

Retail Payment System Act 2022

Guidance on the initial pricing standard

Response to submissions on the draft guidance

Date: 15 December 2022

Associated documents

Publication date	Title
18 May 2022	Retail payment system - Open letter to participants – 18 May 2022 (Commerce Commission)
7 September 2022	Retail payment system – Draft guidance on the initial pricing standard (Commerce Commission)
15 December 2022	Retail Payment System Act 2022 – Guidance on the initial pricing standard (Commerce Commission)

Index of submissions

Publication date	Title	Referred to in this document as
25 October 2022	ANZ Bank New Zealand – Submission on draft IPS guidance – 13 October 2022	ANZ
25 October 2022	ASB – Submission on draft IPS guidance – 13 October 2022	ASB
25 October 2022	BNZ – Submission on draft IPS guidance – 17 October 2022	BNZ
25 October 2022	Mastercard – Submission on draft IPS guidance – 13 October 2022	Mastercard
25 October 2022	Retail NZ – Submission on draft IPS guidance – 11 October 2022	Retail NZ
25 October 2022	Till Payments – Submission on draft IPS guidance – 13 October 2022	Till
25 October 2022	Visa – Submission on draft IPS guidance – 13 October 2022	Visa
25 October 2022	Westpac – Submission on draft IPS guidance – 13 October 2022	Westpac
25 October 2022	Worldline – Submission on draft IPS guidance – 13 October 2022	Worldline

Introduction

- 1.1 We published guidance on 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 on 15 December 2022 (**the Guidance**).
- 1.2 The Guidance explains the scope and applicability of the IPS and how we interpret certain key provisions of the IPS.
- 1.3 This paper sets out our responses to points raised in submissions on our draft guidance on the IPS, published on 7 September 2022. The draft guidance contained a series of questions on which submissions were specifically sought.
- 1.4 We are not seeking submissions on this paper. We expect that the responses provided here to points raised in submissions on the draft guidance will assist stakeholders in understanding the Commission's position on certain topics.
- 1.5 Readers should bear the following in mind:
 - 1.5.1 We have not attempted to respond to every point made in submissions. Instead, this document intends to provide a summary of our views on the main substantive points raised by stakeholders.
 - 1.5.2 Some submitters provided confidential information in their submissions. Confidential points considered as part of finalising the Guidance have not been included in this document.
 - 1.5.3 To the extent relevant, we have provided cross-references to paragraphs of the Guidance where our views on particular points have been expressed.
 - 1.5.4 The draft guidance contains Chapter 7, titled "Information required to assess compliance". The Guidance does not contain a similar chapter. A separate document will be published at a later date which will provide this information and our response to submissions. We will update stakeholders on when this document is to be published.
- 1.6 We thank submitters for their submissions and engagement in the process of developing the Guidance.

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 draft guidance are to the Act unless otherwise stated.

- 1.7 All abbreviations and terms used in this document are either defined, or have the same meaning as in the Guidance.

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Chapter 5: Participants required to ensure compliance with the IPS

No.	Submitter	Main submission arguments	Changes from draft guidance	Response
5A Are you aware of any issuer setting or bilaterally agreeing an interchange fee which is below the maximum rates since 31 March 2021? If so, please provide details of the arrangement.				
1	ANZ	"For each applicable interchange fee category other than charities ANZ has elected to receive the Visa maximum interchange fee. For charities the relevant Visa maximum interchange fee for credit card and debit card transactions is 0.39% and ANZ has elected to receive 0.00% interchange for these transactions."	No change.	Noted.
2	Visa	"ANZ New Zealand has set its interchange rates for all charity transactions at zero percent (credit and debit), below the maximum interchange rates."	No change.	Noted.
3	Westpac	"Yes. We understand that ANZ accepts a 0% Visa interchange fee for charities which are currently subject to a maximum allowed rate of 0.39% pursuant to the Visa New Zealand Domestic Interchange Reimbursement Fee Guide (Visa IRF Guide)."	No change.	Noted.
4	Mastercard	"We are not aware of any issuer setting or bilaterally agreeing rates outside of the rates set by Mastercard (Question 5A)"	No change.	Noted.
5	Till Payments (Till)	"As a monoline acquirer, we are not aware of any issuer setting or bilaterally agreeing an interchange fee below the maximum rates since 31 March 2021."	No change.	Noted.

5B Have we accurately described how interchange fees are set, assigned and charged in practice? If not, please provide an explanation.				
6	Visa	"Schemes set a schedule of maximum, or default, interchange rates based on a variety of factors such as the type of card product (eg, Infinite, Signature, Platinum, Gold, and Commercial), type of payment channel (e.g., Card Not Present/Card Present), funding source (eg,, Debit, Credit, Prepaid), merchant segment, and certain technology or processing factors, such as if the transaction was tokenised. In addition, schemes may grant certain merchants Strategic Merchant Rates. Issuers will then, through an issuer opt-in process, either attest to receive the maximum rates set by schemes or opt-in for rates lower than the maximum rates set by the scheme. Following this process, issuers then typically adopt the maximum rates schemes set, but under certain circumstances, such as those listed in response to Question 5A, a lower rate may be assigned."	Change.	Chapter 5: Further factors included for how schemes set maximum interchange rates.
7	BNZ	"Clause 5.9 of the Document does not provide detail on how the maximum interchange fee (that is generally used by the issuer in setting its own interchange fee) is set, which is done entirely by the schemes. Other participants have no visibility over the methodology used by the schemes to set these maximum interchange fees for each interchange category."	No change.	Noted.
8	Mastercard	Example – transaction where the interchange is 0.30% On a \$100 transaction the switch (eg, Mastercard) would calculate that the issuer is allowed to keep 0.30% as interchange and would therefore require the issuer to pay \$99.70 to the acquirer (so that, in turn, the acquirer can pay the merchant). This is how the issuer collects the interchange fee that it is entitled to. The switch would therefore instruct the settlement bank(s) at which the issuer has a settlement account to transfer \$99.70 from issuer's settlement account to the settlement account of the acquirer.	Change.	Chapter 2: Mastercard has referred to itself as the 'switch' in this example. Clarification added in the Guidance to set out who we are referring to when we say switch.

9	BNZ	"Except as provided in point 2, clause 5.9 of the Consultation Document on Guidance on the IPS (Document) is mostly accurate. However, the practical operation of how interchange fees are set, assigned and charged is a complex process which has been substantially simplified in the Document. We describe at points 3-7 some further information and clarification."	Change.	Chapter 5: The Guidance has noted that the explanation of how interchange fees are charged/processed is simplified and there are other transaction flow models.
10	Till	"The process described correctly illustrates how interchange fees are assigned and charged under a Switch to Acquirer model, however this is not the only available transaction flow (eg, Switch to Issuer; Switch to Scheme)"	Change.	As above.
11	Visa	"The acquirer or merchant's switch operator sends certain information about the transaction to the scheme (such as payment amount, merchant jurisdiction, merchant category code, and indicators unique to the nature of merchant). Based on the card number, the scheme and acquirer will then derive the card type of the transaction. The scheme then allocates the relevant interchange value for the particular transaction by matching the transaction and card information submitted by the acquirer with the interchange schedule of the scheme."	Change.	As above.
12	BNZ	"We do not think that paragraph 5.9.1 properly reflects that some schemes allow both single and dual messaging... We understand two of the four largest bank acquirers use dual messaging and the other two use single messaging."	Change.	As above.

13	Westpac	<p>"We submit that the scheme is in fact the entity that sets the interchange fees and the issuer simply notifies the scheme of the rate to be applied to all transactions."</p> <p>"With respect to paragraph 5.9.1 of the Guidance we would like to clarify that the scheme allocates the value for the particular interchange fee category (based on the assigned indicators, or values within the clearing message identifying the transaction type, which have been submitted by the acquirer) and the rate that the issuer has notified the scheme, they wish to receive."</p>	Change.	As above.
14	ASB	<p>"Yes, although it doesn't directly describe at what point the merchant interchange fee is assigned. For clarity (5.9.2) the acquirer uses information within the transaction from the switch to assign the merchant interchange fee category. This information is then used to charge the merchant and is sent to schemes to initiate the exchange of interchange between acquirer and issuer."</p>	Change.	Chapter 5: Clarification included around how merchant interchange categories and indicators are assigned to a transaction.
15	BNZ	<p>"The amount of that interchange fee is not entered into the interchange system by the acquirer. It is allocated by the scheme based on the interchange category entered by the acquirer."</p>	Change.	Chapter 5: Clarified.
16	BNZ	<p>"The acquirer wholly relies on the relevant scheme's systems to ensure that the interchange fee it is charged (on a net basis) is the correct interchange fee (based on applying the correct interchange fee as set by the issuer for the interchange category entered into its systems by the acquirer and by performing the calculation correctly) and that it is not being charged an interchange fee above the rate set by the issuer (the maximum interchange fee allowed by the schemes)."</p>	Change.	Chapter 5: Clarified that the acquirer/issuer does not have full oversight of the interchange fee being charged correctly.

17	Westpac	<p>"Paragraph 5.12 of the Guidance states that "any participant involved in the setting or charging of the total interchange fees, and who is in a position to affect compliance with the IPS, has a responsibility for ensuring compliance with the IPS." This statement appears to create a wide scope for liability for participants under the Act which is reinforced by paragraph 5.14 of the Guidance."</p> <p>"Paragraph 5.14 of the Guidance refers to secondary liability under the Act and states that participants may be deemed to be "involved in the contravention of the IPS" under the Act if "if they have a causative role in the setting and charging of interchange fees, or compliance with the IPS". The use of the term "causative role" suggests a low threshold for liability. We interpret this term to mean that any participant who contributes to a cause that leads to the ultimate setting and charging of interchange fees (whether this is intentional or not and regardless of actual knowledge of the contravention) is deemed to be involved in the contravention of the IPS."</p>	Change.	Noted. Chapter 5 is concerned with <i>responsibility</i> for compliance, as opposed to legal liability, that is a separate (but related) issue.
18	BNZ	"Interchange fee miscalculations can occur occasionally and are in most cases notified and adjusted by the schemes, though this can occur some time after the date of the error."	Change.	Chapter 6: Noted, and have included an expectation of self-reporting by participants when erroneous interchange fees are assigned and charged.
19	Mastercard	"The interchange rate is not a dynamic field in any market and our systems are not currently set up to apply different interchange rates for different issuers or acquirers."	No change.	Noted.
20	ANZ	"We believe how interchange fees are set, assigned and charged is accurately described."	No change.	Noted.

21	BNZ	"Except for the agreement in relation to charities described above under question 5A, we are not aware of any bilateral agreements between an issuer and acquirer which involve the acquirer agreeing to pay a set sum. Instead, acquirers generally agree to pay the interchange fee "set by the issuer from time to time" – which, in turn, is generally set with reference to the maximum interchange fee set by the schemes."	No change.	Noted.
22	Mastercard	"Once an interchange rate has been introduced or changed, Mastercard will publish the rate/s in a bulletin to our customers (issuers and acquirers). Mastercard requires at least six months (and sometimes longer) to make the technical changes in our system"	No change.	Noted.
23	Mastercard	"We usually give at least six months' notice to our customers, of any additions or changes, to allow any technical changes to be made by acquirers."	No change.	Noted.
24	BNZ	"The Commerce Commission (Commission) should ensure that the IPS does not create regulatory arbitrage by unduly focusing its mandate and compliance on participants that are both acquirers and issuers."	No change.	Noted.
5C(i) Do you agree with our analysis of scenario one? Why/why not?				
25	ASB	"The issuer does not charge the acquirer. In practice, the schemes set the maximum interchange rates, the issuers then advise what rates (maximum or below) they would like to utilise and the acquirers then ensure systems adhere to the rates published by the schemes. Under 5.18.3, it is correct that the acquirer would have been involved in setting the rates up within systems but they would have done so by following the rules set by the schemes."	Change.	Chapter 5: We have further clarified the acquirer's role and updated scenario one to reflect that the acquirer is unlikely to have been involved in the contravention of the IPS in this scenario.

26	BNZ	"We do not agree it is relevant that it is the acquirer who paid the non-compliant interchange fee since it "pays" by receiving a net position from the issuer (being the aggregated settlement amount for the transactions owed by the issuer less the interchange fee). Therefore, the acquirer does not directly control the payment process, it simply receives a net value calculated by the scheme and relies wholly on the scheme to apply the correct interchange fee and perform the calculation correctly."	Change.	Chapter 5: We have clarified that the acquirer is not 'paying' a non-compliant fee. Further clarification to the acquirer role has been included, and we have also set out our expectations in such a scenario.
27	Visa	"Scenario one correctly captures a case of a breach of the IPS by the issuer and the scheme. The scheme had set a maximum interchange rate for contactless debit at a rate above the IPS cap, while the issuer set and charged and received that same rate. Therefore, both the scheme and issuer are in breach of the IPS. Acquirers populate transaction data when sending transaction messages to the scheme, as outlined in our response to Question 5B. Acquirers, however, do not populate interchange rates in this message flow and it is the scheme which assigns interchange rates upon receipt of the acquirer's transaction message. Therefore, the acquirer is not in breach of the IPS."	Change.	Chapter 5: As above.
28	Westpac	"Paragraph 5.18.3 of the Guidance states that "the acquirer is involved in entering the non-compliant interchange fee into the interchange system which enabled that fee to be assigned and charged". We submit that this characterisation is misleading and is inconsistent with the description provided at paragraph 5.9.2 of the Guidance. The acquirer assigns a unique indicator to the transaction which is then submitted to the scheme based on which the scheme then assigns a percentage or fixed fee value to the transaction and enters this into net settlement. It is important to highlight that the acquirer does not enter interchange fees into the system and has no control over the level of interchange fees that are set."	Change.	As above.

29	BNZ	<p>"The acquirer should not be liable under scenario one unless it:</p> <p>(i) enters into a bilateral agreement with an issuer where it expressly agrees to pay an interchange fee in excess of the cap (e.g., instead of paying on an "interchange fee as set from time to time", it agrees to an interchange fee set in excess of the cap); or</p> <p>(ii) receives information from the scheme about a discrepancy or error, or otherwise identifies a discrepancy or error in the interchange fee paid and does not act on that information to remedy past overpayments made by it and its merchants and correct the issue for future transactions; or</p> <p>(iii) deliberately enters an incorrect interchange category that results in the payment of an interchange fee that exceeds the applicable cap (although we note acquirers have no incentive to do this)"</p>	No change.	While not directly addressed in the Guidance, these scenarios have been noted.
30	BNZ	<p>"An issuer should not be liable if it prescribes interchange fees that comply with the cap (and correctly notifies the schemes of its prescribed interchange fees) but receives interchange fees that exceed the cap (and the interchange fees it prescribed) based on a calculation error or other error by the schemes."</p>	No change.	Chapter 6: In this scenario we would expect the issuer to have been aware of the error and correct this in a timely manner. See our discussion on inadvertent contraventions.
31	BNZ	<p>"The issuer should not be liable under scenario one unless it:</p> <p>(i) actively sets an interchange fee that is in excess of the cap (and the scheme allows that higher interchange fee to actually be paid to it by the acquirer); or</p> <p>(ii) receives information from the scheme about a discrepancy or error, or otherwise identifies a discrepancy or error in the interchange fee paid and does not act on that information to remedy the overpayments and correct the issue for future transactions."</p>	No change.	<p>Noted.</p> <p>Point (i) is illustrated in scenario one, where the issuer has actively set an interchange fee in excess of the cap.</p> <p>Point (ii): Agree that an issuer may be liable in this instance (depending on the particular facts and circumstances).</p>
32	ANZ	<p>"We agree with your analysis and allocation of responsibility in scenario 1 although in our view the scenario in question would be unlikely to eventuate."</p>	No change.	Noted.

33	Till	"Yes we agree with the analysis of scenario one"	No change.	Noted.
5C(ii) Do you agree with our analysis of scenario two? Why/why not?				
34	BNZ	"We agree in principle that the issuer and the schemes are the participants that will have knowledge of any "net compensation" and therefore would be the liable parties as a starting point. However, our view is that the current description and analysis in the Document of how "net compensation" will operate in practice is ambiguous to us and arguably inconsistent with sections 3 and 4 of the Act."	No change.	Chapter 6: It is noted that BNZ agrees that the issuer and scheme each have knowledge of the provision of net compensation in scenario two. Net compensation is clarified further in Chapter 6.
35	Visa	"There is insufficient information describing scenario two to assess if it is indeed a breach. In order to determine whether provisioning of net compensation has taken place, the compensation must meet the criteria outlined in Section 6.14 of the draft guidance on the IPS and clause 7(4) of Schedule 1. In addition, the compensation must be able to be linked to enabling the transaction or derived as a result of the transaction taking place. Similarly, the transactions must occur within the time period for which the compensation applies or is intended to apply. Lastly, it must be determined that the payment does not cover chargebacks or fees associated with fines or penalties designed to support the health and growth of the ecosystem."	No change.	Chapter 6: While there has been no change to scenario two itself, we have clarified in Chapter 6 that in this scenario net compensation requirements have been met and the compensation has been reasonably attributed to the relevant transactions to determine the total interchange fee charged for those transactions. The purpose of scenario two is not to test/illustrate the net compensation requirements, but to illustrate participants which may be responsible for ensuring compliance. Note we have included a worked example of how net compensation may be attributed later in Chapter 6.
36	BNZ	"We think that it would be inappropriate and inconsistent with sections 3-4 of the Act for the Commission to focus its compliance efforts on regulating discounts or benefits that are made to an issuer from a scheme (or a third party) but which do not add or increase costs to acquirers (and indirectly, to merchants), through regulating those discounts and benefits as "net compensation".	No change.	Chapter 6: Further clarification has been included.

37	BNZ	<p>"The interpretation of the phrase 'the effect of the IPS' (see our comments on question 6D(i)) – and by extension, the types of discounts or benefits that the Commission is suggesting could qualify as 'net compensation' – might unduly limit the ability of schemes and issuers to undertake commercial negotiations. This is because it appears to conflate issuer revenue with interchange revenue, and perhaps does not recognise that not all issuer revenue performs the same economic function as interchange fees because not all issuer revenue results in an issuer or scheme adding or increasing costs to acquirers (and indirectly, to merchants). As a result, the 'net compensation' provisions, in our view, unduly focus on restricting issuer revenue instead of focusing on reducing acquirer/merchant costs."</p>	Change.	<p>Chapter 6: We have defined the effect of the IPS as reducing issuer's interchange revenue rather than overall revenue.</p> <p>We have updated the Guidance to state that in applying the purpose test we will consider (among other things) whether that compensation is directly or indirectly funded by adding or increasing costs to acquirers (and indirectly to merchants).</p>
38	BNZ	<p>"the fact that clause 7(4) of the IPS does require a 'net positive flow of payments...' and that the Commission intends to ask for information about payments made by the issuer to the scheme under 7.14.2 and 7.15.2 implies that there may be some discounts or benefits made by the issuer to the scheme that will have characteristics or qualities that mean that those discounts or benefits should properly be netted off against discounts or benefits made to the issuer."</p> <p>"It would be helpful for the Commission to clarify further what discounts or benefits paid by the issuer have characteristics that mean that it should properly be "netted off" the discounts or benefits received by the issuer."</p>	Change	<p>Chapter 6: Where there is a sufficient link between an increase in the level of compensation provided to an issuer and an increase in the level of payments made by the issuer, then it may be appropriate to net off the compensation against the payment.</p> <p>We have further clarified:</p> <ul style="list-style-type: none"> • In what instances "netting off" may be appropriate/inappropriate. • The principles we will consider in determining whether there is a sufficient link between a payment and compensation.
39	BNZ	<p>"BNZ notes that it struggled with the interpretation and application of 'net compensation' provisions and has discussed this at length both with internal and external legal counsel to try and navigate the application of 'net compensation'."</p>	No change.	Noted.

40	ANZ	"We assume... that any existing arrangements, in place prior to 1 April 2021, cannot amount to Net Compensation. If those arrangements have not changed, ANZ considers that its initial Net Compensation position is '0'. This is because any arrangement in place at 1 April 2021 predates the introduction of the Retail Payment Systems Bill and therefore could not have the purpose of compensating an issuer for the effect of the IPS."	Change.	Chapter 6: Clarification has been included on our view in relation to compensation agreed before 13 May 2022.
41	ASB	"From an acquiring perspective, we agree that we have no visibility of Issuers Net Compensation arrangements. From an Issuing perspective, ASB has some concerns around the attribution of 'compensation' to transactions (and therefore 'assessed' interchange)."	No change.	Noted.

42	Westpac	<p>"Unduly focusing on issuer revenue, in particular if increasing issuer revenue through discounts or benefits to it by the scheme does not result in the issuer or scheme adding or increasing costs to acquirers (and indirectly, to merchants), seems to be inconsistent with section 4 of the Retail Payment System Act 2022 (Act) and, in our view, will likely have the unintended consequences of:</p> <p>a. Allowing a competitor scheme to offer discounts and benefits to an issuer to incentivise it to switch schemes, but limiting the ability of incumbent schemes to compete during the re-negotiation of an issuer agreement by offering discounts and benefits as part of the general renegotiation process (which would be inconsistent with the purpose of the Act to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand)</p> <p>b. Restricting an issuer's freedom to increase/maintain its revenue through alternative income streams other than adding or increasing costs to acquirers (and indirectly, to merchants) for no tangible benefit to acquirers, merchants or consumers (which could be inconsistent with the principle of the Act that merchants and consumers should pay no more than reasonable fees for the supply of payment services);</p> <p>c. Creating regulatory arbitrage by not sufficiently considering arrangements for discounts or benefits between other participants, such as acquirers that do not have an issuer business, that might also contribute to high merchant service fees and could also warrant consideration of whether those arrangements contain any 'net compensation'; and</p> <p>d. Unduly intruding into commercial negotiations for no tangible benefit to acquirers, merchants or consumers."</p>	<p>Change (point (b)).</p> <p>No change (point (a), (c) and (d)).</p>	<p>We have updated the Guidance to state that in applying the purpose test we will consider (among other things) whether that compensation is directly or indirectly funded by adding or increasing costs to acquirers (and indirectly to merchants).</p> <p>Point (a): We understand there are material costs involved in switching schemes (which the scheme may cover to incentivise switching), whereas those same costs do not apply in respect of issuer retention.</p> <p>Point (b): We acknowledge the difference between 'issuer interchange fee revenue' and 'issuer revenue'.</p> <p>Point (c): Noted. However, net compensation must have the purpose of compensating the issuer for the effect of the IPS.</p> <p>Point (d): To determine net compensation, we will need to assess commercial arrangements.</p>
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43	ANZ	"We agree..." "...this scenario highlights the importance of ensuring the Guidance sets out objective standards for calculating Net Compensation and assessing its contribution to the Total Interchange Fee."	No change.	Noted. Chapter 6: Net compensation has been clarified further.
44	Till	"As a monoline acquirer we would not have any visibility of scenario two, however we agree with the analysis."	No change.	Noted.
45	Westpac	"Yes. We agree that because the acquirer does not have visibility over the issuer's net compensation position it cannot be held to be involved in the contravention."	No change.	Noted.
5C(iii) Are there any additional high-level scenarios you see benefit in us considering at this stage? If so, please provide a description of those scenarios.				
46	Westpac	"We would like to propose the following alternative scenarios and would welcome the Commission's views on our analysis of these scenarios: a) The scheme sets its maximum rate for online debit at 0.60% but when a transaction is sent to the scheme by the acquirer, the scheme incorrectly allocates a rate of 0.80% and this is paid to the issuer. In this scenario, we consider that the scheme is wholly responsible for this breach (with the issuer and the acquirer not being involved in the contravention of the IPS). b) The scheme sets its maximum rate for online debit at 0.60%. A debit transaction is sent to the scheme, but the transaction indicators sent to the acquirer by the switch, imply a credit transaction. The scheme therefore allocates a value of 0.80% which is paid to the issuer. In this scenario, we consider that the switch is responsible for the breach and the acquirer would only be liable if the threshold for secondary liability is met (as set out in paragraph 3.7)."	Change.	Chapter 5: No specific scenarios have been included. However, we have clarified the role we expect a switch to play in the processing of transactions captured by the IPS.

47	ANZ	<p>"Once the Commission has finalised its Guidance in relation to Net Compensation we think it would be beneficial to include a scenario showing how a hypothetical arrangement with a scheme could meet the Net Compensation definition, and how that arrangement might be factored into the IPS fee cap. A practical worked example would assist issuers in accurately identifying their Net Compensation position."</p>	Change.	Chapter 6: We have included a worked example of how net compensation may be attributed to transactions to determine the total interchange fee.
48	Visa	<p>"Visa proposes that the Commission consider the following scenario which may address some of the nuances of the calculations:</p> <ul style="list-style-type: none"> - The scheme was paying incentives to an issuer at an effective rate of 0.02bps before Royal Assent and continued to pay the same incentives after. - As there is no change to this incentive arrangement, the 0.02bps is not considered to be net compensation." 	No change.	Chapter 6: Clarification has been included on our view in relation to compensation agreed under pre-existing arrangements before 13 May 2022.

Chapter 6: Total interchange fee caps under the IPS

No.	Submitter	Main submission arguments	Changes from draft guidance	Response
6A(i) Do you agree with our interpretation of the interchange fees which are considered to be the 1 April 2021 fees? Why/why not?				
49	ANZ	<p>"We believe that an alternative approach might be to use the interchange fee set by the schemes as at April 2021 rather than the actual interchange fee charged by any particular issuer at that time, as proposed by the Commission. We believe this would ensure a more equal playing field and better promote competition.</p> <p>Under this alternative approach, both the IPS Cap and the 1 April 2021 fee would be the maximum interchange fee chargeable within the retail payment system at the relevant time, thus comparing similar arrangements. It would also ensure all issuers were subject to the same caps rather than potentially punishing issuers who proactively lowered the interchange fee they charged for a given interchange fee category."</p>	Change.	Chapter 6: The Guidance has been changed to reflect that we now interpret the 1 April 2021 fees to be the maximum rates set by the scheme for each interchange category as at 1 April 2021, rather than the actual interchange fee set and charged by each issuer as at 1 April 2021.
50	ANZ	<p>"We consider that the IPS Cap or April 2021 fee should be identified in a manner that would be objective and not discriminated between issuers depending on their historical conduct."</p> <p>"The current Guidance could result in two issuers being subject to quite different regulatory regimes with one issuer potentially starting with a lower cap and a higher net-compensation baseline than its competitors. It may also have the impact of freezing the current market positions in place and disincentivising competition, innovation and growth."</p>	Change.	As above.

51	ASB	"ASB agrees with this interpretation."	No change.	Noted.
52	BNZ	"agree"	No change.	Noted.
53	Till	"Yes we agree with the interpretation of the interchange fees"	No change.	Noted.
54	Visa	"Yes, the interpretation of "the interchange fees per transaction as at 1 April 2021" is appropriate and clear for the purposes of the IPS."	No change.	Noted.
55	Westpac	"Yes, we agree with the Commission's interpretation."	No change.	Noted.
6A(ii) Do you agree with our proposed approach for determining those 1 April 2021 fees for each issuer? Why/why not?				
56	ANZ	<p>"We consider that all issuers should be subject to the same IPS fee caps.</p> <p>The proposed approach in the Guidance may create different caps for different issuers and in particular lower caps for issuers who may have elected to set a lower rate. It may also disincentivise issuers from proactively lowering interchange fees in relation to as yet non-regulated networks for fear of being subject to lower caps than their competitors once those networks are designated."</p>	Change.	Refer to response at row 49.
57	Visa	<p>"Accurately determining the benchmark interchange rates to apply requires splitting 'transaction type' into several categories aligned with the scheme's interchange schedule. Key fields include:</p> <ul style="list-style-type: none"> - funding source (I.e., Credit, Debit, Prepaid), card type (eg, Platinum, Gold, Classic, commercial); - transaction type (e.g., CNP/CP, tokenisation), priority rate types (eg, segment rates, and Strategic Merchant); and - fee form (eg, ad valorem or fixed)" 	Change.	Chapter 5: Further factors included for how schemes set maximum rates.
58	ASB	"ASB agrees with the proposed approach."	No change.	Noted.

59	BNZ	"Agree – though see our comment in relation to question 6A(iii) relating to the Commission's approach to requesting information from an issuer under clause 6.10.2 of the Document."	No change.	Noted.
60	Till	"Yes we agree with the proposed approach"	No change.	Noted.
61	Westpac	"Yes, we agree with the Commission's interpretation in so far as it is proposed that the Commission would seek to obtain this information from the schemes. As noted above, it is the schemes that set the rates and seek confirmation from issuers as to the rate to be applied to transactions."	No change.	Noted.
6A(iii) What information could issuers (or other participants, such as the schemes) reasonably provide us to verify the applicable 1 April 2021 fees for each issuer?				
62	BNZ	"Please see our answer to question 5C(ii) relating to what forms of monetary and non-monetary compensation should not be included in the Commission's consideration of net compensation – being any discounts or benefits made to issuers that increase an issuer's revenue but do not perform the same economic function as interchange fees on the basis that those discounts or benefits are not funded by adding or increasing costs to acquirers (and indirectly, to merchants)."	Change.	Chapter 6: Updated the Guidance to reflect that in applying the purpose test, we will consider (among other things) whether that compensation is directly or indirectly funded by adding or increasing costs to acquirers (and indirectly to merchants).
63	ANZ	"Noting our answers to the questions above, we consider that the Interchange Rate Election Notices provided to schemes by issuers and the issuer's published interchange fee schedule that applied as at 1 April 2021 (which we can provide) would provide the Commission with the relevant information for either approach to the 1 April 2021 fees."	No change.	Noted. Our interpretation of the 1 April 2021 fees has changed (as discussed above), and therefore the information we require to determine the applicable 1 April fees has also changed.
64	ASB	"We suggest the Commerce Commission seek this information from the schemes."	No change.	Noted.

65	BNZ	"Issuers and acquirers do not have any additional information to verify with the applicable 1 April 2021 interchange fees in practice other than what it could obtain from the schemes... Instead, the Commission should obtain this information from the schemes as its primary source."	No change.	Noted.
66	Visa	"The minimum information the Commission likely requires for an accurate assessment of 'the interchange fees per transaction as at 1 April 2021' and to support the implementation of the IPS is a matrix of the fields listed under the response above to Question 6A(ii). This information would be required at the issuer-level for each scheme as at 1 April 2021 and then for any subsequent comparison reporting period thereafter."	No change.	Noted.
67	Till	"- Bilateral rebate agreements between issuers and merchants - Strategic agreements between card schemes and merchants - Incentive agreements between card schemes, merchants, issuers, and other related parties"	No change.	We consider that visibility of these agreements may be required to assess net compensation, rather than determining the 1 April 2021 fees.
6B(i) What other forms of monetary or non-monetary compensation should be included in our consideration of net compensation, if any?				
68	Mastercard	"The value of non-monetary compensation (Question 6B) should be determined in accordance with the New Zealand GAAP or other relevant accounting standard."	Change.	Chapter 6: The Guidance now includes how we will value non-monetary compensation.
69	ASB	"Only compensation that relates to a transaction would be included in net compensation as per 6.12. We ask that the Commerce Commission provide additional clarity on the term 'reasonably be attributed'. For example, whether it is expected to include all charges fixed and variable."	Change.	Chapter 6: Further clarity has been included in terms of our approach to reasonable attribution of compensation to transactions. We have also clarified that net compensation may be a fixed or variable amount.

70	Till	"The forms of compensation described would occur in a scheme to issuer scenario therefore are out of scope for Till, however we support the principle of monitoring monetary and non-monetary compensation flows for the purpose of administering the IPS. We don't believe there are any other considerations."	No change.	Noted.
71	Visa	"One of the key components of the draft guidance is the concept of net compensation and its relationship with interchange. To ensure robust oversight and governance, enable fair competition and drive innovation for the benefit of merchants and consumer alike, Visa favours a model that does not permit net compensation, and accordingly removes the ability of retail payment networks to compensate issuers for the effects of IPS."	No change.	The IPS does not prohibit net compensation, it only requires that the total interchange fee for a transaction (being the interchange fee and any net compensation which can reasonably be attributed) not exceed the applicable cap.
72	Visa	"The most important component is whether a monetary or non-monetary exchange of value between a scheme and an issuer seeks to compensate an issuer for the effects of IPS. To avoid loopholes and unfair competition, it is our view that all incentive types concerning regulated transactions that can be linked to the underlying transaction are included for consideration, whether or not they seek to compensate for the effects of IPS."	No change.	Disagree. The purpose test must be applied as stated in the definition of net compensation. This requires that to be net compensation it must have the purpose of compensating the issuer for the effect of the IPS.

73	Visa	<p>"However, given that the Act permits net compensation, it is our view that all incentive types concerning regulated transactions that can be linked to the underlying transaction are included for consideration, whether or not they seek to compensate for the effects of IPS."</p> <p>Specifically:</p> <ul style="list-style-type: none"> • The compensation must be able to be linked to enabling the transaction, or derived as a result of the transaction taking place. • The transactions must occur within the time period for which the compensation applies or is intended to apply. • Fees related to chargebacks, and fees associated with penalties, to facilitate the health and growth of the ecosystem, should be excluded from consideration. 	No change.	<p>To be considered net compensation it must have the purpose of compensating the issuer for the effect of the IPS.</p> <p>If compensation has enabled a transaction, or is derived as a result of a transaction, it could be reasonably attributable to that transaction. However, we do not consider that is the only basis upon which compensation can be attributed.</p> <p>Chapter 6: We agree that one factor for attributing compensation to transactions is the time-period to which the compensation relates.</p> <p>We have not expressly excluded fees relating to chargebacks and fees associated with penalties. Like other fees, they would need to meet the criteria set out in the Guidance in order to be net compensation (including by being made for the purpose of compensating the issuer for the effect of the IPS).</p>
74	Westpac	<p>"Revenue received by issuers should only be of interest to the Commission to the extent that it directly impacts on fees paid by merchants. Additional payments made by schemes to issuers do not of themselves have a direct effect on merchant fees."</p>	Change.	Refer to response at row 62.
<p>6B(ii) How is the value of non-monetary compensation (a) determined between the provider and the recipient; and (b) accounted for in the recipient's accounts?</p>				
75	Visa	<p>"Non-monetary compensation that ties directly to regulated transactions would be quantified to determine the fair value of what is being provided."</p>	Change.	Chapter 6: The Guidance now includes how we will value non-monetary compensation.

76	BNZ	"We are not aware of any 'non-monetary compensation' in that the value of all discounts or benefits are quantified in our arrangements with the schemes."	Change.	As above.
6C(i) Do you consider that compensation has to be linked to a specific transaction in order to be reasonably attributed to it? If so, why?				
77	Westpac	"Yes, we are of the view that compensation has to be linked to regulated transactions in order to be reasonably attributable to them. To adopt an alternative view would imply de facto regulation of transactions that are expressly carved out of the IPS and would, in our view, have the effect of stifling future innovation."	Change.	Chapter 6: We have updated the Guidance to reflect that, in our view, compensation which relates wholly or in part to excluded transactions may still be considered net compensation (ie, it may meet the purpose test) and be reasonably attributable to 'regulated' transactions. This will depend on the particular facts and circumstances of the compensation at hand.
78	Visa	"Yes, incentives concerning regulated transactions that can be linked to the underlying transaction should be assessed against the criteria outlined in Section 6.14. of the guidance. Fees concerning chargebacks and fees associated with penalties designed to promote the health and growth of the ecosystem should be excluded."	Change.	See above. We have not expressly excluded fees relating to chargebacks and fees associated with penalties. But we note for these fees to be net compensation they would need to meet the criteria set out in the Guidance (including by being made for the purpose of compensating the issuer for the effect of the IPS).
79	Mastercard	"In the current proposal, where incentives and interchange are considered together, two separate business models, which should remain independent, are being conflated." "Incentives that schemes provide to issuers are based on the competition between schemes to win that business, considering the revenue that the business will bring to the scheme. Bringing these two models together creates a potential conflict of interest (Question 6C)"	No change.	Schemes (or other participants) may still provide additional compensation to issuers so long as it is not for the purpose of compensating the issuer for the effect of the IPS.

80	BNZ	"We agree with the Commission that a requirement for discounts or benefits to be explicitly payable on a per transaction basis subverts the purpose of the net compensation provisions as an anti-avoidance mechanism and does not appear to be the intention based on the words of the IPS."	No change.	Noted.
81	Till	"We do not consider that compensation has to be linked to a specific transaction in order to be reasonably attributed to it, as compensation could be attributed to a group of transactions rather than a specific transaction (i.e., in the case of compensation for reaching a transaction volume target)"	No change.	Agree that compensation may be linked to a group of transactions, and therefore can be reasonably attributable to those transactions.
6C(ii) What principles or other matters do you consider to be relevant for the purposes of attributing compensation to specific transactions?				
82	Visa	<p>"The relevant principles for attributing compensation to specific transactions include:</p> <p>a. The compensation must be able to be linked to enabling the transaction or derived as a result of the transaction taking place</p> <p>b. The transactions must occur within the time period for which the compensation applies or is intended to apply"</p>	<p>No change (point (a)).</p> <p>Change (point (b)).</p>	<p>If compensation has enabled a transaction or is derived as a result of a transaction it could be reasonably attributable to the transaction. However, we do not consider that is the only basis upon which compensation can be attributed.</p> <p>Chapter 6: We agree that one factor for attributing to compensation to transactions is the time-period to which the compensation relates.</p>

83	ANZ	<p>“We consider that the value of the compensation should be linked to or determined by the underlying transaction value, and should vary based on the overall transaction value as described in our answer to 6C(i).</p> <p>We also consider that any increase in an incentive or rebate from the scheme to an issuer that is partially or fully offset by an increased payment by the issuer to the scheme in respect of transactions to which the increased incentives or rebate relates, should be considered on a net basis.</p> <p>We believe this is consistent with paragraph 6.23 in the Guidance”</p>	No change.	Noted.
6D(i) What do you consider the effect of the IPS to be?				
84	Westpac	<p>"we do not agree with the statement that ‘compensation will have been made for a prohibited purpose where a purpose of that compensation is to compensate an issuer for the loss of interchange fee income caused by the IPS’. Under the Act, any such compensation is not prohibited per se, but is required to be included within the ‘total interchange fee’ for regulated transactions under clauses 7(2), 7(3) and 7(4) of the IPS”</p>	Change.	Chapter 6: We agree that net compensation may be provided so long as the total interchange fee cap is not exceeded for any transaction. The Guidance no longer refers to ‘prohibited purpose’.
85	ANZ	<p>“We consider that the effect of this IPS is to cap interchange fees with a view to reducing costs and creating long term benefits for merchants and consumers”</p>	Change.	Chapter 6: The effect of the IPS set out in the Guidance has not changed. The effect of the IPS as it is referred to in the net compensation definition relates to the effect for issuer. Also refer to response at row 62.
86	BNZ	<p>"...concerned that interpreting the effect of the IPS as ‘issuers’ interchange fee revenue is reduced’, runs the risk of conflating ‘issuers’ interchange fee revenue’ (one single type of income) with ‘issuer revenue’ as a whole. This conflation would operate to restrict an issuers’ ability to increase its revenue through other sources."</p>	Change.	As above. We recognise the difference between ‘issuer interchange fee revenue’ and ‘issuer revenue’.

87	Till	"Fundamentally, the effect of the IPS will be to lower the cost to the acquirer to process Visa and Mastercard transactions. Unless the acquirer takes action to pass these cost savings on to merchants, the only effect would be a transfer of revenue from the issuer to the acquirer."	Change.	As above.
88	ASB	"We consider the IPS will support small businesses to manage the cost of accepting payments. As submitted previously, regulating fees charged by payment service providers should balance the need for those providers to continue to invest in security and innovation and obtain a fair return for the service provided and risk taken. We also note the IPS is likely to impact the generosity of reward schemes offered by issuers."	No change.	Noted.
89	Visa	"With the introduction of IPS, Visa's understanding is that it mandates that issuers should not be compensated in any manner for interchange revenue lost due to the introductions of the IPS's interchange caps."	No change.	Noted.
6D(ii) Do you consider any other principles to be relevant to determining the purpose of compensation?				
90	ASB	"Further clarity needs to be provided, particularly in relation to 6.36, otherwise the assessment of the purpose of compensation is left up to interpretation and is unlikely to be predictable."	Change.	Chapter 6: Further clarity has been added to the Guidance on net compensation.
91	Visa	"Other principles relevant to determining the purpose of compensation are: a. When the compensation was introduced and when it became effective (e.g., was the compensation introduced or changed after Royal Assent). b. Whether there is clear evidence that one of the purposes of the compensation was to compensate an issuer for the effects of IPS. c. Whether the compensation is designed to match any interchange lost due to the IPS."	Change.	a. The Guidance discusses the timing of when compensation is agreed and paid. b. In assessing the purpose of compensation, we will seek information/evidence from the relevant parties. c. Refer to response at row 62.

92	Mastercard	<p>"In our view, net compensation is universally understood as being a value that is calculated or derived from comparing fees paid by issuers to schemes against payments, rebates, incentives or other compensation made by schemes to issuers."</p> <p>...</p> <p>"The application of a combination of mathematical outcomes and applicable accounting principles results in a workable solution for market participants. This also gives schemes and issuers certainty around their commercial relationships."</p>	No change.	Disagree. The framework of net-compensation in the IPS is different from that in Australia.
93	Mastercard	<p>"Returning to the principle of the Act (Schedule 1 Part 1, Subpart 4), the purpose of net compensation, as it's worded today, has no effect on a merchant or consumer paying no more than reasonable fees and the retail system providing a reasonable degree of transparency. Therefore, as it relates to Question 6D, the principles of the Act, particularly competition and efficiency, should be forefront in determining the net compensation calculations."</p>	No change.	As noted in the Guidance, net compensation is intended to be an anti-avoidance mechanism to prevent the policy intent of capping interchange fees to be subverted. Therefore, the regulation of net compensation contributes to the principles and purpose of the Act.
94	ANZ	<p>"We broadly agree with the proposed approach to assessing the purpose of compensation. We note that there can be a number of business reasons why the commercial arrangements between a scheme and issuer might change which do not have the purpose of compensating an issuer for the effect of the standard and may in fact assist in achieving the purposes of the Act."</p> <p>"The approach to assessing Net Compensation should not have the effect (intended or not) of freezing existing arrangements between the schemes and the issuers. This may have the undesired effect of reducing competition and innovation."</p>	No change.	Schemes (or any other participant) may still provide additional compensation to issuers so long as it is not for the purpose of compensating the issuer for the effect of the IPS.

95	BNZ	"Our view is that purpose should be based on subjective purpose, though it should be open to the Commission (and the High Court) to point to objective facts and circumstances that make it untenable to assert that the subjective purpose of certain discounts or benefits was not to compensate for the effect of the IPS (ie the reversal of what the Commission suggests in clause 6.36.2 of the Document)."	No change.	Our position is unchanged. We consider an objective approach to determining the purpose of compensation is appropriate, but we may consider subjective intentions.
6D(iii) What information could parties reasonably provide to enable us to assess the purpose of compensation?				
96	ANZ	"1. Notification of interchange rates to be applied to ANZ issuer transactions, 2. Actual transactional volume and interchange earned on those transactions, 3. Relevant fees paid to schemes 4. Relevant rebates or incentives paid by Visa with respect to ANZ issuer transactions"	No change.	Noted.
97	ASB	"Compensation, where relevant to a transaction, will ultimately be linked to fees charged. The schemes will be well-placed to provide a schedule of fees and information on the purpose of the fees."	No change.	Noted.
98	BNZ	"standardised information (on a short form to be created by the Commission) about new compensation payable to issuers that briefly: a. Identifies how the discount or benefit operates or is calculated; b. Records the purpose of the discount or benefit (e.g. marketing, switching incentives etc); and c. Confirms that the discount or benefit has not been funded by adding or introducing costs to acquirers (and indirectly, to merchants). The Commission could then seek further information from the provider of the discount or benefit, if necessary."	No change.	Noted.

99	Mastercard	"An approach that is based around purpose (which is the second key part of the definition of 'net compensation') becomes an administratively unworkable and entirely subjective test. The proposed approach of providing commercially sensitive information to the regulator to assess purpose would be a global outlier."	No change.	Noted. The definition of net compensation requires us to look at the purpose of compensation.
100	Till	"As a monoline acquirer, Till is unable to comment on the purpose of an agreement that we are not party to (i.e. between a card scheme and a card issuer)."	No change.	Noted.
101	Visa	"Clear rationale and linkage to behavioural drivers, and/or technology/infrastructure upgrades or other investments which the compensation is designed to support."	No change.	Noted.
<p>6E(i) What mechanisms do issuers have in place, and how do those mechanisms operate, to:</p> <ul style="list-style-type: none"> a) Ensure that a cardholder understands and agrees that a CCPP is to be used wholly for purposes other than personal, domestic or household purposes; b) Determine whether a cardholder is using a CCPP for a prohibited purpose (ie, for a personal, domestic or household purpose); c) Remedy the use of a CCPP for a prohibited purpose? For example, by blocking the use of that credit product; and d) Ensure that a CCPP is being charged directly to the account of the business? 				
102	ANZ	<p>(a) "A businesses relationship management number and New Zealand business number is collected as a part of the application process."</p> <p>"Across our commercial card products and facilities, we have either included provisions prohibiting use for non-business purposes or communicated our expectation that businesses communicate the prohibition on personal use through their own spend policies."</p>	No change.	Noted.
103	ASB	(a) "This is primarily through our suitability assessment, product details and terms and conditions. ASB business card products are only available to entities (businesses) as opposed to individuals."	No change.	Noted.

104	BNZ	(a) "BNZ believes cases of use for personal, domestic or household purposes are rare and their impacts low."	No change.	Noted.
105	BNZ	(a) "BNZ uses its general application processes to ascertain the purpose of any scheme credit card. Generally, a business will apply for a CCPP using its business banking channels. Business credit cards require the cardholder to give BNZ an attestation regarding the commercial or investment purposes of a CCPP."	No change.	Noted.
106	BNZ	(a) "Issuers can undertake regular transaction monitoring. There is often significant 'spending category' variances between CCPP spending and personal card spending that can be used to identify whether a CCPP is being used on a recurring/ongoing basis for personal, domestic or household purposes. However, it is not possible to use general transaction monitoring to determine with any level of assurance the purpose of any specific transactions within a 'spending category' to assist issuers in determining whether a CCPP holder is using the CCPP for a prohibited purpose in respect of any transaction within a "spending category".	No change.	Noted.
107	Westpac	(b) "Paragraph 6.57 of the Guidance sets out the Commission's view that, where a product is individually settled, it is not being charged directly to the account of the business and is therefore not a commercial credit payment product" "The principal consideration should be whether or not the debt is ultimately being settled by a business, regardless of the mechanism for doing so." "We would therefore recommend that the Commission should reconsider this position so that a CCPP can be settled via: a) central settlement, or b) individual settlement, where the relevant cardholder is then reimbursed by the business."	Change.	Chapter 6: The Guidance now states that a CCPP needs to ultimately be settled by the business. This means that a CCPP may be individually settled where the cardholder is reimbursed by the business.

108	ANZ	(b) "We do not have the ability to determine what is, and what is not, business related spend for any businesses that we provide commercial cards to. Businesses determine their own internal spend policies that dictate the spend behaviour that is accepted as business expenditure within that business. The customer can, if they wish, request ANZ block merchant category codes on their cards programme that they believe fall outside of their internal spend policy."	No change.	Noted.
109	ASB	(b) "There is no reliable way to monitor the purpose of a transaction. As per 6.49, the purpose should be considered at account opening."	No change.	Noted.
110	ANZ	(c) "As noted in 6E(i)(b) above, we do not have the ability to determine what is, and what is not, business related spend for the businesses that we what is accepted as business expenditure within that business."	No change.	Noted.
111	ASB	(c) "If the business is no longer operating the entity and any associated products will be closed. As above determining use for a prohibited purpose at a transaction level is not possible."	No change.	Noted.
112	BNZ	(c) "If BNZ was put on notice that a cardholder may be using a CCPP on a recurring/ongoing basis for personal, domestic or household purposes, BNZ would open a conversation with its customer to determine whether this is the case. If it were the case, BNZ would remedy this by transitioning the cardholder to a product that better fits the cardholder's purposes and then cancelling the CCPP."	No change.	Noted.

113	ANZ	<p>(d) "For ANZ corporate and purchasing cards it is mandatory that a direct debit is established for the payment of the account. That direct debit must debit from a business account belonging to the business.</p> <p>For ANZ business card accounts, which are typically issued to smaller business customers, it is not mandatory that a direct debit is established and we do not check whether payments are made to the card from a business account.</p> <p>There could be numerous reasons why a payment is not received directly from a business accounts including loans from third parties or the business owners or reimbursement from personal accounts due to errors in the use for the card."</p>	Change.	Chapter 6: The Guidance now states that a CCPP needs to ultimately be settled by the business.
114	BNZ	<p>(d) "BNZ wishes to note that, in respect of sole traders (and potentially other small, closely held family businesses), the credit may be repaid through neither the 'central settlement' nor 'indirect settlement' approach (as described in clause 6.56). Instead, it is most likely that the credit will be repaid through an account that is in the personal name of an individual/sole trader, but the account may be in substance a 'business account' (noting that sole trader businesses are not incorporated). In the sole trader context, the concept of the business reimbursing the individual does not apply because of the nature of a sole trader business. BNZ's view is that these arrangements do qualify as the CCPP being charged 'directly to the account of the business' because the sole trader is 'the business'. The unintended consequence of the Commission taking an alternative view would be that issuers would need to switch sole traders onto personal credit cards for purchases that are legitimately for business or investment purposes. This, in our view, is not a customer-centric outcome."</p>	Change.	<p>As above at 107.</p> <p>Chapter 6: In particular, we have noted 6 that a credit product will be ultimately settled by the business where, in the case of sole traders, the product is directly settled from the account of the self-employed natural person.</p>
115	ASB	<p>(d) "Because a business card is only available to entities it is linked to a business account."</p>	No change.	Noted.

6E(ii) How can we best get assurance from participants that credit products are correctly being categorised and treated as CCPPs?				
116	BNZ	"Our view is that issuers should self-report any identified breaches and that the Commission is entitled to ask for further information if it suspects that any particular issuer is incorrectly issuing CCPPs. Our view is that there is no need for the Commission to require issuers to create new systems that proactively provide information on its CCPP products to give the Commission that assurance."	Change.	Chapter 6: Added to the Guidance that we expect issuers to self-report breaches. We may also request information from an issuer if we suspect an issuer is incorrectly issuing CCPPs.
117	ANZ	"Our commercial card products are separate products within ANZ's card product suite. As stated in our response to 6E(i), our commercial card facilities are provided only to commercial bank customers and cards can only be issued to employees of the business that holds that facility. A New Zealand business number is also required as part of the application process. In addition, the card schemes have specific requirements that issuers must adhere to in order for a card to classified as a commercial card."	No change.	Noted.
118	ASB	"Again, this is primarily through participants' suitability assessment, product details and terms and conditions in addition to the product only being available to businesses."	No change.	Noted.
119	Retail NZ	"We support the strengthening of the definition of a Commercial Credit Payment Product (CCPP), as it provides better clarity to anyone navigating the IPS guidance"	No change.	Noted.

120	Visa	<p>"Card issuers may each have their own assessment capability to determine product suitability - whether at point of origination or during the product lifecycle. With the business banking relationship, the owner has accountability for ensuring each product issued is fit for purpose.</p> <p>Additionally, Visa has very clear rules relating to the issuance of commercial products, ensuring such products are designed to provide a means of payment for business-related goods and services. Visa assesses the product requirements issuers provide to ensure each product meets the intended use."</p>	No change.	Noted.
6F Should ATM transactions be subject to the fee caps under the IPS?				
121	ANZ	"We agree with the Commission that ATM transactions do not meet the definition of 'retail payments' and should not be included."	Change.	Chapter 6: Further clarification has been included on why ATM transactions are not subject to the IPS caps.
122	ASB	"ASB does not consider ATM transactions be subject to the fee caps under the IPS, noting interchange fees go towards the cost of providing the ATM service."	Change.	Refer to response at row 120.
123	BNZ	"We agree that ATM charges are outside the scope of the IPS. While the term 'interchange' is sometimes used in the context of ATM transactions, that word means something different in the context of ATM transactions. Further, ATM withdrawals are not 'payments' as there is no 'creation' of debt between any two persons and the only 'discharge' of debt is the reduction in the debt a deposit taker owes its depositor."	Change.	Refer to response at row 120.
124	Mastercard	"Interchange applied to ATM transactions (Question 6F) are paid by the issuer (rather than by acquirers to the issuer), and therefore, should not be brought into the caps."	Change.	Refer to response at row 120.

125	Visa	"ATM transactions should not be subject to the current fee caps under the IPS. The ecosystem value of ATM transactions is significantly different from the value of typical point-of-sale (POS) purchase transactions. ATM acquirers deploy ATM machines to provide additional consumer touchpoints on behalf of card issuers to withdraw cash and check account balances. The Cash Disbursement Fee (CDF, terminology for ATM interchange) is currently set as a rate to be paid by the card issuer to the ATM acquirer. The CDF is set in a direction to enable ATM acquirers to deploy and innovate ATM technologies."	Change.	Refer to response at row 120.
126	Till	"We believe that the fee caps under the IPS should be applicable to all aspects of the industry, including ATMs, as they form a part of the payments network."	No change.	Disagree. We remain of the view that ATM transactions are not subject to the fee caps under the IPS. Row 120: further clarification has been provided.

6G(i) What mechanisms do participants currently have in place, and how do those mechanisms work, to:				
a) Identify whether an erroneous interchange fee has been charged; and				
b) Address a situation where an erroneous interchange fee has been charged?				
127	ANZ	<p>(a) "Whenever an interchange fee changes we load the relevant interchange fee into our system and test that it is loaded and applied accurately. This creates a system control that should prevent an erroneous interchange fee from being charged."</p> <p>"For ANZ acquired merchants, ANZ generates a report every day that compares the interchange fees received with those loaded in our systems and each of our merchant agreements. If a variance is detected, we would carry out analysis to ascertain whether an error occurred, what corrective action is required to prevent re-occurrence and whether a refund is required to be made. If the error resulted in a higher interchange fee being charged to a merchant, we would correct that... We note that the occurrence of errors is rare."</p> <p>"From an issuing perspective, ANZ reviews interchange received on a monthly basis and compares that to what we would expect to receive for our card product and transaction mix and the interchange rates that ANZ has elected to receive. Where a variance is identified, this is raised with the relevant scheme (Visa for ANZ transactions). The scheme would investigate and make any necessary adjustment to interchange between the issuer and relevant acquirer."</p>	No change.	Noted.
128	ASB	<p>(a) "A third party manages interchange tables on our behalf and a testing framework and corresponding controls are in place to manage this."</p>	No change.	Noted.
129	BNZ	<p>(a) "As mentioned in our answer to question 5B, issuers and acquirers rely wholly on the schemes to correctly apply and calculate the interchange fee."</p>	No change.	Noted.

130	BNZ	(a) "Issuers and acquirers would rely on the schemes to update their systems as needed to correct an error at source. If it were BNZ's acquirer business that was incorrectly applying an interchange category, BNZ would identify the cause of the error (e.g. systems error, human error etc) and remedy it, remediating any impacts to its merchants."	No change.	Noted.
131	Mastercard	(a) "In relation to erroneous interchange fees (Question 6G), there are systems in place to limit incorrect interchange fees being charged through acquirers assigning the incorrect indicator in the first place including clearing system edits and customer testing before changes. We have no visibility of the acquirer/merchant relationships on this matter."	No change.	Noted.
132	Till	(a) "To avoid manual loading errors, we import Scheme interchange tables directly from their respective websites into our billing system. Additionally, we have an audit system in place to identify any instances where an erroneous interchange fee has been charged."	No change.	Noted.
133	Westpac	(a) "All transactions which have been entered into clearing are downloaded according to their interchange category code on a monthly basis. The average rate of interchange fees is calculated for each category code and this is reconciled against the agreed rate. If this average rate is outside of the expected rate, then a more detailed review of transactions is undertaken to identify any erroneous rates." "If an erroneous rate is charged to the merchant, upon becoming aware of that error, the error would be rectified and the merchant will be remediated in a timely manner. Typically, however, errors are of a small scale and because of this, no remediation is required to be paid to the issuer."	No change.	Noted.

134	ANZ	(b) "As we stated in our response to 6G(i)(a) where we identify that an erroneous interchange fee has been charged, we carry out analysis to ascertain how the error occurred, what corrective action is required to prevent re-occurrence and whether a refund is required to be made and to whom."	No change.	Noted.
135	ASB	(b) "ASB has a remediation process in place to manage any issues of this kind should they arise. "	No change.	Noted.
136	Till	(b) "If an erroneous interchange fee had been charged, we would commence a remediation process. This would include the calculation of any difference between the interchange fee charged and the correct interchange fee. We would then work directly with the impacted merchant(s) to resolve the issue."	No change.	Noted.
6G(ii) How are parties made good after an erroneous interchange fee has been detected? In particular, how are merchants made good where the effect of any erroneous interchange fee has flowed directly through to them via the interchange plus pricing model?				
137	ANZ	"We take resolving remediation issues seriously and ensure that any merchant impacted by incorrect charging as a result of an erroneous interchange fee or other fee receives a full refund which is backdated from when the error occurred. We describe this process in more detail in our response to 6G(i)(a)."	No change.	Noted.
138	BNZ	"If BNZ's issuer business identifies that an interchange fee has been incorrectly charged (regardless of whether it identifies the error itself or was advised of the error), it will refund the acquirer. BNZ expects that acquirers will pass that refund onto the merchant. As an acquirer, if BNZ identifies that an interchange fee has been incorrectly charged to it (and passed on to its merchants), BNZ will advise the scheme and the issuer (and potentially other third parties). It will receive a refund from the issuer and use those funds to refund the merchant."	No change.	Noted.

139	ASB	"As above, any issues of this kind would be managed through the remediation process."	No change.	Noted.
140	Till	"As above, In the event that an erroneous interchange fee had been charged, we would commence a remediation process. This would include the calculation of any difference between the interchange charged and the correct interchange. We would then work directly with impacted merchant(s) to resolve."	No change.	Noted.
141	Visa	"Visa reviews all rate implementations and revisions to ensure that systems changes are implemented properly. Furthermore, Visa performs ad hoc reporting to ensure that rates continue to be processed and applied as designed. If Visa finds an error during either of these processes, we ensure the issue is resolved and perform remediation."	No change.	Noted.
142	Visa	"In cases where Visa performs remediation between clients, they may ask us to provide detailed reporting at the merchant level in order to help support proper garnering or redistributing of interchange funds from/to merchants by the acquirer."	No change.	Noted.
143	Visa	"Acquirers are responsible for the process to rectify the effect of any erroneous interchange fees that have flowed directly through to merchants."	No change.	Noted.
144	Westpac	"Following the detection of an erroneous interchange rate, a remediation exercise will be undertaken, which would remediate any overcharging to a merchant, as well as rectifying the cause of the incorrect rate."	No change.	Noted.

Additional comments

No.	Submitter	Main submission arguments	Changes from draft guidance	Response
145	Westpac	<p>"Paragraph 6.22 of the Guidance sets out the Commission's view that, in relation to net compensation, 'net value' refers to the 'total value' of any monetary and non-monetary compensation.</p> <p>We submit that, to adopt such an interpretation, ignores the relevance of the words 'net value' which we would argue were included to require a 'netting off' process to be conducted (as the Commission has acknowledged in paragraph 6.23 of the Guidance). In addition, such an interpretation results in the IPS having an impact on issuers far greater than is necessary to achieve the objectives of the Act because it could effectively prevent issuers from receiving any additional benefits from 13 May 2022 (including, issuers who are looking to switch schemes)."</p>	Change.	Chapter 6: The Guidance reflects that in some instances a 'netting off' process will be appropriate.
146	Westpac	<p>"... we would recommend that the Commission reconsider the view in paragraph 6.22 of the Guidance in light of the IFR such that a similar netting exercise be used as a key evidential tool to determine whether net compensation has been received. That is, the Commission could provide guidance to the effect that, so long as the arrangement between an issuer and a scheme does not result in a 'positive' relationship (i.e., where issuer receipts are greater than issuer payments), then the presumption is that the issuer is not receiving net compensation (subject to evidence to the contrary)."</p>	No change.	We do not consider that the definition of net compensation lends itself to this approach. As noted in the Guidance, in some instances a 'netting off' process will be appropriate.

147	ANZ	<p>“Given the timing of the Guidance and the fact that the IPS comes in to force on 13 November 2022, it would be reasonable to allow issuers time to ensure compliance with the Guidance, noting that this would not apply to the implementation of the IPS. It is not uncommon in the industry for scheme rule changes to allow for a 90-day grace period to enable parties to effectively embed the changes and such a period might be appropriate here.”</p>	No change.	Participants have been given six months to set up their systems to comply with the IPS. The IPS came into force on 13 November 2022 and participants should be complying with it.
148	ANZ	<p>"The Act contemplates that Net Compensation should account for the two-way flow of payments from the issuer to the scheme and compensation from the scheme to the issuer and a netting of monetary flows is required in determining the level of any Net Compensation."</p> <p>"We believe that the use of language like ‘payments’ in the definition explicitly accounts for payments made by the issuer to the scheme."</p> <p>"We would propose the Commission adjust its definition of Net Compensation to account for the two-way flow of payments and the netting of one from the other."</p> <p>In addition, we would also like to re-iterate the importance that the Guidance provide objective, measurable and consistent Guidance in relation to identifying, measuring, attributing and applying Net Compensation to the Total Interchange fee."</p>	No change.	<p>Disagree.</p> <p>Chapter 6: To be net compensation, the compensation must meet the purpose test set out in the definition. Therefore, the pool of compensation being considered is limited and it would not make sense to assess this limited pool against all payments made by the issuer.</p> <p>However, the Guidance reflects that a “netting off” may be appropriate where there is a sufficient link between new or increased compensation and a new or increased payment.</p>
149	Visa	<p>"Visa recommends that a scheme or issuer be permitted six months to adjust interchange or compensation to ensure compliance, should a scheme or issuer identify any net compensation."</p>	No change.	As above.
150	Mastercard	<p>“Please note that the entity which carries on Mastercard’s cards business so far as it relates to New Zealand (including licensing the Mastercard name and marks) is Mastercard Asia/Pacific Pte. Ltd.”</p>	No change.	The designation does not limit the network operator to just Mastercard International Incorporated. Mastercard Asia/Pacific Pte. Ltd may also be a network operator.

151	Mastercard	"As interchange fees cover costs associated with issuing the card, the business case for the New Zealand market, which is already challenged due to its size, will look less attractive for new transactional banking entrants. This will likely further embed the status quo."	No change.	Noted.
152	Mastercard	"We urge the Commission to continue to work with card schemes and banks to ensure the approach taken achieves the principles of the Retail Payment System Act around competition, efficiency and lower merchant costs in a way that is practical and does not create uncertainty on spending that drives continued innovation and security in the payments ecosystem"	No change.	Noted.
153	Mastercard	"If acquirers pass on the interchange reduction to their merchants, merchants will see lower costs for the same services they previously received (including transaction processing, safety and security and liability shift). This should increase the penetration of card payments in store and online, delivering value to merchants, consumers and businesses."	No change.	Noted.
154	Mastercard	"We believe that there needs to be consideration to how these benefits [of the Act] to merchants and consumers are being measured."	No change.	Noted.
155	Retail NZ	"We are aware of a number of cases where merchants are being advised that at least some of their merchant charges are increasing, despite the fact that regulated interchange rates are decreasing."	No change.	Noted.
156	Visa	"Frequency of reporting and baseline period... we recommend annualised reporting to simplify the operational management"	No change.	Noted.
157	Visa	"Visa maintains a global policy of opposing merchant surcharging, which, in our experience, can discourage growth of the digital payments ecosystem and cardholder usage."	No change.	Noted.