

**VERIFONE / SMARTPAY**  
**VERIFONE SUBMISSION ON STATEMENT OF ISSUES**  
**28 April 2020**

**INTRODUCTION AND SUMMARY**

1. Thank you for the opportunity to provide a submission on the Statement of Issues dated 9 April 2020 regarding Verifone's proposed acquisition of Smartpay.
2. The proposed acquisition would not have the effect or likely effect of substantially lessening competition in relation to the supply of terminals to small and medium-sized enterprises (SMEs). As set out in Verifone's clearance application, there is vigorous existing competition in the market for the retail supply of payment terminals, which will continue to significantly constrain Verifone post-acquisition, both in respect of SME customers as well as corporate customers. The level of competition for SME customers is further evidenced by the following:
  - (a) There are numerous examples of price competition by resellers, which show that resellers can and do offer prices that are competitive with the prices offered by Verifone, and win customers from Verifone.
  - (b) In addition to competing on price, resellers also compete with Verifone and Smartpay based on service. For example, key features of the competitive proposition of many resellers includes the ability to provide a more localised service offering and offering a wider service that includes the supply and service of POS solutions (which are a very important input into the decisions that many SME merchants make about their choice of provider).
  - (c) The ability for resellers to compete (both on price and other factors) is supported by Verifone's observation that a large number of resellers have remained in the market over the years and maintained their market share. The amount that resellers are charged at the wholesale level also provides resellers with the ability to offer prices that are competitive with Verifone's prices and still earn a competitive margin.
  - (d) In addition to resellers, there are other larger companies that compete to supply SME customers, including:
    - (i) Windcave [REDACTED]; and
    - (ii) Banks, which supply mPOS devices to SME customers. mPOS devices are typically priced below prices for other payment terminals, and targeted at SME customers.
3. Potential competition from entities such as Ingenico/Paymark/Bambora and emerging technologies will also significantly continue to constrain Verifone post-acquisition. Verifone anticipates that the impact of COVID-19 will further increase demand for card-not-present and eCommerce payment facilities.
4. The proposed acquisition would also not have any anti-competitive vertical effects. Verifone's response to the issue outlined in paragraphs 5.2 and 75 of the Statement of Issues is set out in Confidential Appendix B to this submission.

5. Verifone agrees with the Commission that the acquisition would not have anti-competitive coordinated or conglomerate effects, or vertical or unilateral effects in the areas that the Commission has indicated it is no longer considering. Given the Commission’s indication that it is not considering these issues further, we have not commented further on them in this submission.

6. [REDACTED]

**ACQUISITION WILL NOT SUBSTANTIALLY LESSEN COMPETITION FOR SME MERCHANTS**

7. The Statement of Issues states that the Commission is testing whether the proposed acquisition would substantially lessen competition due to unilateral effects for the supply of terminals to SMEs.

8. Although we consider that the relevant market is the national market for the retail supply of payment terminals in New Zealand (as set out in Verifone’s clearance application, and noting the increasing competition from emerging payment technologies), the Commission’s proposal to analyse separate markets based on customer size does not change Verifone’s view that the proposed acquisition would not have the effect or likely effect of substantially lessening competition in a market. Post-acquisition, Verifone will continue to be constrained by significant existing and potential competition for SME merchants (as well as for larger merchants).

9. This is supported by the fact that the extent of aggregation in the narrower market for the retail supply of terminals to SME merchants would be similar to the level of aggregation in the broader market. Verifone estimates that market shares for the retail supply of terminals to SME customers are as follows:

Supplier	SME Terminals	Market share (%)
Verifone/Eftpos NZ	[REDACTED]	[REDACTED]
SmartPay*	[REDACTED]	[REDACTED]
Eftpos Specialists*	[REDACTED]	[REDACTED]
Windcave*	[REDACTED]	[REDACTED]
Other Resellers*	[REDACTED]	[REDACTED]
Bank – mPOS*	[REDACTED]	[REDACTED]
Estimated Total	[REDACTED]	100%

\* Estimates of Verifone management, based on knowledge of the market

- 10. Based on the market shares estimated above, the post-acquisition market share of Verifone would be approximately [REDACTED], with the remaining [REDACTED] of the market comprising competition from large companies such as Windcave and banks, as well as resellers. As set out further below, all of these competitors would continue to significantly constrain Verifone post-acquisition.

**Current competition**

- 11. The Statement of Issues states that the main competitors to Verifone and Smartpay at the SME level are resellers, which do not import terminals themselves and may find it difficult to compete on price with Verifone and Smartpay in the SME market.<sup>1</sup> This is incorrect. As set out further below, resellers compete on the basis of both price and service with Verifone, and will continue to be able to compete vigorously with Verifone post-acquisition. Banks also compete for SME customers through their mPOS offerings. Windcave is a vibrant competitor in the SME segment of the market, and Ingenico is well placed as a ready-entrant into that segment.
- 12. Verifone will also continue have a strong incentive to be price competitive on terminals post-acquisition, in order to maintain the volume of transactions on the Verifone switch (as suggested at footnote 11 of the Statement of Issues).

*Reseller competition*

- 13. The Statement of Issues understates the degree of constraint that resellers impose on Verifone and Smartpay, and would continue to impose on Verifone post-acquisition.

Resellers can and do compete on price, and will continue to be able to do so post-acquisition

- 14. In response to the Commission’s request for evidence to show the constraint that resellers impose on Verifone and Smartpay for SME customers, Verifone is providing information to the Commission that clearly shows that prices being offered by resellers are competitive with the prices offered by Verifone and that Verifone loses business based on price (as well as other factors) to resellers. The proposed acquisition would not change this.
- 15. Further, the prices that resellers pay to acquire terminals enable resellers to offer strong price competition. [REDACTED]  
[REDACTED]

- 16. The Statement of Issues states that many resellers appear to be somewhat dependent on Verifone, and that this could affect the extent to which resellers would constrain the merged entity post-

<sup>1</sup> Statement of Issues at [24], [47], and [48].

acquisition.<sup>2</sup> Verifone's incentives to offer terminals at a competitive price at the wholesale level will not be affected by the proposed acquisition. The Commission has accepted that Verifone would not be likely to have the ability to raise the cost of resellers or refuse to supply resellers in the Statement of Issues.<sup>3</sup>

17. Verifone will continue to be constrained by other terminal providers, such as Skyzer, from which resellers can (and do) acquire terminals. Very few resellers that acquire terminals from Verifone acquire terminals only from Verifone (and, even if they did, they could easily switch to another provider). Verifone believes that Skyzer is already the largest provider of terminals to resellers, and understands that Skyzer offers comparable pricing for terminals that it supplies to resellers. This means that resellers can also compete with Verifone on price when they supply terminals to merchants that are acquired from Skyzer.
18. If resellers were not able to effectively compete on price (or other factors) with Verifone and Smartpay in the SME segment of the market, we would expect to have seen a material movement in market share, and consolidation and/or reduction in the number of resellers in the SME market. There has not been any such impact. There remain a large number of resellers in the market (at least 50 of which Verifone considers have a material EFTPOS customer portfolio, with up to another 50 that participate in the market to a more limited extent) and that has been the case for a number of years. We also consider that the combined share of Verifone and Smartpay in the SME segment of the market is, at best, static and more likely to be in decline (particularly when accounting for the growth of mPOS devices provided by banks).
19. We therefore consider that there is very strong evidence that resellers can and do compete on price, and will continue to be able to do so post-acquisition.

#### Resellers also compete based on non-price factors

20. In addition to price competition, resellers compete strongly for SME customers based on non-price factors. Other key elements of the competitive proposition of different resellers include:
  - (a) the ability to provide a more localised service offering (as many resellers have operations focused on particular towns, cities, and/or regions); and
  - (b) offering a wider service that includes the supply and service of other products such as POS solutions, which are an important input into the decisions that many SME merchants make about their choice of provider. Neither Verifone nor Smartpay provide service or support for a merchant's wider POS solutions.
21. For example:
  - (a) EftposNow markets itself as providing the "highest level of service" and "highest level of support" to its customers.<sup>4</sup>
  - (b) Eftpos Specialists states that it offers "local knowledge and support" by having franchises throughout New Zealand.<sup>5</sup>

<sup>2</sup> Statement of Issues at [51].

<sup>3</sup> Statement of Issues at [74].

<sup>4</sup> <https://www.eftposnow.co.nz/about-us>

<sup>5</sup> <http://eftpos-specialists.co.nz/about-us/>

- (c) KIWIeftpos promotes its service focus, and also offers POS solutions.<sup>6</sup>
  - (d) Eftco emphasises its service focus.<sup>7</sup>
  - (e) Eftpos Warehouse promotes its “hands-on service” (as well as having a ‘Price Beat Promise’ offering and POS solutions).<sup>8</sup>
  - (f) Otago Business Equipment promotes its “local business support crew”, and targets the lower South Island (with offices in Dunedin and Queenstown).<sup>9</sup>
  - (g) Positive Systems, Maverick Technologies, Nationwide Eftpos, POS Connections, POS Technology, and TotalPOS offer POS solutions as well as Eftpos terminals.<sup>10</sup> As noted at paragraph 49 of the Statement of Issues, the existing relationship that resellers have with a merchant for another service such as POS services can be leveraged to sell terminal services to the merchant as well.
22. We disagree with the suggestion in the Statement of Issues that reduced variety in offers in the SME segment of the market could contribute to a substantial lessening of competition in the market.<sup>11</sup> First, the two examples highlighted in paragraph 45 of the Statement of Issues (Verifone’s hospitality solutions and Smartpay’s taxi solutions) are corporate solutions, not SME solutions, and therefore not relevant to competition for SME customers. Second, as noted above and in the clearance application, there are a number of different ways in which terminal suppliers differentiate their offerings in the supply of terminals to SME customers, for example through price, the duration of contracts, service offerings, locality of support staff etc. Third, there is a significant number of terminal suppliers all competing with each other across these different aspects of competition in order to win the business of SME customers.

#### *mPOS supplied by banks*

- 23. Resellers are not the only competitors that compete with Verifone and Smartpay to supply terminals to SME merchants.
- 24. All main acquiring banks now also compete in the SME segment of the market through bank-branded mPOS or terminal offerings that are targeted at SME customers (ANZ FastPay, BNZ Payclip, Westpac Get Paid, ASB Accept).
- 25. The solutions offered by banks are competitive, particularly at the lower end of the SME market, and are all generally priced well below prevailing rental prices for Smartpay, Verifone, and other market participants. The solutions have grown strongly in recent years and will continue to provide a clear competitive alternative and constraint on the merged entity’s ability to increase price post-acquisition. Banks are also able to bundle mPOS solutions with their acquiring services.

<sup>6</sup> <https://kiwiefpos.co.nz/about-kiwi-efpos-pos/>

<sup>7</sup> <https://eftco.co.nz/efpos-contract-elsewhere/>

<sup>8</sup> <https://eftposwarehouse.co.nz/about-us/>

<sup>9</sup> <https://www.otagobusiness.co.nz/>

<sup>10</sup> <https://www.pos-itive.co.nz/info/>; <https://www.mavericktechnology.co.nz/>; <https://www.nzeftpos.co.nz/>;

<https://www.posconnections.co.nz/about-us/>; <https://posttechnology.co.nz/about/>; <https://totalpos.co.nz/about-total-pos/>

<sup>11</sup> Statement of Issues at [45].

*Windcave*

- 26. In addition to resellers and banks, Windcave competes to supply payment terminals to SME merchants.
- 27. The Statement of Issues suggests that Windcave primarily competes in the corporate market. Although Windcave is a very strong competitor for corporate merchants, Windcave already also provides strong competition for SME merchants. While this has historically been in the provision of integrated solutions to SME merchants, Verifone understands that Windcave is now actively marketing standalone mobile type EFTPOS solutions as well.<sup>12</sup>
- 28. [REDACTED]
- 29. [REDACTED]
- 30. Windcave is therefore not just a potential competitor in the SME terminal market, it is already a very vibrant competitor for SME customers across both Paymark and Verifone networks, offering both integrated and standalone solutions. Windcave also offers acquiring services, so can compete based on its vertical offering.

**Other potential competition**

- 31. Verifone also maintains that it is very likely that Paymark/Ingenico (either directly or via Bambora) will enter the terminal market, both as a means of generating incremental revenue from existing merchant relationships, and as a means of protecting its existing transactional volume. As previously advised to the Commission, Ingenico recorded its intention to do so in its press release dated 11 January 2019, which states that Ingenico’s acquisition of Paymark means that it is well positioned “to deploy the full suite of its offer to retailers ... including in-store and online payment acceptance services”.<sup>13</sup>
- 32. Verifone’s view regarding the likelihood of Ingenico’s entry into the market will clearly constrain the merged entity post-acquisition. The Statement of Issues correctly identifies that [REDACTED].<sup>14</sup> There are no significant barriers that Ingenico would face to start competing for SME merchants directly. As set out in Verifone’s clearance application, barriers to entry in the market for the retail supply of payment terminals are very low. Ingenico/Paymark is also clearly well positioned

<sup>12</sup> The standalone device offered by Windcave is shown at <https://www.windcave.com/merchant-attended-MTM300>.

<sup>13</sup> <https://cdn.ingenico.com/binaries/content/assets/corporate-en/press-releases/2019/01/20190111-ingenico-group-announces-the-completion-of-paymark-acquisition.pdf>

<sup>14</sup> Statement of Issues at [57.1]. See also, for example, [REDACTED].

to meet requirements such as application development and certification to Paymark, ongoing Paymark compliance, and Paymark network fees.

33. As noted in the Statement of Issues, in addition to directly competing to supply SME merchants, Ingencio could also support terminal retailers and resellers in other ways to ensure that it maintains volume over its switch.<sup>15</sup> We understand that Bambora is already providing card-present acquiring services to merchants by partnering with resellers for the terminals, and it is a natural extension of that offer to move into direct terminal provision.<sup>16</sup> [REDACTED]

34. As set out in Verifone's clearance application, there is also a range of new technologies that either reduce a merchant's reliance on a payment terminal or involve new ways to make payments that do not require a payment terminal. The COVID-19 pandemic could further increase the interest in such technology, as discussed further below.

**Countervailing power**

35. The Statement of Issues states that the Commission has not identified any means through which SME merchants may be able to exert countervailing power on the merged entity. Although SME merchants are small businesses, the evidence that Verifone is providing to the Commission regarding the constraint that resellers provide on Verifone shows that SME merchants can, and do, switch (or credibly threaten to switch) to another provider.

[REDACTED]

36. [REDACTED]

37. [REDACTED]

38. [REDACTED]

<sup>15</sup> Statement of Issues at [59].

<sup>16</sup> See <https://www.bambora.com/en/nz/one-channel/> for an overview of Bambora's omni-channel solution.

39.

**IMPACT OF COVID-19**

40. It is still difficult to accurately predict the longer-term impacts of COVID-19. However, at this stage, Verifone foresees the following two major systemic implications for the market:

- (a) **Increasing merchant and consumer demand for contactless payment:** Banks, switches, and terminal providers have collaborated to support wider contactless acceptance in the short term, along with increases to the limits at which a contactless transaction requires a PIN. We expect that, while some of the pricing breaks for contactless transactions will be unwound over time, there will remain a much stronger sustained demand from consumers for contactless payment that is driven by hygiene in addition to convenience. It is currently difficult to determine the exact extent of the change. However, we anticipate that it will support a very material increase in contactless acceptance across the market and therefore a material switch to S2A transactions from S2I transactions.
- (b) **Increasing demand for card-not-present and eCommerce payment facilities:** We have already observed a significant increase in demand for card-not-present and eCommerce payment facilities – particularly from merchants who traditionally only accept in-store payments. Although some of this is potentially short-term in nature in order to support some re-opening of business under Alert Level 3, we expect a sustained shift in demand from terminal card-present payment solutions to remote eCommerce type solutions that will accelerate the existing trend towards online payment. This will especially be the case as both existing and new retailers look to avoid the high overhead and high fixed cost model associated with a physical store. Such a change is likely to further improve the competitive proposition of market participants such as Windcave, which can support both eCommerce and terminal solutions. Neither Verifone nor Smartpay currently offer eCommerce products to merchants. Paymark has also recently been promoting its ‘Online EFTPOS’ as an option for retailers to use for in-store purchases, stating that:<sup>17</sup>

*Retailers have already been using Online EFTPOS for their web stores but many are starting to use it for in-store purchases as well. Customers can shop in-store and when making their purchase the retailer can use their own websites to conclude the transaction via Online EFTPOS. The customer approves the purchase through their own banks’ mobile apps and the transaction is completed with the minimum of contact.*

<sup>17</sup> <https://www.scoop.co.nz/stories/BU2004/S00103/online-eftpos-in-store-true-contactless-payments.htm>. See also <https://www.paymark.co.nz/blog/think-100-contactless-eftpos-payments/>, <https://www.paymark.co.nz/cardless-eftpos-oe/>, and <https://www.interest.co.nz/business/104343/fourth-part-series-nzs-retail-payment-systems-gareth-vaughan-looks-eftpos-and-covid>.



**CONCLUSION**

- 43. The material provided to the Commission clearly shows that Verifone’s proposed acquisition of Smartpay would not have the effect or likely effect of substantially lessening competition in a market.
- 44. We expect that the information that has been provided to the Commission will fully address the issues raised in the Statement of Issues. Verifone is happy, however, to further discuss the issues with the Commission if required.

**CONFIDENTIALITY**

- 45. Confidentiality is sought for the information in this application included in square brackets and highlighted.
- 46. Confidentiality is also sought for all of Appendix A, and Appendix B (which is subject to a confidentiality undertaking provided to the Commission).
- 47. A public version of this submission with the confidential information deleted will be provided to the Commission.
- 48. We request that we be notified of any request made under the Official Information Act 1982 for the information, and be given the opportunity to be consulted as to whether the information remains commercially sensitive at the time that the request is made.
- 49. These requests for confidentiality are made because the information is commercially sensitive, and disclosure would be likely to unreasonably prejudice the commercial position of Verifone. The information includes confidential information relating to [REDACTED]  
[REDACTED]  
[REDACTED].