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Retail Payment System Act 2022 - Draft guidance on the initial pricing standard - BNZ feedback

Dear Kimberley and Matthew,

Bank of New Zealand ('BNZ') has prepared this response in relation to the questions asked by the Commerce Commission (Commission) in its "Retail Payment System Act 2022: Draft guidance on the initial pricing standard".

BNZ is committed to serving and supporting our customers and communities. To this end BNZ has lowered Merchant Service Fees significantly over the past 12 months. Today the published rates for small businesses include BNZ Package Pricing at an average MSF of 1.1% and other options at substantially reduced rates when compared to the market.

We have also introduced the BNZ Pay app, which enables contactless Visa and Mastercard acceptance on an Android Mobile phone. When paired with BNZ Package Pricing this creates a new low-cost acceptance option for small merchants.

As an issuer and acquirer participating in Visa and Mastercards' networks, BNZ welcomes the opportunity to provide our feedback to the draft guidance on the initial pricing standard (IPS). Attached as a schedule to this letter is a table which sets out BNZ's specific responses to each of the questions asked by the Commission. BNZ continues to recommend (as we have in previous submissions) international interchange be reviewed and lowered to make it more equitable to local businesses with inbound tourism card present transactions.

In addition, BNZ wishes to offer the following key points to assist the Commission in its role as regulator of the IPS:

- The most efficient way for the Commission to obtain information about the calculation of interchange fees across the relevant interchange categories will be directly from the schemes. Any information provided to the Commission by issuers and acquirers on the calculation of interchange fees would be obtained by the issuer or acquirer from the schemes and passed on to the Commission in the form provided to it by the schemes.
- BNZ considers the analysis of what payments and benefits may constitute "net compensation", and how the "net value" of such payments and benefits will be calculated, would be difficult to apply in practice. The approach in the draft guidance potentially restricts commercial negotiations in a manner that may not be consistent with the following purposes and principles of the Retail Payment System Act 2022 (Act):
    - Promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand (section 3); and
    - That merchants and consumers should pay no more than reasonable fees for the supply of payment services (section 4(2)(a)).
- BNZ's view is that the purpose of the "net compensation" provisions as an anti-avoidance mechanism can be achieved in a manner that is more consistent with sections 3 and 4 of the Act and which reduces the risk of negative unintended consequences (including potentially reducing competition between schemes for issuer business). The Commission could achieve this by taking the view that payments or benefits that might increase or maintain the revenue of issuers do not have the "purpose of compensating the issuer for the effect of the IPS", and do not "perform the same economic function as interchange fees", unless those payments or benefits are financed by adding or increasing costs to acquirers (and indirectly, to merchants).

We would be glad to speak directly with the Commission's team to describe our submission in further detail if that would be helpful.

Yours sincerely,

Paul Hay, General Manager, Regulatory Affairs
Bank of New Zealand

QUESTION	BNZ RESPONSE
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.	We have agreed an interchange fee of [DELETED] to be paid by acquirers for merchants that are charities where BNZ is the issuer and the acquirer. We are also aware than ANZ, in its capacity as issuer, has agreed to a [DELETED] interchange fee for all charities, regardless of acquirer. These arrangements were set prior to 31 March 2021 but continue to operate today.
5B – Have we accurately described how interchange fees are set, assigned and charged in practice? If not, please provide an explanation.	1. Except as provided in point 2, clause 5.9 of the Consultation Document on Guidance on the IPS (**Document**) is mostly accurate. However, the practical operation of how interchange fees are set, assigned and charged is a complex process which has been substantially simplified in the Document. We describe at points 3-7 some further information and clarification. 2. We do not think that paragraph 5.9.1 properly reflects that some schemes allow both single and dual messaging. Single messaging involves one message being sent to the scheme by the acquirer containing both the authorisation information and the financial information (including the interchange category which is then applied by the schemes to calculate the correct the interchange fee). We understand two of the four largest bank acquirers use dual messaging and the other two use single messaging. 3. Clause 5.9 of the Document does not provide detail on how the maximum interchange fee (that is generally used by the issuer in setting its own interchange fee) is set, which is done entirely by the schemes. Other participants have no visibility over the methodology used by the schemes to set these maximum interchange fees for each interchange category. 4. It is important to note that while the Initial Pricing Standard (**IPS**) has set caps in respect of four key transaction types, the schemes actually have over 130 domestic interchange categories (each would be sub-categories of the four transaction types identified in the IPS) and over 100 international interchange categories (based on two broad categories, being intra (Asia Pacific) and inter (rest of the world)). The number of domestic interchange categories would increase exponentially if any issuer set an interchange fee that differed from the usual practice of charging the maximum rate allowed by the schemes. Each of the interchange categories will prescribe a

different maximum interchange fee that can be charged by issuers – which will each need to be no higher than the maximum interchange fee set by the IPS.

5. While 130+ interchange categories are captured by the IPS, in BNZ's view, the most important interchange categories to achieve the government's objectives, the international interchange fees, are expressly excluded from the IPS. The international interchange fee is much greater than the domestic maximum and results in overall merchant services fees being substantially higher to accept internationally issued products at the point of sale. BNZ has consistently submitted that international interchange should be included in the IPS. The international interchange fee has a significant impact on merchants, especially in Aotearoa's tourism areas (for example, internationally issued scheme cards represent around 70% of payments accepted by certain tourist operator merchants). These merchants are aligned in their feedback regarding the impact of the international interchange fee on their business. However, acquirers will have extremely limited scope to reduce its merchant fees in respect of transactions from international cardholders at the point of sale because the interchange fee set by overseas issuers is the highest of any interchange category. It is therefore on behalf of the merchants in these areas and industries that we again propose the addition of a cap on international interchange fees in the IPS.

6. It should be noted that:

    a. Acquirers play no role in setting the applicable interchange fee in relation to any of the interchange categories and have no control over whether the interchange fees change over time. This is, in practice, all done by the schemes (on the basis that issuers are in the practice of setting the interchange fee at the maximum level permitted by the scheme).

    b. Except for the agreement in relation to charities described above under question 5A, we are not aware of any bilateral agreements between an issuer and acquirer which involve the acquirer agreeing to pay a set sum. Instead, acquirers generally agree to pay the interchange fee "set by the issuer from time to time" – which, in turn, is generally set with reference to the maximum interchange fee set by the schemes.

    c. The amount of that interchange fee is not entered into the interchange system by the acquirer. It is allocated by the scheme based on the interchange category entered by the acquirer.

	d. The acquirer wholly relies on the relevant scheme's systems to ensure that the interchange fee it is charged (on a net basis) is the correct interchange fee (based on applying the correct interchange fee as set by the issuer for the interchange category entered into its systems by the acquirer and by performing the calculation correctly) and that it is not being charged an interchange fee above the rate set by the issuer (the maximum interchange fee allowed by the schemes). The issuer similarly wholly relies on the schemes in this way once it has notified the scheme of the applicable interchange fee that it has prescribed in respect of each interchange category. e. In general, a discrepancy in the interchange fee set and published by the issuer and the interchange fee actually paid by an acquirer would only be identified by an acquirer if it resulted in a noticeable outlier when performing general financial reconciliation. This is the same with issuers. Interchange fee miscalculations can occur occasionally and are in most cases notified and adjusted by the schemes, though this can occur some time after the date of the error. f. If a discrepancy were to be identified, the acquirer or issuer would ask for a breakdown from the scheme. Accordingly, acquirers and issuers have little information to perform a reconciliation of prescribed interchange fees vs interchange fees actually paid except for the information provided to them by the schemes. 7. As a general point, this Document does not necessarily capture the diversity of acquiring businesses that now operate in Aotearoa, considering the significant changes to the acquirer market in the last 5-10 years. In particular, international and domestic acquirers that are not issuers (those that either provide exclusively acquirer services or that provide payment gateway and acquirer services) now make up a significant share of the acquirer market. The Commerce Commission (**Commission**) should ensure that the IPS does not create regulatory arbitrage by unduly focusing its mandate and compliance on participants that are both acquirers and issuers.
5C(i) – Do you agree with our analysis of scenario one? Why/why not?	1. As highlighted in our answers to question 5B (at points 3-7), due to the complexity of the interchange fee process (in particular, several hundred interchange categories), issuers and acquirers rely entirely on the schemes to ensure compliance by correctly applying and calculating interchange fees based on the interchange category entered by the acquirer. On that basis, our view is that:

	a. The issuer should not be liable under scenario one **unless** it: (i) actively sets an interchange fee that is in excess of the cap (and the scheme allows that higher interchange fee to actually be paid to it by the acquirer); **or** (ii) receives information from the scheme about a discrepancy or error, or otherwise identifies a discrepancy or error in the interchange fee paid and does not act on that information to remedy the overpayments and correct the issue for future transactions. That is, an issuer should **not** be liable if it prescribes interchange fees that comply with the cap (and correctly notifies the schemes of its prescribed interchange fees) but receives interchange fees that exceed the cap (and the interchange fees it prescribed) based on a calculation error or other error by the schemes. b. The acquirer should not be liable under scenario one **unless** it: (i) enters into a bilateral agreement with an issuer where it expressly agrees to pay an interchange fee in excess of the cap (e.g., instead of paying on an "interchange fee as set from time to time", it agrees to an interchange fee set in excess of the cap); **or** (ii) receives information from the scheme about a discrepancy or error, or otherwise identifies a discrepancy or error in the interchange fee paid and does not act on that information to remedy past overpayments made by it and its merchants and correct the issue for future transactions; **or** (iii) deliberately enters an incorrect interchange category that results in the payment of an interchange fee that exceeds the applicable cap (although we note acquirers have no incentive to do this). 2. We do not agree it is relevant that it is the acquirer who paid the non-compliant interchange fee since it "pays" by receiving a net position from the issuer (being the aggregated settlement amount for the transactions owed by the issuer less the interchange fee). Therefore, the acquirer does not directly control the payment process, it simply receives a net value calculated by the scheme and relies wholly on the scheme to apply the correct interchange fee and perform the calculation correctly.

5C(ii) – Do you agree with our analysis of scenario two? Why/why not?	1. Our answers to this question will relate solely to the calculation of the net compensation component of the interchange fee. Our answers to this question should also be read alongside our answer to question 6D(i), as the interpretation of the "effect of the IPS" is connected to our answer to this question. 2. BNZ notes that it struggled with the interpretation and application of "net compensation" provisions and has discussed this at length both with internal and external legal counsel to try and navigate the application of "net compensation". 3. We assume, based on the Document, that the Commission is comfortable that: a. A starting assumption, based on clause 6.13 of the IPS, should be that discounts or benefits offered to an issuer by a competitor scheme as part of a tender/RFP on the expiry of an existing issuer agreement (**Existing Agreement**) has the purpose of incentivising the issuer to switch schemes, not compensating the issuer for the effect of the IPS unless the agreement itself or any express representations made by the scheme put the issuer on notice that particular elements of the discounts or benefits offered do have the purpose of compensating the issuer for the effect of the IPS; and b. To the extent that an issuer receives any discount or benefit in future that it can directly trace back to a contractual right that it has under an Existing Agreement entered into before the Act and the IPS were announced those discounts or benefits are not "net compensation" because discounts or benefits negotiated and agreed before the Act and the IPS were announced cannot have the purpose of compensating the issuer for the effect of the IPS, even if it is paid now. Any increases to discounts or benefits agreed under an Existing Agreement, where the increase itself was negotiated and agreed as a term of an Existing Agreement, is also not net compensation, nor are any existing discounts or benefits that are rolled over on the same or substantially similar terms as an Existing Agreement during a re-negotiation/renewal with an incumbent scheme. 4. We are concerned that: a. The practical calculation of the "net value" of net compensation has not been addressed – in particular, relating to whether it will be one single number, several numbers based on categories of discounts or

benefits and what, if any, discounts or benefits made by issuers have characteristics and qualities that might rightly warrant those discounts or benefits being "netted" from discounts or benefits received; and

b. The interpretation of the phrase "the effect of the IPS" (see our comments on question 6D(i)) – and by extension, the types of discounts or benefits that the Commission is suggesting could qualify as "net compensation" – might unduly limit the ability of schemes and issuers to undertake commercial negotiations. This is because it appears to conflate issuer revenue with interchange revenue, and perhaps does not recognise that not all issuer revenue performs the same economic function as interchange fees because not all issuer revenue results in an issuer or scheme adding or increasing costs to acquirers (and indirectly, to merchants). As a result, the "net compensation" provisions, in our view, unduly focus on restricting issuer revenue instead of focusing on reducing acquirer/merchant costs.

How the "net value" of monetary and non-monetary compensation will be calculated

5. It would be helpful for the Commission to clarify further what discounts or benefits paid by the issuer have characteristics that mean that it should properly be "netted off" the discounts or benefits received by the issuer. We understand from clauses 6.25 and 6.26 of the Document that the Commission does not intend to take the Australian approach of "netting" all issuer payments against all issuer receipts. However, the fact that clause 7(4) of the IPS does require a "*net positive* flow of payments…" and that the Commission intends to ask for information about payments made by the issuer to the scheme under 7.14.2 and 7.15.2 implies that there may be some discounts s or benefits made by the issuer to the scheme that will have characteristics or qualities that mean that those discounts or benefits should properly be netted off against discounts or benefits made to the issuer.

Focusing on issuer income instead of acquirer/merchant costs in assessment of "net compensation"

6. Unduly focusing on issuer revenue, in particular if increasing issuer revenue through discounts or benefits to it by the scheme does not result in the issuer or scheme adding or increasing costs to acquirers (and indirectly, to merchants), seems to be inconsistent with section 4 of the Retail Payment System Act 2022 (**Act**) and, in our view, will likely have the unintended consequences of:

   a. Allowing a competitor scheme to offer discounts and benefits to an issuer to incentivise it to switch schemes, but limiting the ability of incumbent schemes to compete during the re-negotiation of an issuer

	agreement by offering discounts and benefits as part of the general renegotiation process (which would be inconsistent with the purpose of the Act to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand); b. Restricting an issuer's freedom to increase/maintain its revenue through alternative income streams *other than* adding or increasing costs to acquirers (and indirectly, to merchants) for no tangible benefit to acquirers, merchants or consumers (which could be inconsistent with the principle of the Act that merchants and consumers should pay no more than reasonable fees for the supply of payment services); c. Creating regulatory arbitrage by not sufficiently considering arrangements for discounts or benefits between other participants, such as acquirers that do not have an issuer business, that might also contribute to high merchant service fees and could also warrant consideration of whether those arrangements contain any "net compensation"; and d. Unduly intruding into commercial negotiations for no tangible benefit to acquirers, merchants or consumers. 7. We assume that the Commission does not intend for its approach to determining whether a discount or benefit qualifies as "net compensation" to have the above unintended consequences. Therefore, we think that it would be inappropriate and inconsistent with sections 3-4 of the Act for the Commission to focus its compliance efforts on regulating discounts or benefits that are made to an issuer from a scheme (or a third party) but which do not add or increase costs to acquirers (and indirectly, to merchants), through regulating those discounts and benefits as "net compensation". 8. In summary, we agree in principle that the issuer and the schemes are the participants that will have knowledge of any "net compensation" and therefore would be the liable parties as a starting point. However, our view is that the current description and analysis in the Document of how "net compensation" will operate in practice is ambiguous to us and arguably inconsistent with sections 3 and 4 of the Act. Accordingly, there are a wide range of seemingly appropriate commercial terms that we are concerned issuers and schemes could be restricted from agreeing to (or risk becoming liable for) where it is difficult for these participants to navigate whether those discounts or benefits qualify as "net compensation" and which should not, in the interests of consistency with ss 3-4 of the Act, qualify as "net compensation".

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.	No comment
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?	Agree.
6A(ii) – Do you agree with our proposed approach for determining those 1 April 2021 fees for each issuer? Why/why not?	Agree – though see our comment in relation to question 6A(iii) relating to the Commission's approach to requesting information from an issuer under clause 6.10.2 of the Document.
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?	Issuers and acquirers do not have any additional information to verify with the applicable 1 April 2021 interchange fees in practice other than what it could obtain from the schemes. Accordingly, any information sought from issuers or acquirers by the Commission would be secondary information and would require those participants to request the information from the schemes only to pass on to the Commission as is. Instead, the Commission should obtain this information from the schemes as its primary source.
6B(i) – What other forms of monetary or non-monetary compensation should be included in our consideration of net compensation, if any?	Please see our answer to question 5C(ii) relating to what forms of monetary and non-monetary compensation should **not** be included in the Commission's consideration of net compensation – being any discounts or benefits made to issuers that increase an issuer's revenue but do not perform the same economic function as interchange fees on the basis that those discounts or benefits are not funded by adding or increasing costs to acquirers (and indirectly, to merchants).
6B(ii) – How is the value of non-monetary compensation (a) determined between the provider	We are not aware of any "non-monetary compensation" in that the value of all discounts or benefits are quantified in our arrangements with the schemes.

and the recipient; and (b) accounted for in the recipient's accounts?	The value of discounts on rewards and reward programmes offering prizes to consumers is a quantifiable number agreed between the provider (usually a scheme) and the recipient (issuer) with reference to the terms of the relevant agreement (usually a scheme agreement) and is accounted for in accordance with generally accepted accounting practice.
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 agree with the Commission that a requirement for discounts or benefits to be explicitly payable on a "per transaction" basis subverts the purpose of the net compensation provisions as an anti-avoidance mechanism and does not appear to be the intention based on the words of the IPS.
6C(ii) – What principles or other matters do you consider to be relevant for the purposes of attributing compensation to specific transactions?	No comment – agree with the Commission's approach in clause 6.29 of the Document.
6D(i) – What do you consider the effect of the IPS to be?	Our answer to this question should be read alongside our answer to question 5C(ii). We note that the "effect of the IPS" is not clearly set out or defined in the IPS itself, so in our view, the "effect of the IPS" should be interpreted consistent with the purposes and principles of the Act, set out in ss 3-4. We are concerned that interpreting the effect of the IPS as "issuers' interchange fee revenue is reduced", runs the risk of conflating "issuers' interchange fee revenue" (one single type of income) with "issuer revenue" as a whole. This conflation would operate to restrict an issuers' ability to increase its revenue through other sources. This conflation is arguably present in the Document, (e.g., the breadth of discounts or benefits that could meet the criteria set out in 6.17.1, 6.17.3 and 6.18), and makes it ambiguous as to whether issuers can negotiate with incumbent schemes increases to their revenue through discounts or benefits **provided that** the issuer or the scheme absorbs the cost of this and do not add or increases costs to acquirers (and indirectly, to merchants). Our view is that the effect of the IPS is that "it reduces the costs charged to acquirers (and passed on to merchants) through interchange fees for accepting payment products offered by designated retail payment networks" – that is, it

	is about reducing costs to acquirers (and, indirectly, to merchants), **not** inherently about reducing an issuer's revenue. Issuers and schemes should have the freedom to make commercial decisions about how to increase issuer revenue from other sources and how to apply that revenue in its issuer business. This should be of no concern to the Commission **unless** those discounts or benefits are financed through increasing or introducing costs to acquirers (and indirectly, to merchants). In our view, issuer revenue that is not funded by adding costs to acquirers (and indirectly, to merchants) do not "perform the same economic function as an interchange fee". We think that it is inconsistent with sections 3 and 4 of the Act, to interpret "the effect of the IPS" as a restriction on an issuer's freedom to negotiate with the incumbent scheme and with competitor schemes to receive discounts or benefits from sources other than acquirers and merchants in order to maintain its revenue. BNZ is concerned that such restrictions could be an unintended consequence of the Commission's current interpretation of that phrase.
6D(ii) – Do you consider any other principles to be relevant to determining the purpose of compensation?	While we agree that looking to the courts' interpretation of "purpose" under the Commerce Act 1986 is a useful starting point, we do note that the Commerce Act has a "purpose **or effect**" test, while the IPS only has a "purpose" test. Therefore, it is more logical to assess "purpose" under the Commerce Act through an objective lens (ie, subjective purpose is less relevant to the Commerce Act test because the effect of a decision can also be determinative). However, under the IPS, using an objective analysis of purpose could result in the Commission substituting the "effect" of a discount or benefit for the "purpose" of that discount or benefit. This was not parliament's intention since it chose for the definition of "net compensation" to not include an "effect" test. “Purpose” is inherently a subjective word. Therefore, our view is that purpose should be based on subjective purpose, though it should be open to the Commission (and the High Court) to point to objective facts and circumstances that make it untenable to assert that the subjective purpose of certain discounts or benefits was not to compensate for the effect of the IPS (ie the reversal of what the Commission suggests in clause 6.36.2 of the Document).
6D(iii) – What information could parties reasonably provide to enable us to assess the purpose of compensation?	We think that the providers of any new discounts or benefits after 13 May 2022 (including increases to existing discounts or benefits where the increase had not been negotiated and agreed prior to 13 May 2022) could provide the Commission with standardised information (on a short form to be created by the Commission) about new compensation payable to issuers that briefly:

	a. Identifies how the discount or benefit operates or is calculated; b. Records the purpose of the discount or benefit (e.g. marketing, switching incentives etc); and c. Confirms that the discount or benefit has not been funded by adding or introducing costs to acquirers (and indirectly, to merchants). The Commission could then seek further information from the provider of the discount or benefit, if necessary. However, our view is that this short form information should not be required proactively as it is ultimately the responsibility of each issuer and provider of a discount or benefit to ensure they understand their obligations and comply with the caps. Requiring providers of discounts or benefits to proactively provide the Commission with this information would involve the Commission becoming disproportionately involved in commercial negotiations. Instead, this information could be sought by the Commission if it has a specific concern about the commercial terms of a specific agreement or becomes aware of a specific market practice which concerns it.
6E(i) – What mechanisms do issuers have in place, and how do those mechanisms operate, to: **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;** **b) Determine whether a cardholder is using a CCPP for a prohibited purpose (ie, for a personal, domestic or household purpose);** **c) Remedy the use of a CCPP for a prohibited purpose? For example,**	In summary, BNZ relies on its onboarding processes to ensure a CCPP is not used for personal, domestic or household purposes. We note that the person using a CCPP for personal, domestic or household purposes might be prejudiced by higher interchange fees so has an incentive not to do this. BNZ believes cases of use for personal, domestic or household purposes are rare and their impacts low. In particular: a. BNZ uses its general application processes to ascertain the purpose of any scheme credit card. Generally, a business will apply for a CCPP using its business banking channels. Business credit cards require the cardholder to give BNZ an attestation regarding the commercial or investment purposes of a CCPP. b. Issuers can undertake regular transaction monitoring. There is often significant "spending category" variances between CCPP spending and personal card spending that can be used to identify whether a CCPP is being used on a recurring/ongoing basis for personal, domestic or household purposes. However, it is not possible to use general transaction monitoring to determine with any level of assurance the purpose of any specific transactions within a "spending category" to assist issuers in determining whether a CCPP holder is using the CCPP for a prohibited purpose in respect of any transaction within a "spending category". This is because any transaction could involve purchasing the exact same item for two different purposes (e.g., a cardholder might be at the petrol station filling up their work vehicle or their personal vehicle and the issuer has no way of knowing

by blocking the use of that credit product; and **d) Ensure that a CCPP is being charged directly to the account of the business?**	which it is). We would expect that, because a CCPP requires the scheme card to be charged directly to a business account, the business itself is generally able to determine whether the outgoing payments have been used for personal, domestic or household purposes and the business would have an incentive to stop the cardholder from using the CCPP and withdrawing funds from the business account for that purpose (and therefore may contact the issuer and ask it to switch the user to a different card type and cancel the CCPP). This logic may not apply to small, family run businesses and sole traders. As a general point, the only option would be for issuers to require CCPP users to make attestations confirming the purposes for which they use CCPPs on a regular basis and rely on those attestations. c. If BNZ was put on notice that a cardholder may be using a CCPP on a recurring/ongoing basis for personal, domestic or household purposes, BNZ would open a conversation with its customer to determine whether this is the case. If it were the case, BNZ would remedy this by transitioning the cardholder to a product that better fits the cardholder's purposes and then cancelling the CCPP. BNZ staff are also trained in how to correctly onboard a customer based on their customer profile and needs to ensure that CCPPs are not being mis-sold to customers at the outset d. In most cases, BNZ can ensure that a CCPP is being charged directly to an account in the name of the business through our general onboarding process. This usually involves a business applying for a CCPP using its business banking channels which results in the debt that accumulates on the CCPP being in the name of the relevant business and the repayment of the credit is charged directly to an account that is also in the name of that business. BNZ wishes to note that, in respect of sole traders (and potentially other small, closely held family businesses), the credit may be repaid through neither the "central settlement" nor "indirect settlement" approach (as described in clause 6.56). Instead, it is most likely that the credit will be repaid through an account that is in the personal name of an individual/sole trader, but the account may be in substance a "business account (noting that sole trader businesses are not incorporated). In the sole trader context, the concept of the business re-imbursing the individual does not apply because of the nature of a sole trader business. BNZ's view is that these arrangements do qualify as the CCPP being charged "directly to the account of the business" because the sole trader is "the business". The unintended consequence of the Commission taking an alternative view

	would be that issuers would need to switch sole traders onto personal credit cards for purchases that are legitimately for business or investment purposes. This, in our view, is not a customer-centric outcome.
6E(ii) – How can we best get assurance from participants that credit products are correctly being catergorised and treated as CCPPs?	Our view is that issuers should self-report any identified breaches and that the Commission is entitled to ask for further information if it suspects that any particular issuer is incorrectly issuing CCPPs. Our view is that there is no need for the Commission to require issuers to create new systems that proactively provide information on its CCPP products to give the Commission that assurance.
6F – Should ATM transactions be subject to the fee caps under the IPS?	We agree that ATM charges are outside the scope of the IPS. While the term "interchange" is sometimes used in the context of ATM transactions, that word means something different in the context of ATM transactions. Further, ATM withdrawals are not "payments" as there is no "creation" of debt between any two persons and the only "discharge" of debt is the reduction in the debt a deposit taker owes its depositor.
6G(i) – What mechanisms do participants currently have in place, and how do those mechanisms work, to: **a) Identify whether an erroneous interchange fee has been charged; and** **b) Address a situation where an erroneous interchange fee has been charged?**	a. As mentioned in our answer to question 5B, issuers and acquirers rely wholly on the schemes to correctly apply and calculate the interchange fee. b. Issuers and acquirers would rely on the schemes to update their systems as needed to correct an error at source. If it were BNZ's acquirer business that was incorrectly applying an interchange category, BNZ would identify the cause of the error (e.g. systems error, human error etc) and remedy it, remediating any impacts to its merchants.
6G(ii) – 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	If BNZ's issuer business identifies that an interchange fee has been incorrectly charged (regardless of whether it identifies the error itself or was advised of the error), it will refund the acquirer. BNZ expects that acquirers will pass that refund onto the merchant.

interchange fee has flowed directly through to them via the interchange plus pricing model?	As an acquirer, if BNZ identifies that an interchange fee has been incorrectly charged to it (and passed on to its merchants), BNZ will advise the scheme and the issuer (and potentially other third parties). It will receive a refund from the issuer and use those funds to refund the merchant.
7A(i) – Do you agree that the information we have identified is the right information to enable us to assess compliance with the obligations under the IPS? Why/why not?	Our view is that, unless the Commission is investigating a suspected breach of the IPS (i.e., not general information gathering) the information the Commission is asking for unduly intrudes into commercial negotiations and would also require excessive resourcing for both the Commission and the regulated participants. Instead, participants need to satisfy themselves of what discounts or benefits are "baseline/pre-IPS" discounts or benefits, what discounts or benefits are "new/post-IPS" discounts or benefits or contain an increase in "pre-IPS" discounts or benefits that was not previously negotiated and, in respect of "post-IPS" discounts or benefits, satisfy itself that discount or benefit does not have the purpose of compensating an issuer for the effects of the IPS and properly record the purpose of the post-IPS discount or benefit. This information can be sought by the Commission if a breach is suspected. Although we appreciate that it is the approach taken in Australia, it is not clear to us that asking for "average" interchange fee calculation (under clauses 7.7-7.9 of the Document) is helpful in the Aotearoa context. This is because the Australian Standard has a provision (clause 4.2) which requires participants to calculate the total value of interchange fees during a "reference period" and divide it by the transactions in that reference period to determine whether the reference period is an "above benchmark reference period". There is no such obligation under the Act – instead, it would appear that a single transaction being charged an interchange fee that exceeds the cap is a breach even if the average interchange fee charged for an interchange category does not exceed the cap (e.g. if other transactions in that interchange category charged a lower interchange fee which brought the average below the cap). Our view is that the best outcome would be achieved by the Commission seeking the same information published by the Reserve Bank of Australia (**RBA**), being Merchant Service Fee (**MSF**) information to be provided by all acquirers which shows the impact of lower interchange fees on overall costs to merchants. While this figure captures more information than merely changes to interchange fees, we consider that this will best assist the Commission in determining whether the broader purposes of the Act as set out in ss3-4 have been achieved

	through lower costs charged to merchants and passed on to consumers. This can also assist the Commission in identifying any other sources of high MSF (e.g. fees charged by acquirers other than interchange fees). The Commission can seek specific breakdowns of interchange fees charged on transactions (from the schemes), if it considers that MSFs look higher than expected or it the Commission becomes aware of specific circumstances which might be a breach of the IPS and warrant further investigation and in doing so, can also identify if high MSFs are being caused by fees and charges other than interchange fees.
7A(ii) – What alternative information, if any, can provide us with assurance that the IPS is being complied with?	We re-iterate that issuers and acquirers do not have any additional information to verify that the IPS is being complied with in practice other that what it could obtain from the schemes. Accordingly, any information sought from issuers or acquirers by the Commission would be secondary information and would require those participants to request the information from the schemes only to pass on to the Commission as is. Instead, the Commission should obtain this information from the schemes as its primary source.