

Statement of Preliminary Issues

epay / Ezi-Pay

1 February 2012

Introduction

1. On 17 January 2012, the Commerce Commission (Commission) received an application from epay New Zealand Limited (epay) seeking clearance to acquire Ezi-Pay Limited (Ezi-Pay). The public version of the application can be accessed on the Commission's website at:

<http://www.comcom.govt.nz/clearances-register/detail/751>
2. This Statement of Preliminary Issues outlines the key competition issues the Commission currently considers will be important in deciding whether or not to grant clearance. The issues highlighted in this statement are based on the information available at the time of publication, and may change as the Commission's assessment of the application for clearance progresses. Therefore, the issues highlighted in this Statement of Preliminary Issues are in no way binding on the Commission.
3. The Commission invites interested parties to make comment on the likely competitive effects of the proposed merger.

Relevant parties

The acquirer – epay

4. epay is a division of Euronet Worldwide Incorporated. epay is involved (through a range of retail outlets) in dispensing PINs, activating products and initiating payment for a range of products including pre-paid mobile telephone top-ups, landline telephone calling cards, gift cards and vouchers, and cards for computer software and games.

The target – Ezi-Pay

5. Ezi-Pay is New Zealand owned and operated. It has the same shareholders as Compass Communications Limited (Compass) and EFTDATA Holdings Limited (EFTDATA). The business of Ezi-pay is like that of epay.
6. Under the proposed acquisition, epay will acquire the business of Ezi-Pay. In addition to the assets and shares of Ezi-Pay, this also includes certain assets of Compass and EFTDATA, and shares in EFTDATA.

Analytical framework

7. In the context of an application for clearance, the Commission must consider whether or not an acquisition substantially lessens competition. An important step in

the Commission's analytical framework¹ is to determine the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target where aggregation of market share may arise from the acquisition. The Commission then considers the relevant products and geographic regions that may be close substitutes from both a customer's and a supplier's point of view.

8. The Commission uses a forward-looking type of analysis to assess the degree of any potential lessening of competition in the relevant market or markets arising from a proposed acquisition. Therefore, the next step is to establish the two hypothetical future scenarios:
 - with the acquisition in question
 - without the acquisition.
9. The impact of the acquisition on competition is then viewed as the difference between those two scenarios.
10. The Commission analyses the extent of competition in each relevant market for both the with and without scenarios, in terms of:
 - Existing competition – the degree to which existing competitors compete and their ability to expand production in the event that the combined entity raises prices.
 - Potential competition – the ability of businesses to readily enter the market and thereafter expand, given an inducement to do so.
 - The countervailing market power of buyers – the potential for a business to be sufficiently constrained by purchaser's ability to exert an influence on price, quality and/or terms of supply.
 - Coordinated behaviour – whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.
11. A comparison of the extent of competition in the relevant markets both with and without the acquisition enables the Commission to assess the degree by which the proposed acquisition might lessen competition. If the lessening is substantial the Commission may not give clearance to the proposed acquisition.

Preliminary issues

12. The proposed acquisition would result in aggregation of market share in the provision of vouchers for topping up pre-paid mobile telephones, landline telephone calling cards, gift cards and vouchers, and cards for computer software and games.

¹ Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

13. The Commission considers that its consideration of the proposed acquisition will focus on the areas outlined below.

Market definition

14. epay submits that the relevant market is a single national market for payment processing.
15. The Commission will consider whether each of the products in which epay and Ezi-Pay overlap are in separate product markets. In defining any such markets, the Commission will also consider there are any close substitutes for the products supplied by epay and Ezi-pay.

Existing and potential competition

16. epay submits that the merged entity would continue to face strong competition post acquisition from number of existing competitors and be further constrained by potential entry. In addition, epay submits that customers have a wide choice of payment types and can readily switch to alternatives. For example, consumers can also top-up a pre-paid mobile telephone directly with their chosen network provider.

Countervailing power

17. epay submits that the merged entity will have no ability to unilaterally raise prices post acquisition. It submits that the mobile telephone companies, retailers and other content providers determine its margins and have countervailing power.

Next steps

18. In line with the Commission's Merger and Acquisitions Clearance Process Guidelines (available on the Commission's website at www.comcom.govt.nz), the Commission has established a draft timeframe for consideration of the issues and epay's application for clearance. An extension of time has been agreed to by the Applicant such that the Commission should make its final decision by **7 March 2012**. However, this timeframe could change. To keep abreast of possible changes to timing and to find relevant documents, visit the Clearance Public Register on the Commission's website at:

<http://www.comcom.govt.nz/clearances-register/>
19. As part of its investigation, the Commission will identify the parties it believes will provide the best information to help it assess the preliminary issues identified above. The Commission will be contacting those parties over the next few weeks.
20. The Commission invites submissions from any other parties who consider they have information relevant to the Commission's consideration of this matter. If you wish to make a submission, please send it to the Registrar, at registrar@comcom.govt.nz with the reference epay / Ezi-Pay in the subject line of your email, or The Registrar, PO Box 2351, Wellington 6140 by **4pm on Friday 10 February 2012**. Please clearly identify any confidential information contained in the submission and provide contact details.