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Market Regulation

Commerce Commission

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Draft IPS Guidance Submission - ANZ Bank New Zealand

Thank you for the opportunity to comment on the draft guidance (**Guidance**) on the initial pricing standard (**IPS**) under the Retail Payment Systems Act 2022 (the **Act**).

We support the aim of the Act to promote competition and efficiency in the retail payment system for the long term benefit of consumers and merchants in New Zealand. We think that ensuring a level playing field and a competitive market will be important to achieving these purposes.

While we are broadly comfortable with the Commission's approach in the Guidance, we would like to make the following key comments:

1. The application of subjective criteria, particularly in relation to the initial fee cap, may result in participants being advantaged or disadvantaged based on historical conduct and market position.
2. The proposed definition of Net Compensation appears, in effect, to be gross compensation. It would be helpful for the Commission to provide objective, measurable and consistent guidance in relation to identifying, measuring, attributing, and applying Net Compensation to the Total Interchange Fee.
3. To the extent the Commission intends to set a Net Compensation baseline for each issuer, where an issuer's arrangements with the scheme pre-date 12 April 2021 and have not changed since that date, the initial baseline Net Compensation should be "0".
4. The Commission should move quickly to designate other payment networks and issue standards for surcharging, to ensure fair competition in the market.

We have followed the submission template provided with the Guidance.

Chapter 5: Participants required to ensure compliance with the IPS

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.
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ANZ only issues Visa credit cards and Visa debit cards. 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.

ANZ has no bilateral agreements with any acquirer relating to interchange fees.

We have an interchange rebate arrangement in place with one merchant for ANZ issued card transactions they process however we still elect to receive the Visa maximum interchange fee.

This arrangement is linked to ANZ's overall banking relationship with that merchant and the contractual terms are reviewed from time to time.

ANZ is not aware whether any other issuer sets or has bilaterally agreed an interchange fee which is below the maximum rates.

5B	Have we accurately described how interchange fees are set, assigned and charged in practice? If not, please provide an explanation.
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We believe how interchange fees are set, assigned and charged is accurately described.

5C(i)	Do you agree with our analysis of scenario one? Why/why not?
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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. All the participants in the payment system would be aware of the prescribed maximum rates in the Act. Therefore, it is unlikely that a higher rate would be adopted by any participant, even if that rate was set by the scheme.

5C(ii)	Do you agree with our analysis of scenario two? Why/why not?
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We agree with your analysis.

We believe 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. All issuers must be able to accurately and confidently assess their Net Compensation position at any given time.

We assume, however, 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.

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.
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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.

Chapter 6: Total interchange fee caps under the IPS

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?
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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.

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.

6A(ii)	Do you agree with our proposed approach for determining those 1 April 2021 fees for each issuer? Why/why not?
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We consider that all issuers should be subject to the same IPS fee caps.

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.

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?
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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.

6B(i)	What other forms of monetary or non-monetary compensation should be included in our consideration of net compensation, if any?
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Schemes may provide a range of non-monetary services to issuers including, for example:

1. undertaking product and market research or similar consultancy
2. training staff
3. contributing to travel or conference costs for industry conferences
4. providing tickets to events for issuer customers



Noting our response to question 5C(ii) above, we think it would also be helpful to include some categories of non-monetary compensation that are unlikely to amount to Net Compensation. For example, where a scheme provides funds to support marketing or developing new products / enhancements and these funds must be used for that purpose.



[REDACTED]

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?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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?

We do consider that compensation has to be linked to a specific transaction in order to be reasonably attributed to it. The value of the compensation should be linked to, or determined by, the underlying transaction value or type, and should vary based on the overall value including both the compensation received by the issuer and the payments made by the issuer in relation to that transaction.

We consider that payments that are not linked to transaction type or volume should be excluded. For example, lump sum incentives to support activities such as marketing, or for product development or enhancements are not be linked to transactional volume.

[REDACTED]

6C(ii) What principles or other matters do you consider to be relevant for the purposes of attributing compensation to specific transactions?

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).

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.

We believe this is consistent with paragraph 6.23 in the Guidance.

6D(i) What do you consider the effect of the IPS to be?

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.

6D(ii)	Do you consider any other principles to be relevant to determining the purpose of compensation?
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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.

These may include support and investment in new capabilities, enhanced security and product innovation. The commercial arrangements also change in response changes in the market, to account for new entrants and products as well as arrangements by different schemes to obtain preference with a particular issuer.

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.

To this end, while we agree that a prohibited purpose does not need to be the sole purpose or even the dominant purpose as noted in paragraph 6.36.3 of the Guidance, we would be concerned that without clear guide rails any compensation to an issuer could ultimately be determined to be Net Compensation.

6D(iii)	What information could parties reasonably provide to enable us to assess the purpose of compensation?
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We would expect to be able to provide the Commission with all relevant information on a case by case basis. We believe this would likely include:

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

6E(i)	What mechanisms do issuers have in place, and how do those mechanisms operate, to:
(a)	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.

Our processes ensure that staff are aware that personal customers are not eligible for any commercial card products and that commercial cards are only linked to business relationship management numbers. A businesses relationship management number and New Zealand business number is collected as a part of the application process.

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.

To make this process more robust we will include provisions expressly prohibiting personal use of business card products and facilities across all relevant conditions of use.

6E(i)	What mechanisms do issuers have in place, and how do those mechanisms operate, to:
(b)	b. Determine whether a cardholder is using a CCPP for a prohibited purpose (i.e., for a personal, domestic or household purpose);

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.

6E(i)	What mechanisms do issuers have in place, and how do those mechanisms operate, to:
(c)	c. Remedy the use of a CCPP for a prohibited purpose? For example, by blocking the use of that credit product; and

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. The customer can, if they wish, request that ANZ block merchant category codes on their cards programme that they believe fall outside of their internal spend policy.

6E(i)	What mechanisms do issuers have in place, and how do those mechanisms operate, to:
(d)	d. Ensure that a CCPP is being charged directly to the account of the business?

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.

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.

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.

6E(ii)	How can we best get assurance from participants that credit products are correctly being categorised and treated as CCPPs?
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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 be classified as a commercial card.

6F	Should ATM transactions be subject to the fee caps under the IPS?
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We agree with the Commission that ATM transactions do not meet the definition of 'retail payments' and should not be included.

6G(i)(a)	<p>What mechanisms do participants currently have in place, and how do those mechanisms work, to:</p> <p>Identify whether an erroneous interchange fee has been charged; and</p>
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Interchange fees are loaded in ANZ systems. Schemes publish updates to the interchange fees typically every six months, however this may occur more frequently.

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.

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 in their invoice, or refund to the merchant if the higher charge has already been paid. We note that the occurrence of errors is rare.

In addition, all our merchant customers receive detailed Merchant Service Fee statements which detail the transactions processed and the level of interchange and merchant service fee charged. Should a merchant raise any questions relating to their fees this would be investigated by ANZ.

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.

6G(i)(b)	<p>What mechanisms do participants currently have in place, and how do those mechanisms work, to:</p> <p>Address a situation where an erroneous interchange fee has been charged?</p>
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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.

6G(ii)	<p>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?</p>
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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).

Chapter 7: Information required to assess compliance

7A(i)	<p>We are interested in your views on the scope of the information we consider is required to assess compliance with the obligations under the IPS, including:</p> <p>(i) Do you agree that the information we have identified is the right information to</p>
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	enable us to assess compliance with the obligations under the IPS? Why/why not?
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Based on the current draft of the Guidance we consider that the Commission has identified the right information to assess compliance with the obligations under the IPS. However, we are concerned that the proposal to create individual baselines for issuers, coupled with the collection and review of the information categories identified by the Commission post IPS implementation will create significant work for participants and the Commission and will fail to provide the efficiency that is one of the objectives of the Act.

We note our view, already expressed in 5C(ii), that any arrangements in place before 1 April 2021 cannot amount to Net Compensation on the basis that it 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. The date also aligns with the 1 April 2021 fees for simplicity. We consider that for many issuers the baseline Net-Compensation position will be "0". Once the Commission has identified the baselines for each issuer it may wish to ask the threshold question of whether any changes have been made before seeking the information categories it has outlined.

7A(ii)	What alternative information, if any, can provide us with assurance that the IPS is being complied with?
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We believe the information identified would be adequate to provide the Commission with assurance the IPS is being complied with given its proposed approach.

Additional comments

8	The definition of Net Compensation in the Guidance appears to be gross compensation
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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.

Specifically, the definition of Net Compensation in the Act does not include reference to compensation 'provided directly or indirectly to an issuer'. We believe that the use of language like 'payments' in the definition explicitly accounts for payments made by the issuer to the scheme.

However, the Guidance describes 'Net value' at paragraph 6.22 as the '*total value of any monetary and non-monetary compensation which meets the definition of net compensation*', and paragraph 6.16 states that '*[n]et compensation can include payments, rebates, incentives, or other means of monetary and non-monetary compensation provided directly or indirectly to an issuer*'. We consider that impact of this is to define Net Compensation as gross compensation received from the scheme.

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.

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.

9	The Guidance applies caps and net compensation levels subjectively to issuers
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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.

We also consider that the Guidance should take a similar approach to issuers in relation to Net Compensation, setting the current value of Net Compensation at "0" for all issuers provided that they have not made changes since 1 April 2021. Any arrangement in place before this date could not reasonably be said to have the purpose of compensating and issuer for the effect of the standard.

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.

10	Delayed application of review powers
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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.

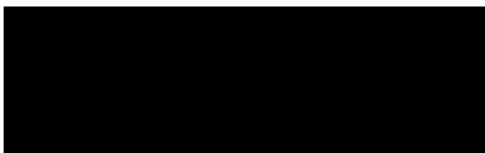
12	Further designations
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No doubt the Commission has noted the increased activity from non-designated payment networks. We would like to urge the Commission to move quickly to designate other payment schemes and to issue standards for surcharging to ensure fair competition in the market.

Once again we thank the Commission for the opportunity to provide submission on the Draft IPS Guidance.

We would be more than happy to meet and discuss any aspect of this submission if that would be helpful for the Commission.

Yours faithfully,



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ANZ New Zealand