**PUBLIC VERSION**

DATE: 24 May 2018

**COMMERCE COMMISSION – INGENICO/PAYMARK**

**INGENICO CROSS-SUBMISSION ON ISSUES RAISED IN SUBMISSIONS ON THE COMMISSION'S 23 APRIL 2018 STATEMENT OF PRELIMINARY ISSUES**

1 Ingenico welcomes this opportunity to comment on the public submissions on its proposed acquisition of Paymark Limited.[1]

**Summary of this cross-submission**

2 In summary, Ingenico's view is that:

2.1 The New Zealand terminal market is highly competitive, as evidenced by the evenly-weighted market shares and presence of multiple global players, each with New Zealand certified handset offerings. Merchants also have access to emerging terminal alternatives such as those promoted by the major retail banks.

2.2 Paymark faces head-on rivalry for all transaction types from Verifone/ENZL, Payment Express and other technologies.[2] Moreover, the banks are continually looking for the cheapest and best available payments package to enhance their business banking offerings. For these reasons, Paymark does not have market power in the switching market or any part of that market (such as STI transactions).

2.3 Verifone and Payment Express are not reliant on Paymark for any reason beyond their own choice to 'buy' access from Paymark rather than 'build' their own switching assets and issuer links. Each firm has the means and expertise to undertake such investment. And, in Verifone's case, it already has existing switching assets which it could utilise if it wished to do so. Again, Verifone's and Payment Express's election to rely on Paymark for some payment types does not diminish their strength as competitors.

2.4 The transaction will not destroy the banks' incentive to seek out the lowest cost switching option. In fact, the ownership change may reinforce the current pricing tension between Paymark and the major acquirers and issuers.

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[1] The public submissions were released on the Commerce Commission website on 11 May 2018 and comprise submissions from Verifone (4 May 2018), Retail NZ (4 May 2018), Progressive Enterprises (4 May 2018), Anonymous (23 April 2018), Payment Express (11 May 2018), PED NZ Ltd and Perception Technologies Ltd (10 May 2018), and Anonymous (7 May 2018).

[2] For an example of commentary on other emerging technologies see: https://www.bloomberg.com/graphics/2018-payment-systems-china-usa/

2.5 Similarly, the proposed services agreement, which would come into effect post-transaction, do not diminish the current ability of Verifone and Payment Express to compete directly with Paymark to win new merchant volumes – as they do today.

3 We provide further details and evidence below.

**Terminal market foreclosure**

4 Some submitters characterised the New Zealand terminal market as not particularly competitive, as a result of high entry barriers and/or few global providers who could enter the market.[3] Submitters were also sceptical that emerging technologies constrain terminal providers because merchants are extremely slow to take up new technologies.[4]

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

5.1 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;

5.2 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;

5.3 the relatively evenly-weighted market shares of the leading terminal market participants, which again include global heavyweights like Verifone, PAX, Activate and Castles, as can be seen in the below share chart:

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3 See, e.g., the Verifone submission at [69] to [72].

4 Verifone submission at [75].

]

5.4 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.

6 Indeed, Ingenico's recent experience has been that its proposed prices for sales (via its resellers) to potential customers in the New Zealand corporate and enterprise market have been **[ ]** than the rivals' winning tender bids. Ingenico believes that the highly-competitive pricing in this industry reflects the sheer choice of terminals and the number of major competitors with suitable offerings.

7 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,[5] 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.[6]

8 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, **[ ]**. Ingenico also, however, wishes to invest in smoothing and speeding the software certification process and intends to **[ ]**.

**Paymark's position in the switching market**

9 Some submitters contended that Paymark enjoys market power in the switching market—or least in aspects of the switching market such as STI transaction processing. Those submitters say that, post-closing, Paymark would be able to lift

5 Payment Card Industry Data Security Standard, which is an information security standard for organisations that handle scheme credit cards. The PCI Standard is mandated by the card brands and administered by the Payment Card Industry Security Standards Council.

6 Payments NZ *Device Register*: https://www.paymentsnz.co.nz/resources/industry-registers/device-register/

switching prices and its customers would have no choice but to accept that increase. These market power allegations were premised on various factual statements, most importantly that:

9.1 Paymark is the sole switch provider with "full capabilities", and has the ability to throttle Verifone's and Payment Express's access at will, because both of those rivals are dependent on Paymark for (at least) some STI processing;[7]

9.2 Paymark is not constrained by the banks' countervailing power in the switching market;[8] and

9.3 new entry or meaningful expansion into the switching market is extremely unlikely in the near to medium term.[9]

10 Each of these premises is incorrect.

11 First, though, we suggest that the Commission should be cautious before placing weight on these statements, particularly where Verifone—which complains in its submission of being reliant on Paymark—promotes itself to New Zealand customers as:

11.1 offering the latest payment technologies, enabling it to provide the widest range of quality terminals at the best possible price;

11.2 supported by its parent, global payments company VeriFone Systems, Inc. with an installed base of more than 20 million terminals in more than 150 countries; and

11.3 New Zealand's number one provider of reliable and secure card payment solutions.

12 For its part, Payment Express bills itself as offering the leading EFTPOS solution in New Zealand and providing PCI DSS compliant payment solutions certified with all major card schemes. It identifies major retailers like Trademe, Ezibuy, and SONY as among its key partners.

13 Ingenico believes that the presence of major, well-resourced rivals like Verifone and Payment Express is compelling evidence that Paymark does not enjoy any market power in the switching market.

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7 Verifone submission at [20], [25] and [26], and [29]; Payment Express at [8] to [10].

8 Verifone at [44] to [45]; Payment Express at [16].

9 Verifone at [41]; Payment Express at [11] is redacted but is presumably to similar effect.

***--Paymark faces competition from integrated rivals Verifone and Payment Express***

14 It is not correct that Verifone and/or Payment Express are reliant on Paymark to offer full service switching capability (particularly around some or all STI transactions).

15 Ingenico understands that **[** **]**. Verifone would, of course, have had to invest in links to non-ANZ acquirers and major issuers to enable the settlement of non-ANZ acquired transactions without utilising Paymark's switch. But that could readily be achieved if Verifone wished to do so.

16 Verifone has, however, instead elected to **[** **]** rather than investing in its own assets. Verifone has also marketed terminals and switching access in a bundled product which has proved very successful with merchants. Any dependency on Paymark—to switch STI transactions or more generally—reflects Verifone's chosen business strategy over the last five years.

17 For its part, Payment Express has elected to aggressively pursue eCommerce (digital gateway) offerings, while also securing the ability to switch STA transactions direct to Visa and Mastercard. In the meantime, Payment Express has **[** **]**. Again, Payment Express has willingly adopted this business strategy rather than building out its own infrastructure and issuer links.

18 Verifone and Payment Express plainly have the means and expertise to invest further in switching assets if they held the view (as they say they do) that Paymark is charging at above-normal levels for use of its infrastructure in either the retail market or at the wholesale/access level.

***--Banks have substantial countervailing power***

19 The banks **[** **]**. The banks are also dependent on payments solution to attract business banking customers. Ingenico expects that the banks thus have every incentive to use their size and scale to secure the most attractive and lowest cost payment solution.

20 To date, the banks have exercised that countervailing power via ownership control of Paymark. But it is not correct that that incentive—or the banks' ability to exercise buy-side power—would end if the transaction proceeds.[10] To the contrary, the banks would likely have an even stronger incentive to constrain Paymark than they do at present. With Paymark under third party ownership, the banks would be directly exposed to any switching price increases. **[ ]**

21 While Ingenico does not have direct knowledge of Paymark's previous pricing decisions or its cost base, Ingenico thinks **[ ]**. Again, Paymark may be expected to have selected pricing which maximises its overall profit: that incentive will be unchanged under Ingenico ownership.

22 The assertion that the banks would, by completing the transaction and entering into the proposed services agreements, tie their hands and become unable to exercise any countervailing market power is likewise incorrect. So too is the submission that, post-transaction, the banks would no longer have an incentive to use any non-Paymark provider. Ingenico says that because:

22.1 **[ ]**;

22.2 the banks may be expected to be well aware of both Paymark's switching costs and the likely rates they could secure by shifting to another provider, via:

(a) their experience as Paymark owners;

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10 Verifone submission at [18].

(b) ANZ's ownership experience of ENZ; and

(c) Australian parents.

22.3 **[** **]** A recent example, **[** **]**, demonstrates that large merchants (supported by their bankers) can and will switch if they believe a non-Paymark switching option will deliver additional functions or lower costs; and

22.4 **[** **]**

23 In summary, the banks have both substantial countervailing power and a direct incentive to minimise switching costs. The Commission should not assume that the transaction will result in any difference between the pricing rebates and volume commitments in the proposed services agreements and the market arrangements which might be expected to eventuate were Paymark under continued bank ownership (or an alternative shareholder) in the counterfactual.

24 We would be happy to discuss these issues and submissions with the Commission team.

Yours faithfully

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