process is more complex and involves many nuances. We are also aware of other transaction flows such as switch-to-scheme, single vs dual messaging and other permutations.

Mastercard and Visa

- 5.14. Mastercard and Visa have been designated as the network operators of their respective networks and are therefore both subject to compliance with the IPS.
- 5.15. Visa and Mastercard have a key role to play in (a) setting the maximum rates; and (b) the net settlement process through which interchange fees are charged and settled.

Other participants of the initial designated networks

- 5.16. We consider that any participant involved in the setting or charging of total interchange fees, and who is in a position to affect compliance with the IPS, has a *responsibility* for ensuring compliance with the obligations under the IPS.
- 5.17. We are not purporting to specify which participants bear legal liability for a contravention – that will be assessed by reference to the legislative requirements and ultimately by the Court, if necessary.

- 5.18. Accordingly, in addition to the schemes, we consider that issuers, acquirers and switches have key compliance obligations under the IPS:
- 5.18.1. Issuers – as the person that sets and receives the direct benefit of interchange fees.
 - 5.18.2. Acquirers – as a person with a role in the processing of transactions, including by the assigning of certain transaction information which enables interchange fees to be assigned.
 - 5.18.3. Switches – as the providers that route transaction data between merchants and the acquirer.
- 5.19. However, depending on the facts and circumstances of any contravention of the IPS, other persons may have a causative role in the setting and charging of interchange fees, or compliance with the IPS. For example, where an intermediary has provided what we determine to be net compensation to an issuer, they may be considered to have contravened the IPS or been “involved in the contravention”.

Scenarios

- 5.20. In order to illustrate the obligations imposed under the IPS on the schemes, issuers acquirers, and switches of the initial designated networks, two high-level scenarios and accompanying analysis are provided below.
- 5.21. The scenarios discussed below are for illustrative purposes only and set out a highly simplified set of facts. These scenarios are intended to illustrate responsibility and do not purport to specify who bears legal liability for any contravention.
- 5.22. We will assess any potential contravention on its own terms against the requirements of the Act, and it is open to us to take a view that differs from those expressed below.

Scenario one – interchange fee

- 5.23. Set out below is a scenario where the IPS has been breached:

Scenario one

The scheme sets its maximum rate for contactless debit at 0.30%, but the applicable cap under the IPS is 0.20%. The issuer adopts the maximum rate of 0.30% and charges the acquirer at this rate.

5.24. In the above scenario, the total interchange fee for contactless debit is in excess of the cap and we consider that each of the scheme and issuer had the ability to ensure compliance with the IPS and failed to do so. Accordingly, it may be the case (depending on the particular facts and circumstances) that each person has either contravened, or been involved in the contravention of, the IPS.

5.24.1. The issuer has accepted the non-compliant maximum rate (in effect, setting a non-compliant interchange fee) and received a total interchange fee for contactless debit transactions which exceeds the statutory cap.

5.24.2. The scheme set its maximum rate for contactless debit at 0.30% which allowed the issuer to set a non-compliant interchange fee and was involved in entering that interchange fee into its interchange system and assigning that fee in the net settlement process.

5.25. In this scenario it is unlikely that the acquirer or the switch would have contravened, or been involved in the contravention of, the IPS. However, we have set out below what role we expect the acquirer and switch to play in ensuring compliance with the obligations under the IPS.

5.25.1. The acquirer assigns the correct indicator to the transaction and sends this to the scheme. This results in an interchange fee in excess of the IPS being applied to the transaction by the scheme.

5.25.1.1. While the acquirer is not directly in control of the settlement process or involved in applying the excessive interchange fee within the system, the acquirer should have visibility of the interchange fee being deducted to form its net position.

5.25.1.2. In this scenario, we would expect the acquirer to identify the interchange fee is non-compliant, notify and/or make a complaint to the Commission, and work with the relevant participants to remedy the breach.

5.25.2. The switch sends the correct information about the transaction to the acquirer, which results in the correct indicator being assigned.

5.25.2.1. However, if the switch became aware of the non-compliant interchange fee, we would expect the switch to notify the Commission and work with the relevant participants to remedy the breach.

Scenario two – net compensation

- 5.26. Set out below is a scenario where the IPS has been breached due to the provision of net compensation to the issuer.
- 5.27. This scenario is not intended to illustrate the requirements needed to establish the provision of net compensation. A worked example of how the 0.22% total interchange fee (consisting of 0.02% of net compensation) could be calculated is provided in Chapter 6.
- 5.28. In the below scenario, we consider that the scheme and the issuer may have either contravened, or been involved in the contravention of, the IPS. However, that is unlikely to be the case for the acquirer or the switch.

Scenario two

The issuer adopts a compliant rate of 0.20% for contactless debit, but due to the payment of monetary compensation by the scheme to the issuer (ie, the provision of net compensation), the total interchange fee for contactless debit was assessed by the Commission to be 0.22%.

- 5.28.1. The issuer has received a total interchange fee for contactless debit transactions which exceeds the applicable cap under the IPS.
- 5.28.2. The scheme has provided net compensation to the issuer, and we understand that (unlike the acquirer) it has visibility of the issuer's net compensation position. That is to say, the scheme is aware or ought to be aware that the provision of net compensation by it to the issuer would cause the IPS cap to be breached for contactless debit transactions.
- 5.28.3. The acquirer has assigned the correct indicator and was charged an interchange fee which is compliant from its vantage point as it does not have visibility over the issuer's net compensation position. As with the previous example, the switch has sent the correct transaction information to the acquirer which assists with the correct indicator being applied to the transaction.

6. Total interchange fee caps under the IPS

- 6.1. This chapter describes the “total interchange fee” caps (**fee caps**) that apply under the IPS, and is structured as follows:
- 6.1.1. **Total interchange fee caps** – describing our approach to determining the applicable fee caps.
 - 6.1.2. **Net compensation** – clarifying the elements required to establish net compensation.
 - 6.1.3. **Transactions not subject to the interchange fee caps** – being commercial credit payment products, payment instruments issued outside New Zealand, prepaid payment products and ATM transactions.
 - 6.1.4. **Inadvertent contraventions** – setting out our expectations in respect of how inadvertent contraventions are dealt with by participants.

Our approach to determining the applicable fee caps

- 6.2. The fee caps imposed by the IPS are set out in Table 1 below.⁴²

Table 1: IPS fee caps

Visa and Mastercard initial designated networks		Total interchange fees must not exceed the lower of	
Credit		0.80%	The interchange fees per transaction as at 1 April 2021
Debit	Contacted-in-person	0.00%	
	Contactless-in-person	0.20%	
	Online or any other payment method	0.60%	
	Contactless-in-person (flat fee per transaction)	\$0.05	

- 6.3. The total interchange fee that may be received by an issuer for an individual transaction must not exceed the applicable cap – being the lower of the specified maximum set out in cl 7 of Schedule 1 (set out in the third column in Table 1 above) and the “interchange fees per transaction as at 1 April 2021” (**1 April 2021 fees**).⁴³

⁴² Schedule 1, subpart 3.

⁴³ This reading is consistent with the Minister’s recommendation that it should be clarified that “interchange fee caps applies [sic] as a hard cap on each transaction, rather than averaged out across transactions.” “Regulation of the Retail Payments System Additional Policy Approvals (8 September 2021) at [63].

- 6.4. In order to determine the applicable fee caps, we must determine whether any 1 April 2021 fee was lower than the specified maximum set out in cl 7 of Schedule 1. If so, the 1 April 2021 fee applies.
- 6.5. This means, as a first step, we must determine the appropriate 1 April 2021 fees.

What are the “interchange fees per transaction as at 1 April 2021”?

- 6.6. Our view is that the appropriate 1 April 2021 fee is the maximum rate set by the scheme for each interchange fee category as at 1 April 2021.
- 6.6.1. Using the maximum rate set by the scheme means that each issuer is subject to the same cap and therefore ensures an even playing field for issuers.
- 6.6.2. In our view, this interpretation best supports the promotion of competition in the retail payment system (as is required by the statutory purpose).
- 6.6.3. While the issuer can opt-in to receive an interchange fee below the maximum cap set by the scheme, in practice, issuers customarily adopt the maximum rates set by the schemes.
- 6.7. We have also considered whether the 1 April 2021 fee could refer to either (a) the actual interchange fee that would have applied to an equivalent transaction between the same issuer and acquirer on 1 April 2021; or (b) an average of some kind. However, we do not consider these to be appropriate because:
- 6.7.1. If the 1 April 2021 fee was to be interchange set and charged by the issuer as at 1 April 2021, it could result in different caps applying to different issuers. In our view this does not best promote competition as it creates an unequal playing field and locks in competitive advantages/disadvantages.
- 6.7.2. If Parliament had intended averaging across a set of transactions at 1 April 2021, it would have referred to the 1 April 2021 fee as being an average (or something similar) and set out the appropriate timeframe for the averaging.

Net compensation

- 6.8. The total interchange fee for a transaction includes any net compensation that can reasonably be attributed to the transaction.⁴⁴
- 6.9. The regulation of “net compensation” is intended to be an anti-avoidance mechanism to prevent the policy of capping interchange fees from being subverted by compensatory payments or other incentives.⁴⁵ But it is not intended to “limit schemes’ ability to incentivise issuers to switch schemes.”⁴⁶

Elements required to establish net compensation

- 6.10. Based on the definition of “net compensation” in cl 7(4) of Schedule 1, for any amount to qualify as net compensation it must:
- 6.10.1. be a net positive flow of payments, rebates, incentives or other monetary or non-monetary compensation;
 - 6.10.2. be reasonably attributable to the transaction;
 - 6.10.3. be made after the date of Royal assent; and
 - 6.10.4. have the purpose of compensating an issuer for the effect of the IPS.
- 6.11. We discuss each of these elements below.

Net positive flow of payments, rebates, incentives or other monetary or non-monetary compensation

- 6.12. Net compensation can include payments, rebates, incentives, or other means of monetary and non-monetary compensation provided directly or indirectly to an issuer.

⁴⁴ Cl 7(4) of Schedule 1, definition of “total interchange fee”.

⁴⁵ See Hon Dr David Clark “Retail Payment System Bill: Approval for Introduction” (29 October 2021) at [8] and Retail Payment System Bill 2022 (80–2) (select committee report) at 7.

⁴⁶ Retail Payment System Bill 2022 (80 – 2) (select committee report) at 7.

- 6.13. Monetary compensation includes (among other things):
- 6.13.1. The effect of changes to scheme fees for issuers.⁴⁷
 - 6.13.2. The introduction by an issuer or the scheme of a new fee payable by acquirers which effectively performs the same economic function as an interchange fee.
 - 6.13.3. One-off lump sum payments, as well as ongoing payments.
 - 6.13.4. Both fixed and variable amounts.
- 6.14. Non-monetary compensation includes discounts on rewards and reward programmes offering prizes to consumers.⁴⁸
- 6.15. In determining the value of non-monetary compensation we will use the value agreed between the parties, unless there is good reason to depart from this valuation. For example, where the value of non-monetary compensation has clearly been significantly undervalued.

Source of compensation

- 6.16. In principle, net compensation may come from a scheme, acquirer, or some other source.
- 6.17. While compensation must be provided to and/or benefit an issuer (whether directly or indirectly) to be considered net compensation, the IPS is not directly concerned with the source of that compensation.

Meaning of “net value”

- 6.18. In our view, “net value” generally refers to the total value of any monetary and non-monetary compensation which meets the definition of net compensation.
- 6.19. In some instances it will be appropriate for “net value” to reflect the net amount of the increased or additional compensation provided to the issuer minus any increased or additional payments (referred to as **payments** in this section) made by the issuer which are sufficiently linked to compensation being considered.

⁴⁷ While the definition of “monetary compensation” in cl 7(4) of Schedule 1 refers to the “effect of changes to scheme fees for issuers that are also acquirers”, we consider it also captures changes in scheme fees for issuers that are not acquirers.

⁴⁸ Cl 7(4) of Schedule 1.

- 6.20. It will generally only be appropriate to net off:
- 6.20.1. payments made by the issuer after 13 May 2022 (being the date of Royal assent); and
 - 6.20.2. increased payments made by the issuer under new arrangements or changes to existing arrangements made in anticipation of the IPS taking effect (including at a time when the effects of the IPS could be reasonably known or estimated).
- 6.21. In considering whether there is a sufficient link between compensation and any payment, we may consider whether:
- 6.21.1. the payment is being made to the same party which is providing the issuer with the compensation at issue;
 - 6.21.2. there is a temporal relationship between the compensation and the payment;
 - 6.21.3. the compensation and payment relate to the same type of transactions (for example, based on card type, merchant, payment method).
- 6.22. To establish that compensation should be the net amount, we would expect participants to present evidence that the two (or more) amounts are sufficiently linked.
- 6.23. As an example, the table below illustrates where there is a link between an increased rebate received by the issuer and an increased payment by the issuer, such that the level of compensation is calculated to be the net amount (being the amount of the increased rebate minus the amount of the increased payment).

Table 2: Example: Compensation as a net amount

Description	Amount
Increased rebate received by the issuer from the scheme relating to contactless debit transactions during 2023	\$1,000,000
Increased payment by the issuer to the scheme relating to contactless debit transactions during 2023	\$700,000
Net value of compensation	\$300,000

Reasonably attributable to the transaction

- 6.24. The total interchange fee only includes net compensation that “can reasonably be attributed to a transaction” and the definition gives the example of “dividing net compensation for a period by the number or value of relevant transactions during the same period”.⁵⁰ The Select Committee gave an example of a monthly rebate being split across transactions within that period.⁵¹
- 6.25. Compensation does not have to be expressed as a figure “per transaction” to qualify as net compensation but may be a figure payable in respect of a period that can then be nominally allocated between transactions in that period.

Our approach to reasonably attributing compensation to transactions

- 6.26. The reasonable attribution of compensation to transactions depends on the particular facts and circumstances of the compensation. In attributing compensation to specific transactions, we will consider (and may request information to help us determine):
- 6.26.1. The time period to which the compensation relates. The transactions must occur within the time period for which the compensation applies or is intended to apply. For example, if the compensation relates to a specific month, then the transactions to which it may be attributed must occur within that month;
- 6.26.2. The type of transactions to which the compensation relates. Where compensation relates only to specific transaction types (eg, based on card type or merchant), then compensation will only be attributed to transactions of that type made within the relevant time period; and
- 6.26.3. Whether the compensation should be attributed equally to all relevant transactions, or on some other basis. For example, we may consider the value of the relevant transactions and attribute compensation on a proportional basis.

Made after the date of Royal assent

- 6.27. To qualify as net compensation, the payment or incentive must be made to an issuer after 13 May 2022.

⁵⁰ Cl 7(4) of Schedule 1.

⁵¹ Retail Payment System Bill 2022 (80 – 2) (select committee report) at 8.

- 6.28. Our view is that compensation agreed before 13 May 2022 may still be relevant for the purpose of calculating net compensation providing the provision/payment occurred after that date. However, as discussed below, it is unlikely the purpose test will be met.

Purpose of compensating an issuer for the effect of the IPS

- 6.29. Net compensation may only be taken into account in the calculation of the total interchange fee where the underlying compensation has “a purpose of compensating an issuer for the effect of this standard”.⁵²
- 6.30. The effect of the IPS, as it pertains to issuers, is that issuers’ interchange fee revenue is reduced. Accordingly, compensation will qualify as “net compensation” where the purpose of that compensation is to compensate an issuer for a loss of interchange fee income caused by the IPS.

Principles for assessing the purpose of compensation

- 6.31. Where we identify that new compensation has been introduced or existing compensation has been increased, we may seek information from the relevant parties in order to determine its purpose.
- 6.32. The assessment of the purpose of compensation payments is fact-specific, and the purpose will be inferred from the facts and circumstances at hand.
- 6.33. We have been guided by the approach of the Courts under the Commerce Act,⁵³ and consider the following principles to be relevant for assessing the purpose of compensation:
- 6.33.1. It is the purpose of the compensation which is important, rather than any particular participant’s purpose.
- 6.33.2. We will take an objective approach to determining the purpose of any compensation, although subjective intentions may still be taken into account.
- 6.33.3. The purpose of compensating the issuer for the effect of the IPS only needs to be “a purpose”, not necessarily the sole or even dominant purpose.

⁵² s 7(4) of Schedule 1, definition of “net compensation”.

⁵³ In particular, we have referred to cases dealing with s 27 of the Commerce Act, including *Giltrap City Limited v Commerce Commission* [2004] 1 NZLR 608, *ANZCO Foods Waitara Limited v AFFCO New Zealand Limited* [2006] 3 NZLR 351 and *Commerce Commission v Bay of Plenty Electricity Limited* HC, CIV 2001-485-917.

- 6.34. We expect the parties involved in the provision of any compensation (whether net compensation or otherwise) to be able to explain the underlying purpose of any compensation.

Increased acquirer costs

- 6.35. In considering whether compensation has been made for the purpose of compensating an issuer for the effect the IPS, we will take into account (among other things) whether that compensation is directly or indirectly funded by adding or increasing costs to acquirers (and indirectly to merchants).
- 6.36. This will be most clear where an issuer directly imposes an additional fee or other cost on an acquirer for the processing of transactions. But this may also be the case where, for example, the scheme provides compensation to an issuer while increasing costs for acquirers.
- 6.37. If we identify an increase in acquirer costs by a scheme, we may seek information to determine whether those increasing costs are directly or indirectly funding compensation for issuers.
- 6.38. To be clear, compensation may still have been made for the purpose of compensating an issuer for the effect of the IPS even if it does not directly or indirectly impose additional costs on acquirers.

Compensation agreed before 13 May 2022

- 6.39. It is unlikely that compensation under an arrangement entered into before 13 May 2022 (being the date of Royal assent) could be considered to have been made for the purpose of compensating the issuer for the effect of the IPS, even if that compensation was provided after 13 May 2022. However, this will ultimately depend on the facts and circumstances of the compensation.
- 6.40. Compensation provided as a result of changes to existing arrangements or new arrangements made in anticipation of the IPS taking effect (including at a time when the effects of the IPS could be reasonably known or estimated) may be considered net compensation, provided it has the necessary purpose described above.

Scope of new arrangements and changes made to existing arrangements

- 6.41. A new arrangement or change to an existing arrangement may encompass (among other things):
- 6.41.1. A change to the agreed amount/level of compensation;
 - 6.41.2. A change to the way that compensation is calculated or determined; and
 - 6.41.3. The introduction of a new type of compensation, whether via a new agreement or an amendment to an existing agreement.

Changes to the level of compensation driven solely by transaction volumes or values

- 6.42. Where an increase in the level of compensation provided to an issuer is driven solely by a change to the mix of transactions (eg, volume, value, or type), we would not expect it to meet the purpose test described above, although that ultimately depends on the facts and circumstances.
- 6.43. However, if the increase in the level of compensation is driven by a change in the arrangements (for example, the basis upon which the compensation is calculated) as well as a change in the mix of transactions, then it may meet the purpose test depending on the particular facts and circumstances.

Approach to compensation relating to excluded transactions

- 6.44. Depending on the particular facts and circumstances, compensation may meet the purpose test even if it relates in whole or in part to transactions to which the IPS does not apply (excluded transactions), being:
- 6.44.1. Transactions which took place prior to the IPS coming into effect (ie, before 13 November 2022); and/or
 - 6.44.2. Transactions which are excluded from the IPS. We discuss those exclusions in paragraphs 6.48 to 6.51 below.
- 6.45. Where the purpose test is met, the Commission will determine whether/how the compensation can reasonably be attributed to specific transactions on the basis described above at paragraphs 6.24 to 6.26 above.⁵⁴

⁵⁴ Where compensation relates to a mix of both regulated transactions and excluded transactions, it may be appropriate to attribute the compensation across both transaction types, which would result in part of the compensation not being included in the total interchange fee calculation. However, depending on the circumstances, it may be appropriate to attribute compensation wholly (or predominately) to one transaction type.

Worked example of net compensation

- 6.46. As per scenario two, which calculated a total interchange fee of 0.22% per transaction (consisting of 0.20% interchange fee and 0.02% of net compensation), set out below is a worked example of how that total interchange fee could be calculated.
- 6.46.1. The scheme makes a payment to the issuer, as a result of an agreement entered into between the scheme and the issuer after 13 May 2022. The agreement outlined that if the value of contactless debit transactions exceeded \$500 million for a relevant period (ie, the 12 months after 13 November 2022), then the issuer will receive a payment of \$200,000.
- 6.46.2. The value of contactless debit transactions during the relevant period is \$1 billion and the issuer is paid \$200,000.
- 6.46.3. This payment does not relate to existing arrangements, it can be reasonably attributed to the transactions (as shown below) and has been made after the date of Royal assent. The purpose test depends on the particular facts and circumstances, but this example assumes the test is met.
- 6.46.4. The amount of compensation is attributed to the contactless debit transactions as follows:
- 6.46.4.1. The amount of compensation paid by the scheme to the issuer is \$200,000.
- 6.46.4.2. The compensation is reasonably attributable to the contactless debit transactions which took place during the relevant period (the total value of which are \$1 billion).
- 6.46.4.3. Net compensation is therefore calculated to be the amount of compensation (\$200,000) divided by the value of the transactions to which the compensation may be reasonably attributed (\$1 billion) and works out to be 0.02% per dollar of transaction.
- 6.47. Note that in this example compensation has been attributed equally to all relevant transactions irrespective of the value of those transactions. However, depending on the facts and circumstances, it may be appropriate to attribute compensation between transactions on a basis which is proportionate to the value of each transaction (as discussed above at 6.25).

Transactions not subject to the interchange fee caps

6.48. The fee caps under the IPS relating to the designated credit networks do not apply to:⁵⁵

6.48.1. Commercial credit payment products (**CCPPs**); and

6.48.2. Payment instruments that are issued outside New Zealand.

6.49. The fee caps under the IPS relating to the designated debit networks do not apply to:⁵⁶

6.49.1. Prepaid payment products; and

6.49.2. Payment instruments that are issued outside New Zealand.

6.50. In addition to those exclusions set out in the IPS, we consider that the fee caps do not apply to ATM transactions (as defined below).

6.51. We deal with each of these exclusions below.

Commercial credit payment products

6.52. CCPPs are excluded from the fee caps applying to the credit networks under the IPS.

6.53. The definition of a CCPP is set out in cl 7(4) of Schedule 1 as follows:

commercial credit payment product means a credit product that is issued to a business (within the meaning of the Fair Trading Act 1986) for use wholly for purposes other than personal, domestic, or household purposes, and that is charged directly to the account of the business

6.54. We discuss the elements of the CCPP definition below.

Credit product

6.55. While not defined in the Act, we consider a credit product to be a product which provides the cardholder with access to credit (as defined in the Credit Contracts and Consumer Finance Act 2003)⁵⁷ up to an agreed limit. An example of a credit product is a credit card.

⁵⁵ Cl 7(2) of Schedule 1.

⁵⁶ Cl 7(3) of Schedule 1.

⁵⁷ Credit Contracts and Consumer Finance Act 2003, s 6 definition of "credit".

Product must be issued to a business

6.56. We understand that commercial/business products, while relating to a business, may be issued to an individual cardholder. In our view, this will still satisfy the legislative requirement that the product be issued to the business where:

- 6.56.1. The business has authorised the issue of the product to the individual;
- 6.56.2. The individual is an employee or agent of the business; and
- 6.56.3. The product is ultimately being settled by the business (as discussed below).

Issued for use wholly for purposes other than personal, domestic, or household purposes

6.57. The product must be issued for use wholly for purposes other than personal, domestic, or household purposes.

Purpose of product determined at point of issuance

6.58. The purpose of the product is determined at the point of issuance, rather than on a transaction basis. For example, where a credit product is issued wholly for business purposes, it will still be a CCPP even if it is used for a personal use at some point (subject to whether such use is recurring/ongoing).

6.59. In coming to this view, we have considered:

- 6.59.1. The plain text of the CCPP definition – which suggests that the purpose is determined at the point of issuance; and
- 6.59.2. The practical difficulties of determining whether individual transactions are for a personal, household or domestic use, and only applying the applicable caps to those transactions.

6.60. However, if an issuer becomes aware (or reasonably ought to be aware) that a CCPP is being used on a recurring/ongoing basis for personal, domestic or household purposes:

- 6.60.1. We expect the issuer to rectify this issue, for example, by moving the cardholder to a personal card; and
- 6.60.2. The credit product may no longer be considered a CCPP, and the fee caps under the IPS apply.

6.61. In the event of repeated issues of this nature, we recommend the issuer notify us of what processes have been implemented to prevent the issue reoccurring.

Wholly vs predominately

- 6.62. A product will have been issued for use wholly for purposes other than personal, domestic or household purposes where:
- 6.62.1. The terms and conditions relating to the product require that the product be used wholly for purposes other than personal, domestic or household purposes; and
 - 6.62.2. The cardholder acknowledges and agrees to those terms and conditions.
- 6.63. Where a product is issued for mixed purposes (for example, both business and personal uses), it will be subject to the fee caps under the IPS. This will even be the case where a product has been issued for use predominately but not exclusively for purposes other than personal, domestic or household purposes.

Charged directly to the account of the business

- 6.64. The definition of CCPP requires that the credit product be “charged directly to the account of the business”.
- 6.65. In considering the practical realities of how commercial credit products are settled, we interpret this as requiring the credit product to be ultimately settled by the business.
- 6.66. A credit product will be ultimately settled by the business where:
- 6.66.1. the balance of the product is settled directly from the business’ bank account (being central settlement);
 - 6.66.2. the balance of the product is settled from the personal bank account of the cardholder who is entitled to use the product who is then reimbursed by the business (being individual settlement); and
 - 6.66.3. in the case of sole traders, the product is directly settled from the account of the self-employed natural person.

Self-reporting where CCPP is incorrectly issued

- 6.67. We expect issuers to self-report any identified breaches, for example, where a CCPP is being used on a reoccurring basis for personal, household or domestic purposes or is not ultimately being settled by the business.
- 6.68. If we suspect that any particular issuer is incorrectly issuing CCPPs, we may request further information.

Payment instruments issued outside New Zealand

- 6.69. Payment instruments that are issued outside New Zealand (for example, foreign-issued cards) are excluded from the fee caps applying to both the credit and debit networks under the IPS.
- 6.70. For example, where a credit or debit card is issued in Australia, but used in New Zealand, it will not be subject to the fee caps under the IPS.

Prepaid payment products

- 6.71. Prepaid payment products are excluded from the fee caps applying to the debit networks under the IPS.
- 6.72. Prepaid payment products are not defined in the Act, but in our view, they are payment products (whether physical or electronic) which can be used to pay for goods and services using a store of value that has been prepaid/pre-funded.⁵⁸

ATM transactions

- 6.73. We understand that ATM cash withdrawal transactions using credit or debit cards (**ATM transactions**) may be subject to fees, however, these fees in the case of:
- 6.73.1. Visa are not interchange fees but ‘Cash Disbursement Fees’ which are paid from the issuer to the acquirer.⁵⁹
- 6.73.2. Mastercard are not interchange fees but ‘Service fees’ which are paid from the issuer to the acquirer.⁶⁰
- 6.74. Although not expressly excluded from the IPS, as interchange fees do not apply to ATM cash withdrawal transactions, the caps are not applicable.

⁵⁸ We have been guided by the definitions of (a) “Prepaid Card of a Scheme” in the Australian Standard No.2 of 2016 The Setting of Interchange Fees in the Designated Debit and Prepaid Card Schemes and Net Payments to Issuers; and (b) “prepaid payment product” in the Canadian Prepaid Payment Products Regulations SOR/2013-2019.

⁵⁹ Visa Rules (23 April 2022), Cash Disbursement Fee – A fee paid by an Issuer to an Acquirer for performing a Cash Disbursement.

⁶⁰ Mastercard Rules (7 June 2022), cl 8.1.4 – the definition of Service fee refers to an amount paid by the Issuer to the Acquirer with respect to the interchange of a Manual Cash Disbursement Transaction or ATM Transaction.

Inadvertent contraventions

- 6.75. We understand that there have been instances where an incorrect interchange fee has been applied to certain transactions within Mastercard and Visa's respective networks. For example, a transaction may be assigned an incorrect indicator (applying the incorrect card or merchant type) and therefore attract an interchange fee which is too high.
- 6.76. Participants may still be liable for a contravention of the IPS even if the contravention was inadvertent. However, our assessment of the contravention will take account of the particular facts and circumstances.
- 6.77. We expect participants to have arrangements in place to:
- 6.77.1. Identify whether any erroneous interchange has been charged;
 - 6.77.2. Address a situation where an erroneous interchange fee has been charged, including by ensuring that costs are reimbursed and not passed on to consumers and merchants; and
 - 6.77.3. Self-report to the Commission where any miscalculations or situations where erroneous interchange fees have been charged.

Appendix 1 – Relevant definitions under the network rules

1. Definition of “issuer”

- a. Set out below is the definition of “issuer” under the Mastercard Rules:⁶²

Issuer

A Customer in its capacity as an issuer of a Card or Account.

- b. Set out below is the definition of "issuer" under the Visa Rules:⁶³

Issuer	<p>In the AP Region, Canada Region, CEMEA Region, LAC Region, US Region: A Member that enters into a contractual relationship with a Cardholder for the issuance of one or more Card products.</p> <p>In the Europe Region: A Member that issues a Card to a Cardholder and maintains the contractual privity relating to the Card with that Cardholder.</p>
<small>ID# 0024768 Edition: Apr 2022 Last Updated: Oct 2016</small>	

2. Definition of “acquirer”

- a. Set out below is the definition of “acquirer” under the Mastercard Rules:⁶⁴

Acquirer

A Customer in its capacity as an acquirer of a Transaction.

- b. Set out below is the definition of “acquirer” under the Visa Rules:⁶⁵

Acquirer	<p>A Member that signs a Merchant or Payment Facilitator, provides a Cash Disbursement to a Cardholder, or loads funds to a Prepaid Card, and directly or indirectly enters a Transaction into Interchange.</p> <p>In the Europe Region: A Member that either:</p> <ul style="list-style-type: none"> • Enters into an agreement with a Merchant for the display of any of the Visa-Owned Marks and the acceptance of Visa products and services • Disburses currency to a Cardholder, except where “Acquirer” is otherwise defined for the Europe Region in the Visa Rules
<small>ID# 0024219 Edition: Apr 2022 Last Updated: Apr 2020</small>	

⁶² Mastercard Rules, at Appendix C. At: <https://www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf>.

⁶³ Visa Core Rules and Visa Product and Service Rules, at Glossary. At: <https://usa.visa.com/content/dam/VCOM/download/about-visa/visa-rules-public.pdf>.

⁶⁴ Above at n 62.

⁶⁵ Above at n 63.

3. Definition of “Interchange Fee”

a. Set out below is the definition of “interchange fee” under the Mastercard Rules:⁶⁶

1. “Interchange fee” means an amount paid by the Acquirer to the Issuer with respect to the interchange of a Transaction conducted by a Merchant or a Merchandise Transaction conducted at an ATM Terminal. All references to interchange fees in this section mean both the levels of the fees and all qualifying criteria and conditions for their applicability.

b. Set out below is the definition of “interchange fee” under the Visa Rules:⁶⁷

Interchange Reimbursement Fee (IRF)	A fee between Acquirers and Issuers in the Clearing and Settlement of an Interchange Transaction.
ID# 0024733	Edition: Apr 2022 Last Updated: Oct 2017

⁶⁶ Above n 62, at 8.1.

⁶⁷ Above n 63, at Glossary. While we understand this refers to “interchange reimbursement fee” rather than “interchange fee”, we still consider this to be the appropriate definition for the purposes of establishing the “interchange fee” definition under cl 1 of Schedule 1 of the Act.