

**Verifone New Zealand / Smartpay Holdings Limited**  
**Cross-submission by Smartpay Holdings Limited on submissions received on the Statement of Preliminary Issues**  
**2 March 2019**

**Introduction**

1. On 26 February 2020 the Commerce Commission ("**Commission**") published two submissions that it had received from Paymark and Skyzer Payments Ltd ("**Skyzer**") in response to the Commission's Statement of Preliminary Issues ("**SOPI**").<sup>1</sup>
2. Those submissions contain a number of factual inaccuracies that paint a misleading picture of the nature of competition in this industry. Accordingly, Smartpay Holdings Limited ("**Smartpay**") is providing this cross-submission to identify those factual inaccuracies for the Commission.

**Background to Paymark and Skyzer**

3. To put the submissions in their appropriate context, Smartpay considers that it would be helpful for the Commission to understand the likely motivation behind these submissions.
4. As the Commission is aware, Smartpay's terminals are currently directly connected to Paymark's switch. One potential outcome post-transaction is that Verifone will migrate Smartpay's terminals to Verifone's own switch. This would have a direct impact on the transaction volumes going through Paymark's switch impacting their revenue. As Paymark also charge a Merchant Access Fee to each merchant whose terminal directly connects to Paymark's switch, the loss of these direct connections will further negatively impact Paymark's revenue. Paymark therefore has a vested interest in opposing this transaction to protect these revenue lines and avoid subjecting its near-monopoly position in the switching market to real competition from Verifone.
5. Whereas previously, Paymark could rely on its legacy shareholders (the major banks) to protect Paymark's monopoly by not allowing Verifone access to their debit links, this is no longer the case. Post-transaction, should Verifone connect Smartpay's terminals to the Verifone switch, Verifone's switch would obtain meaningful scale making it potentially a significantly more viable option for the major banks to allow Verifone to access their debit links. As the banks no longer have a vested interest in protecting Paymark's monopoly position in debit processing following their exit as shareholders from the business, Paymark's new owners would no doubt be concerned about this possibility.
6. Furthermore, although it is true that Skyzer is a separate entity from Paymark and Ingenico (Paymark's owner), as the sole distributor of Ingenico terminals in NZ, Skyzer is dependent upon its ongoing relationship with Ingenico, which suggests a probable alignment in their approach to the Commission.
7. Smartpay encourages the Commission to assess the submissions received from Skyzer and Paymark through the lens of parties that have vested interests in seeking to prevent the transaction for their own commercial gain rather than of interested parties who have legitimate concerns that the transaction may give rise to anticompetitive effects in New Zealand.

<sup>1</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0021/211890/Paymark-Submission-on-Verifone-New-Zealand-and-Smartpay-Holdings-Limited-Statement-of-Preliminary-Issues-24-February-2020.PDF](https://comcom.govt.nz/_data/assets/pdf_file/0021/211890/Paymark-Submission-on-Verifone-New-Zealand-and-Smartpay-Holdings-Limited-Statement-of-Preliminary-Issues-24-February-2020.PDF) and [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0029/211889/Skyzer-Submission-on-Verifone-New-Zealand-and-Smartpay-Holdings-Limited-Statement-of-Preliminary-Issues-25-February-2020.PDF](https://comcom.govt.nz/_data/assets/pdf_file/0029/211889/Skyzer-Submission-on-Verifone-New-Zealand-and-Smartpay-Holdings-Limited-Statement-of-Preliminary-Issues-25-February-2020.PDF).

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8. Importantly this transaction has the potential to bring competition to the switching market for the reasons outlined in points 4 and 5 above, which would be beneficial to both merchants and consumers.
9. Both the Paymark and Skyzer submissions make similar claims that are factually inaccurate. Smartpay's response to those submissions is as follows.

### **Smartpay is not active in the wholesale market**

10. Paymark claims that the transaction will remove "one of the four current suppliers in the wholesale terminal market".<sup>2</sup> Similarly Skyzer claims that:

In the "wholesale" market as it is referenced by Verifone, ST competes with Verifone, Perception Technologies and Smartpay.

11. This claim is incorrect. As the Commission knows, Smartpay does not, as a matter of course, participate in the "wholesale" market. Although, Smartpay has in the past sold a very small number of terminals to one or, at most, two "resellers", it is inaccurate and misleading to point to such limited and *de minimis* sales as being reflective of any real presence in the "wholesale" market.

### **The transaction will not result in the removal of one of the three current terminal brands**

12. Paymark claims that the transaction will result in the "possible removal of the availability in New Zealand of one of the three current terminal brands".<sup>3</sup> Skyzer similarly claims that:<sup>4</sup>

In paying such a premium for Smartpay the only commercially beneficial option for Verifone is to replace the entire PAX fleet with Verifone hardware and migrate the switching services away from Paymark onto their own Eftpos NZ switch, effectively removing availability of the PAX brand from the market.

13. These assertions are incorrect:
  - (a) Post-transaction, the full range of PAX terminals will remain certified for use by anyone on the Paymark switch. PAX will continue to be able to supply terminals into the New Zealand market either directly or through any of the number of other terminal resellers in New Zealand. In fact, if Skyzer are truly concerned around this point, they are well placed to become a PAX distributor themselves in the NZ market if they so choose.
  - (b) Paymark<sup>5</sup> and Skyzer<sup>6</sup> allege that to remain in the market PAX would need to find an entity that can develop software to go on the terminal and that "certification requirements" would make it difficult for PAX to do so. This is inaccurate on both accounts:
    - (i) There are already other independent providers in market who can supply a PAX payment application, including EFT Solutions and Aurium Limited,

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<sup>2</sup> Paymark submission, 2(a) and 6.

<sup>3</sup> Paymark submission at 2(b) and 8.

<sup>4</sup> Skyzer submission, page 3, at 76.

<sup>5</sup> Paymark submission at 16.

<sup>6</sup> Skyzer submission, page 4, first paragraph.

which has developed PAX applications including for the New Zealand market;<sup>7</sup> and

- (ii) Paymark control the software certification process so to the extent that certification is a genuine barrier (which Smartpay strongly disagrees with), Paymark is uniquely placed to unilaterally remove such a barrier.

Indeed, as Paymark/Ingenico itself has previously submitted to the Commission:<sup>8</sup>

Ingenico also observes that certification is not a significant hurdle for any major terminal manufacturer wishing to enter the NZ market. The baseline requirements are well-understood and widely-used international payment technology standards such as PCI DSS, in conjunction with hardware certification requirements developed by Payments NZ, and can be met by any major manufacturer. The Payments NZ website shows a list of the dozens of EFTPOS terminal types from a range of manufacturers which are currently certified for New Zealand use. Paymark's standards primarily relate to software and transaction flow requirements, rather than hardware certification. Ingenico's understanding, and its own experience, is that certification is readily achievable.

- (c) In any event, there are not just three terminal brands in New Zealand. There are at least 18 terminal brands listed on Payments NZ Device Register as at 13 February 2020 (both merchant and unattended terminals).<sup>9</sup> Those brands listed in this register include Castles, CYNOVO, Datecs, Direct Payment Solutions, Emerge Mobile, Fujian Landi Commercial Equipment Co, Ingenico, Invenco, Miura Systems, PAX, Payment Express, Quest Payments Systems, Spectra Technologies, Spire Payments, Uniform Industrial Corp, Vanstrone Electronic (Beijing) Co, Verifone, and Windcave. As above, Paymark/Ingenico has previously cited the "dozens of EFTPOS terminal types from a range of manufacturers which are currently certified for New Zealand use".<sup>10</sup>

14. Indeed, the reality is as Paymark/Ingenico has previously submitted to the Commission in support of its own clearance application:<sup>11</sup>

Ingenico's perspective is that the New Zealand terminal market is in fact highly competitive, as can be seen by:

- the reality that Verifone/ENZ, Payment Express and others each have an array of terminals already certified for use on the Paymark switch or any other EFTPOS system, which they can continue to use post-transaction;
- the ready availability of terminals manufactured in overseas facilities by worldwide players such as Verifone, PAX, Activate and Castles, meaning that a new entrant can adopt an import-only model and there

<sup>7</sup> <https://eft.solutions/services/>

<sup>8</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0028/85933/Ingenico-Cross-submission-on-Ingenico-Group-SA-and-Paymark-Limited-Statement-of-Preliminary-Issues-24-May-2018.PDF](https://comcom.govt.nz/_data/assets/pdf_file/0028/85933/Ingenico-Cross-submission-on-Ingenico-Group-SA-and-Paymark-Limited-Statement-of-Preliminary-Issues-24-May-2018.PDF)

<sup>9</sup> <https://www.paymentsnz.co.nz/resources/industry-registers/device-register/>

<sup>10</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0028/85933/Ingenico-Cross-submission-on-Ingenico-Group-SA-and-Paymark-Limited-Statement-of-Preliminary-Issues-24-May-2018.PDF](https://comcom.govt.nz/_data/assets/pdf_file/0028/85933/Ingenico-Cross-submission-on-Ingenico-Group-SA-and-Paymark-Limited-Statement-of-Preliminary-Issues-24-May-2018.PDF)

<sup>11</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0028/85933/Ingenico-Cross-submission-on-Ingenico-Group-SA-and-Paymark-Limited-Statement-of-Preliminary-Issues-24-May-2018.PDF](https://comcom.govt.nz/_data/assets/pdf_file/0028/85933/Ingenico-Cross-submission-on-Ingenico-Group-SA-and-Paymark-Limited-Statement-of-Preliminary-Issues-24-May-2018.PDF)

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is no requirement to invest in fixed production assets to supply the New Zealand terminal market;

- the relatively evenly-weighted market shares of the leading terminal market participants, which again include global heavyweights like Verifone, PAX, Activate and Castles.

15. The above, including the contradictions between Paymark's 2018 submissions and its current submission, demonstrates the inaccurate and disingenuous nature of Paymark's current submission to the Commission and, therefore, we trust that the Commission appreciates the care required in critically evaluating any such submissions from Paymark (and Skyzer) in the current process.

### **The emergence of alternative payments technologies**

16. Paymark cites statements made by Verifone about emerging technologies in 2018 in the context of the Ingenico/Paymark case.<sup>12</sup>
17. Two years is a long time in fast-moving technology markets, and there have been significant further payments developments since then, including the developments that Paymark/Ingenico itself cited in support of its clearance application, citing:<sup>13</sup>

the fast uptake of emerging technologies and terminal alternatives like Payclip and Fastpay, which have rapidly gained share since their launch approximately two years ago. Ingenico estimates that there are now at least [ ] such devices in the market, particularly with smaller traders such as taxi firms and market operators. The popularity of these terminal alternatives reflects both their lower monthly cost and absence of a fixed-term contract.

18. Rather than focus on historic statements, it is appropriate to assess the proposed transaction based on the state of technology and competition today and in the near future (as the test the Commission applies is a forward looking test). As the UK's Competition & Markets Authority ("**CMA**") observed in respect of its evaluation of a merger in the payments industry in 2019:

Our evaluation of this Merger takes into account that the payment services industry is a fast-moving and dynamic market. Such markets are distinguished by rapid growth in a relatively short period of time and notable technological and commercial developments that often result in disruption to the current state of competition and how consumers interact in the marketplace. In this context, we do not consider it sufficient to assess the impact of the Merger with reference solely to the current state of competition; we instead need to consider the likely impact on competition as it is expected to develop in relation to the markets it will affect. For this reason, we have taken account of a range of forward-looking evidence and, in particular, evidence that allows us to form expectations about future competition, both with and without the effects of the Merger.

19. Focussing on the developments since 2018 and the likely continuation of those trends demonstrates the significant emergence of alternative technologies in payments. For example:

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<sup>12</sup> Paymark submission at 20(c) and (d).

<sup>13</sup> [https://comcom.govt.nz/data/assets/pdf\\_file/0028/85933/Ingenico-Cross-submission-on-Ingenico-Group-SA-and-Paymark-Limited-Statement-of-Preliminary-Issues-24-May-2018.PDF](https://comcom.govt.nz/data/assets/pdf_file/0028/85933/Ingenico-Cross-submission-on-Ingenico-Group-SA-and-Paymark-Limited-Statement-of-Preliminary-Issues-24-May-2018.PDF)

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- (a) In 2019 the UK's CMA found that providers of traditional POS and mPOS compete in the same relevant market, citing "very similar" functionality, lower pricing, diversion ratios of over 30% between mPOS and POS and the attractiveness of such options, in particular for smaller merchants.<sup>14</sup>

mPOS offerings differ from traditional POS offerings primarily in terms of their pricing structures rather than functionality (which is very similar). mPOS offerings typically do not require a contract or monthly rental agreement, and pricing structures are, in most cases, based on a flat transaction rate. In terms of overall cost, a comparison of total charges indicates that mPOS services are generally a cheaper option for very small (nano and some micro) merchants than typical traditional POS services. This makes mPOS services attractive to merchants with low levels of customer card use, who are uncertain on what level of card use to expect, or whose usage is seasonal. Our survey of the Parties' customers asked what their main reasons were for choosing an mPOS offering. The main reasons provided were ease of use, flexibility (no long-term contracts), portability, speed of receiving funds, and lower overall and upfront costs.

- (b) In 2019 the European Commission ("**EC**") similarly treated traditional POS and mPOS as competing in the same relevant market, citing the "strong competition in this space in particular from mPOS terminals suppliers (PayPal/iZettle, Square, SumUp) who are specifically targeting smaller merchants".<sup>15</sup>
- (c) One of the more recent technologies to have subsequently emerged is "PIN on Glass", which is allowing touch screen interfaces to accept cards as a direct substitute to conventional PIN entry devices (i.e. regular EFTPOS terminals).<sup>16</sup> Even more recent is "PIN on Mobile", which allows merchants to take payment on a regular smartphone or tablet without needing a separate card reader or PIN entry device. Internationally, payments provider Fiserve is looking to launch this technology in collaboration with Samsung Electronics Co, Visa Inc, and PayCore Inc.<sup>17</sup> Both of these are rapidly emerging technologies that have very real scope to completely replace conventional EFTPOS terminals in the near to medium term. Indeed, as Ingenico's Executive Vice President of Innovation noted in his "The future of payments: Ingenico's 5 predictions for 2020" analysis:<sup>18</sup>

Last but not least, with "**PIN on Mobile**" technology, mobile phones will be transformed into payment terminals – all you'll need to do is type in your PIN code or just hold your card to a seller's mobile. Simultaneously, various acceptance points will continue to grow.

20. This demonstrates the significant expansion and competitive constraint imposed by newer technologies since 2018. This context invalidates the backward looking view portrayed in both Paymark's and Skyzer's submission.

<sup>14</sup> [https://assets.publishing.service.gov.uk/media/5cffa74440f0b609601d0ffc/PP\\_IZ\\_final\\_report.pdf](https://assets.publishing.service.gov.uk/media/5cffa74440f0b609601d0ffc/PP_IZ_final_report.pdf)

<sup>15</sup> Case M.9357 – FIS / Worldpay. 05/07/2019

<sup>16</sup> <https://www.paymentscardsandmobile.com/pin-on-glass-new-payments-technology/>

<sup>17</sup> <https://www.mobilepaymentstoday.com/news/fiserv-testing-pin-on-mobile-payment-technology-with-visa-samsung/>

<sup>18</sup> <https://www.ingenico.com/press-and-publications/press-releases/all/2019/09/the-future-of-payments.html>

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### **Other factual inaccuracies in the Paymark and Skyzer submissions**

21. For completeness, **Appendix 1** highlights other factually incorrect and misleading claims in the Paymark and Skyzer submissions.

### **Concluding comments**

22. We trust this cross-submission demonstrates the number of incorrect statements in the Paymark and Skyzer submissions, and that the contradictions between Paymark/Ingenico's previous submissions and their present submission demonstrates the care required in critically evaluating any such submissions from Paymark (and Skyzer) in the current process.
23. Indeed, rather than putting weight on or re-litigating historic submissions from 2018, it is more informative for the Commission's forward looking assessment to focus on the developments since 2018, the likely continuation of those trends, and the blurring of payments technologies into a single market – as recognised by two of the world's most pre-eminent competition regulators.
24. Smartpay remains available to discussion these issues and this cross-submission with the Commission.

Appendix 1 – Other inaccuracies in the Paymark and Skyzer submissions

Claim made	Why it is inaccurate and/or misleading
<p>Windcave do not have their own terminal.<sup>19</sup>                      mPOS is only available from Verifone and Smartpay.<sup>21</sup></p>	<p>Windcave do have their own terminal, which it developed in-house.<sup>20</sup>                      BNZ is also a large (potentially the largest) supplier of mPOS. BNZ supplies a Miura mPOS terminal that is sourced from a provider called Mint Payments.</p>
<p>"With regards to QR Code Technology, many of the QR code applications referenced by Verifone reside on the payment terminal".<sup>22</sup></p>	<p>This is misleading and is used by Skyzer to suggest that since QR payments require a terminal they cannot be a potential substitute for a terminal. In reality, the exact same QR codes that may be delivered through a terminal can actually, and more easily, be delivered through any device (including phones, tablets, PCs, dedicated screens etc.). Accordingly, QR payments are a genuine substitute to terminals.</p>
<p>"That the proposed acquisition has the propensity to increase the cost of the provision of a payment terminal solution to the NZ market, particularly the SME market who are already under increasing pressure to reduce costs in a tough retail environment."<sup>23</sup></p>	<p>To the extent retailers are operating in a "tough retail environment", this would reinforce how price sensitive they are, demonstrating that they will not accept any non-competitive price increases. Further, as the EC and CMA have observed, mPOS is a direct competitor for traditional POS terminals and is a particularly attractive alternative for smaller merchants. Also, if Paymark have a genuine concern here, they may look to moderate their own Merchant Access Fee which they charge to merchants for each EFTPOS terminal connection and which continues to trend up over time (and which this transaction has the potential to bring additional competition to, which would be beneficial to both merchants and consumers.).</p>
<p>"The acquisition removes another terminal supplier from the NZ market, and reduces the availability and choice for both the wholesale and retail market."<sup>24</sup></p>	<p>The transaction does not have any material impact in the wholesale market as Smartpay does not have a relevant presence in the wholesale market.</p>

<sup>19</sup> Skyzer submission at 3(b) and Paymark submission at 13(b).

<sup>20</sup> <https://www.windcave.com/merchant-attended-MTM300>

<sup>21</sup> Skyzer submission, page 2, 3(b).

<sup>22</sup> Skyzer submission, page 2, second last paragraph.

<sup>23</sup> Skyzer submission, page 4

<sup>24</sup> Ibid

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<p>"Verifone refers to BNZ Payclip terminals as a competitive constraint. Their terminals are provided by Mint presently, however they need to be upgraded to prior to 30 April 2020 to remain compliant with industry hardware and software requirements"<sup>25</sup></p> <p>Paymark asserts that there is limited evidence that mPos and QR payments impose a constraint.</p>	<p>Furthermore, the transaction could not have any anticompetitive effect in the retail market given the significant number of viable alternative suppliers remaining post-transaction</p> <p>This is incorrect. The Mint product mentioned is actually a Miura terminal. From the Payments NZ Device Register<sup>26</sup> it appears that the Miura terminals are certified for use in New Zealand until 30 April 2023 and 30 April 2029 respectively.</p> <p>Smartpay has seen numerous regular EFTPOS terminals that have been replaced by such technologies since the Commission's decision in Ingenico/Paymark in particular in the smaller merchant segment. [REDACTED]</p> <p>Indeed, as the EC and CMA have observed, mPOS is a direct competitor for traditional POS terminals and is a particularly attractive alternative for smaller merchants.</p>
<p>"Smaller providers from international markets would be unlikely to enter the New Zealand market, given the prohibitive cost of entry"<sup>27</sup></p>	<p>This is factually incorrect and inconsistent with the number of smaller providers who are now certified and present in New Zealand.<sup>28</sup></p> <p>It is also inconsistent with previous statements by Paymark/Ingenico to the Commission.<sup>29</sup></p> <p>Ingenico also observes that certification is not a significant hurdle for any major terminal manufacturer wishing to enter the NZ market. The baseline requirements are well-understood and widely-used international payment technology standards such as PCI DSS, in conjunction with hardware certification requirements developed by Payments NZ, and can be met by any major manufacturer. The Payments NZ website shows a list of the dozens of EFTPOS terminal types from a range of manufacturers which are currently certified for New Zealand use. Paymark's standards</p>

<sup>25</sup> Paymark submission at 17.

<sup>26</sup> <https://www.paymentsnz.co.nz/resources/industry-registers/device-register/>

<sup>27</sup> Paymark submission at 20(a).

<sup>28</sup> <https://www.paymentsnz.co.nz/resources/industry-registers/device-register/>

<sup>29</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0028/85933/ingenico-cross-submission-on-ingenico-group-sa-and-paymark-limited-statement-of-preliminary-issues-24-may-2018.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0028/85933/ingenico-cross-submission-on-ingenico-group-sa-and-paymark-limited-statement-of-preliminary-issues-24-may-2018.pdf)



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	<p>primarily relate to software and transaction flow requirements, rather than hardware certification. Ingenico's understanding, and its own experience, is that certification is readily achievable...</p> <p>the ready availability of terminals manufactured in overseas facilities by worldwide players such as Verifone, PAX, Activate and Castles, meaning that a new entrant can adopt an import-only model and there is no requirement to invest in fixed production assets to supply the New Zealand terminal market</p>
<p>"Paymark notes that in this regard that on the Paymark network currently, [redacted] of the terminals are mPOS and [redacted] are unattended"<sup>30</sup></p>	<p>The number of mPOS terminals currently being used in the market is of no relevance to an analysis of the effect on competition arising from the transaction. What is important is that mPOS (and other technologies) are a viable substitute and as such will continue to impose competitive constraint on terminal providers post-Transaction due to real and credible threat of further switching to mPOS terminals as is currently occurring in New Zealand, and as recognised by the EC and CMA overseas.</p>
<p>Paymark cites concerns about the slow uptake of open banking and the involvement of government to suggest that such technology is unlikely to arise in the near future.<sup>31</sup></p>	<p>Contrary to what Paymark claims, the intervention of government in relation to the uptake of API and open-banking is likely to bring forward open banking compared with if the government did not intervene.</p>

<sup>30</sup> Paymark submission at 20(b).

<sup>31</sup> Paymark submission at 20(d) and (e).

