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PUBLIC VERSION

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Commerce Commission
BY EMAIL

INGENICO: APPLICATION FOR CLEARANCE TO ACQUIRE PAYMARK – CROSS-SUBMISSIONS ON LETTER OF ISSUES DATED 11 JULY 2018

1. As you are aware, we act for Payment Express (**PE**). PE is grateful for the opportunity to provide a cross-submission on the responses to the Letter of Issues dated 11 July 2018 (**Lol**). This letter and its enclosure comprise the cross-submission on behalf of PE.

Introduction

2. This letter does not seek to repeat what has already been set out in PE's prior submissions in relation to the application (including in our letter dated 1 August 2018 and Mr Dunning QC's letter dated 11 May 2018.). This letter simply provides supporting evidence and greater surrounding detail on the following matters:
 - (a) The apparent argument made by Ingenico, Paymark and the vendor banks that the ability to process S2A transactions is a sufficient substitute for processing S2I transactions (in connection with the Lol, para 23); and
 - (b) Clarifying the actual current status of PE's efforts to establish sufficient direct issuer links (in connection with the Lol, para 48), and the status of access to "wholesale" services via Paymark, which also seems to underpin some arguments in (a).
3. As this letter includes references to confidential information it is not for publication. Passages containing information confidential to PE are highlighted in **blue**. A public version, in which these passages have been redacted, will be provided separately.
4. At the outset, PE records its concern that parts of the submissions on the Lol by Ingenico, Paymark and the vendor banks assert a position that is inconsistent with correspondence and dealings by PE. ].

Electronic payment services must include traditional EFTPOS (S2I) switching to be competitive

5. The submissions in response to the Lol from the vendor banks, Paymark and Ingenico make various assertions about S2I (proprietary EFTPOS transactions) being constrained by S2A (scheme transactions). Examples of the proposition as put in their responses include:

The Commission's description of the relationship between STA and STI transactions does not reflect Paymark's experience in the market. Paymark's experience is that STI is important to merchants as long as, and to the extent that, it provides a cost-effective means of transaction processing for them, that is also attractive to their customers. (by Paymark, para 3)

In summary, the trend towards STA and away from STI (particularly EFTPOS) is significant not only because merchants or banks might respond to an STI processing price increase by actively looking to move customers to STA, as the Commission seems to assume. Rather, the quickening, albeit organic, shift to STA is important evidence that the banks have options other than STI and will support those options if it is in their interests to do so. The trend to STA also plays into the hands of Verifone and Payment Express. Those firms have selectively invested in infrastructure (links) that enables them to provide standalone services, primarily for STA processing, while still falling-back to Paymark for STI under the currently contracted arrangements. (by Ingenico, para 28)

[A]s discussed in the NERA report, there is a shift to an increasing number of S2A transactions, meaning that the reliance on Paymark's S2I services will be significantly reduced in the near future (by the vendor banks, para 70(a))

6. None of those responses seems to recognise the place of the consumer, who is actually trying to make a payment with a card, and the necessary connection between that consumer and the merchant who wants to accept that payment card. As to the position of proprietary EFTPOS for card holders and merchants, in PE's experience:

- (a) There are still many EFTPOS-only cards on issue (reflected by the still greater than 40% of transactions routed as S2I on proprietary EFTPOS cards in the dark marine bar in the graph reproduced from the MBIE issues paper in the Ingenico response at para 22). To put that cohort of card holders in context: they include those who simply do not take up scheme debit cards with associated fees, and indeed, more financially vulnerable consumers such as those issued with WINZ cards.¹ Those EFTPOS cards cannot be used in an S2A environment at all. There is no evidence that there would be any timely means of shifting sufficient numbers of those people to use of S2A-capable cards (which would involve issuing new cards as some people will not have scheme debit cards at all and credit cards exclude a large segment due to eligibility) such that merchants currently only accepting EFTPOS would take up (or threaten to take up) an S2A-only service.

- (b) Looked at from the payment provider perspective, all merchants with retail card-present capable terminals in New Zealand that accept scheme cards (credit and contactless debit) via PE also accept proprietary EFTPOS, except for one [REDACTED]

7. Paymark seems to state in the above that acceptance of S2I transactions is in the hands of the merchants, but that is not the position for the reasons above and previously recorded. The proponents of the proposed transaction do seem to recognise that there remains reliance on S2I/EFTPOS services (but they say it is diminishing). It follows that there is an underlying

¹ See <https://www.workandincome.govt.nz/on-a-benefit/payments/using-your-payment-card.html#null>.

assumption that access via Paymark will be available to providers that wish to offer terminal payment solutions as a fall-back. As to that, PE comments further under the separate heading below. On the underlying question, none of the responses addresses the market fact that merchants see payment types as cumulative (ubiquity being key) and that as things stand, a large number of consumers use proprietary EFTPOS, and some simply *must* use it.

- 8. Further, the suggestion in the Paymark response (at para 8 and 9) that the issuing banks could simply force debit cards (routed as S2I when used other than via contactless technology) to be routed as S2A by pressing the "Credit" button would immediately render those cards useless at merchants that do not accept scheme cards and *only* accept EFTPOS (essentially those who do not accept credit cards). The immediate effect would rather be that the customers of those banks would not be able to use their cards at the likes of local dairies and other smaller such merchants.

Current status of PE S2I links

- 9. In order to compete effectively with Paymark in the S2I sphere, PE would need to establish issuer links with virtually all New Zealand issuers, or have access to the issuers via Paymark on a non-discriminatory basis, for the reasons previously outlined.

- 10. 

- (a) 

- (b) 

- (c) 

- (d) 

- 

[REDACTED]

[REDACTED]

(e) [REDACTED]

(f) [REDACTED]

11. In addition, none of the proponents of the proposed transaction have produced any evidence to show that Paymark or Ingenico has or will offer standard access on a non-discriminatory commercial basis to PE or other providers. Ingenico's response goes so far as to suggest that the availability of *potential claims against Paymark for breach of the Commerce Act 1986* arising from a refusal of access by Paymark can be relied upon to prevent an anti-competitive outcome where a (less than ubiquitous) set of links have been built, para 32.6(a).

[REDACTED]

12. Please do not hesitate to contact us if you wish to discuss any aspect of this submission further with us or our client's representatives.

Yours faithfully

[sgd:Tim Mullins/Daniel Nilsson]

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