COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

ISSN 1178–2560
Decision Series
Project no. 11.04/PRJ0044326

Public version

Determination

Verifone New Zealand and Smartpay Holdings Limited [2020] NZCC 13

The Commission:	Anna Rawlings Dr Stephen Gale John Crawford Dr John Small
Summary of application:	An application from Verifone New Zealand seeking clearance to acquire the assets used by Smartpay Holdings Limited (and its subsidiaries) to operate the Smartpay business in New Zealand.
Determination:	Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission gives clearance to the proposed acquisition.
Date of determination:	10 June 2020

Confidential material in this report has been removed. Its location in the document is denoted by [ ].

The proposed acquisition

1. On 31 January 2020, the Commerce Commission registered an application (the Application) from Verifone New Zealand (Verifone) to acquire the assets used by Smartpay Holdings Limited (and its subsidiaries) (together, the merging parties) to operate the Smartpay business in New Zealand (Smartpay) (the Proposed Acquisition).[1]

2. Our decision relates to the Proposed Acquisition that the Commission was notified of in the Application. Prior to the Commission making its decision the parties terminated the Proposed Acquisition.[2] Under section 68(2) of the Commerce Act 1986 (the Act) the Commission may reject any application if we consider the acquisition is unlikely to proceed. However, in this case, we had reason to believe that the Proposed Acquisition may proceed. This is because [ ].

Our decision

3. Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to the proposed acquisition.

Our framework

4. Our approach to analysing the competition effects of the acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines (our guidelines).[3]

The substantial lessening of competition test

5. As required by the Act, we assess mergers and acquisitions using the substantial lessening of competition test.

6. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).[4]

7. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the 'competitive price'),[5] or reduce non-price factors such as quality or service below competitive levels.

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1 A public version of the Application is available on our website at: https://comcom.govt.nz/case-register/case-register-entries/verifone-new-zealand-smartpay-holdings-limited.

2 See for example Maria Slade "Smartpay sale to Verifone off" *The National Business Review* (online ed, Auckland, 1 May 2020).

3 Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2019).

4 *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

5 Or below competitive levels in a merger between buyers.

When a lessening of competition is substantial

8. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.[6] Some courts have used the word 'material' to describe a lessening of competition that is substantial.[7]

9. As set out in our guidelines, there is no bright line that separates a lessening of competition that is substantial from one which is not. What is substantial is a matter of judgement and depends on the facts of each case.[8]

10. A lessening of competition or an increase in market power may manifest itself in a number of ways, including higher prices or reduced services.[9]

11. While we commonly assess competition effects over the short term (up to two years), the relevant timeframe for assessment depends on the circumstances. A longer timeframe will be appropriate if, on the evidence, competition effects are likely to arise in later years.[10]

When a substantial lessening of competition is likely

12. A substantial lessening of competition is 'likely' if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility but does not mean that the effect needs to be more likely than not to occur.[11]

The clearance test

13. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.[12] If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.

Background to industry

Electronic payments

14. Consumers who purchase goods and services in a physical retail store normally pay using an electronic payment: EFTPOS, debit card or credit card. In order to accept electronic payments, a merchant must have a terminal or other device. Payments made in physical stores are known as 'card-present' transactions. In comparison, payments using cards online are known as 'card-not-present' transactions. Among other things, the merging parties are suppliers of terminals for card-present transactions.

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6 *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].
7 Ibid at [129].
8 *Mergers and Acquisitions Guidelines* above n3 at [2.23].
9 Ibid at [2.21].
10 *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [131].
11 Ibid at [111].
12 Section 66(3)(a).

15. A merchant's payment terminal is connected to a 'switch', which routes the transaction to the relevant financial institutions to check whether the cardholder has sufficient funds or credit to make the purchase. We described how this works in Ingenico/Paymark.[13] In summary, there are two ways in which transactions are routed:

    15.1 Switch-to-issuer transactions are triggered when a cardholder makes a card-present transaction using either: an EFTPOS card; a loyalty card; or swipes or inserts a scheme debit card (such as a Visa or Mastercard debit card). These transactions are routed via the switch to the issuer of the card to check if the cardholder has sufficient funds. The transaction then returns to the terminal and appears as accepted or declined.

    15.2 Switch-to-acquirer transactions are triggered whenever a cardholder makes a card-present transaction using either: a credit card; or uses contactless scheme debit card.[14] These transactions are routed via the switch to the merchant's bank, and then on to the card scheme (such as Visa and Mastercard) to check if the cardholder has sufficient funds or credit. The transaction then returns to the terminal as accepted or declined.

16. Settlement of funds for each kind of transaction also differs. For switch-to-issuer transactions, the funds are settled between the banks of the cardholder and merchant. For switch-to-acquirer transactions, the funds are settled according to the card scheme rules.

17. Paymark Limited (Paymark) and Verifone operate the two main switches in New Zealand for card-present electronic transactions:

    17.1 Paymark's switch can process any switch-to-issuer and switch-to-acquirer transaction.

    17.2 Verifone's switch can process all switch-to-acquirer transactions and switch-to-issuer transactions for ANZ cardholders only. It has an agreement (referred to by Verifone and Paymark as the 'wholesale agreement') with Paymark to use the Paymark switch to process switch-to-issuer transactions for cardholders whose cards are issued by banks or financial institutions other than ANZ.

18. The main participants in the terminal supply chain are:

    18.1 global terminal suppliers that manufacture and supply terminal hardware. The majority of terminals in New Zealand are either Verifone or Ingenico branded, with PAX as the third most common brand;

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[13] *Ingenico Group SA and Paymark Limited* [2018] NZCC 18 at 13-26.

[14] In addition, all card-not-present transactions are switch-to-acquirer.

18.2 terminal importers (referred to in the industry and in the remainder of the reasons as “terminal vendors”) in New Zealand that import terminals and develop them to:

18.2.1 enable them to meet the requirements of the switch that will process the transactions; and

18.2.2 add features and functionality; and

18.3 terminal retailers and resellers that supply the terminals to merchants.[15]

Merchants

19. Merchants that use terminals vary in both the size of their operations and the complexity of their needs. Although there is no strict definition of merchant size, the customer categories identified in the Application (and which we have used in describing market participants) are:[16]

19.1 Tier 1: enterprise – over 100 terminals, eg, a supermarket chain;

19.2 Tier 2: commercial – 10-100 terminals, eg, a retail group; and

19.3 Tier 3: small and medium-sized enterprises (SMEs) – 1-10 terminals, eg, small shops.

20. The size of the merchant can dictate their terminal requirements.

20.1 Larger merchants (such as Tier 1 enterprise and Tier 2 commercial merchants) tend to have more complex requirements. These merchants might have multiple locations which require different types of terminals. They may wish to have their terminals integrated into their point of sale (POS) and accounting systems, so that the value of the electronic payment is automatically delivered to the terminal when it is rung up on the POS. The benefits of integration include minimising the time to serve a customer, minimising human error, and making reporting easier. These merchants may also want bespoke services such as the ability to accept their own loyalty cards.

20.2 Smaller merchants (such as Tier 3 SME merchants) tend to have fewer requirements. These merchants might only have a single location and only require the basic function of accepting electronic payments. The terminal for these merchants is likely to be standalone. That is, the terminal is not

15 We refer to terminal retailers as those terminal vendors who also supply terminals directly to merchants. We refer to terminal resellers as those firms that buy terminals from terminal vendors and then supply to merchants.

16 The Application at [55]. The Application also includes a micro-merchant category which is small traders with one terminal. Most firms we spoke to did not distinguish micro merchants from SMEs. For that reason, we describe SMEs as including all merchants smaller than enterprise and commercial merchants.

connected to the POS and the merchant manually enters the value of the electronic payment both into the terminal and the POS.

21. As we discuss in the market definition section, for the purposes of our analyses we have assessed competition for larger merchants (enterprise and commercial merchants) separately to SMEs.

The Parties

The merging parties

22. Verifone is a global supplier of terminal and electronic payment processing solutions. Within New Zealand it provides several services.

    22.1 Electronic payment processing – As noted above, Verifone operates a switch which it uses to process electronic payment transactions.

    22.2 Terminal vendor – Verifone imports its own branded terminals and then wholesales them to resellers. Verifone supplies terminals to resellers both for use on Paymark's switch as well as its own switch.

    22.3 Terminal retailer – Verifone's subsidiary Eftpos New Zealand Limited supplies Verifone-branded terminals directly to merchants under the EFTPOS New Zealand brand (for ease, we refer to EFTPOS New Zealand as Verifone in the remainder of the document).

23. Smartpay is a vendor and retailer of terminals to merchants in New Zealand and Australia. Smartpay imports PAX branded terminals. It makes these terminals compliant for use on the Paymark switch and adds software that provides more functionality. Smartpay then sells these terminals to merchants under the Smartpay brand. Smartpay supplies some terminals to resellers, although these volumes are small and Smartpay is not a material participant in the supply of terminals to resellers.

24. Smartpay also operates the following businesses in New Zealand (which are not part of the transaction):

    24.1 Retail Radio, which provides in-store audio and video to merchants; and

    24.2 Alipay/WeChat acquiring services which allow merchants to accept Alipay and WeChat payments on their terminals.

Other parties

25. Ingenico Group SA (Ingenico) is a global supplier of electronic payment services, including terminals, transaction routing and online payments. Within New Zealand it:

    25.1 supplies terminals to independent New Zealand terminal vendors including Skyzer and Windcave;

25.2 owns Paymark which, as described above, operates a switch which processes electronic payment transactions; and,

25.3 owns Bambora which provides online payment services to merchants who make online sales.

26. Skyzer Payments (Skzyer) is a vendor of Ingenico terminals. Skyzer supplies these terminals to resellers who in turn supply to merchants. Skyzer also competes to supply some merchants directly.

27. Windcave is a supplier of terminals and online payment solutions to merchants. Windcave mainly uses Ingenico terminals. Windcave also operates a switch that can process some types of transactions.

The relevant markets

28. We define markets in the way that we consider best isolates the key competition issues that arise from a merger. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products and services that fall outside the market, but which would still impose some degree of competitive constraint on the merged entity.

29. Verifone submitted that the following markets apply to our consideration of the Application:[17]

29.1 the national market for the retail supply of terminals in New Zealand (although noting that terminals are facing greater competition from other emerging payment solutions); and

29.2 the national market for terminal wholesaling (although noting that Smartpay does not operate at this level).

30. We last considered market definition in the electronic payment industry in Ingenico/Paymark.[18] That investigation focused on the competitive constraints and alternatives for switching services. The following markets were considered relevant to the competition assessment in that matter:

30.1 switching services, separate national markets for switch-to-issuer and switch-to-acquirer transactions; and

30.2 terminals, national markets for:

30.2.1 the wholesale supply of terminals; and

30.2.2 the resale (retailing) of terminals.

[17] The Application at 13.
[18] *Ingenico Group SA and Paymark Limited* [2018] NZCC 18 at 26-31.

31. The Proposed Acquisition focuses on competition for the supply of terminals. We consider the following markets are relevant to the competition assessment in this matter:

    31.1 national markets for the provision of switching services, separated into markets for switch-to-issuer and switch-to-acquirer transactions (the switching markets);

    31.2 an upstream market for the supply of terminals by global terminal manufacturers to terminal vendors in New Zealand (the importation market);

    31.3 a national market for the wholesale supply of terminals to resellers (the wholesale market); and

    31.4 two national markets at the retail/resale level for supply of terminals to:

        31.4.1 larger (enterprise and commercial) merchants (the retail/resale market for enterprise and commercial customers); and

        31.4.2 SME merchants (the retail/resale market for SMEs).

32. We have defined a market for SMEs separate to that for enterprise and commercial customers. Although there is some overlap, the suppliers that focus on supplying enterprise and commercial customers differ from those which focus on supplying SMEs. Additionally, larger customers are more likely to use competitive tenders and/or directly negotiate bespoke arrangements. This is uncommon in the case of SMEs.

33. When considering the electronic payment industry prior to *Ingenico/Paymark*, the Commission defined regional geographic markets for the retail/resale of terminals.[19] However, as noted above, a national market was considered appropriate in *Ingenico/Paymark*. The evidence we have in this case is that many parties in the industry including Verifone, Smartpay, Windcave and some resellers operate on a national basis. Although some resellers operate locally, there are few barriers to them supplying customers in other regions. Consequently, as was the case in *Ingenico/Paymark*, we consider that the appropriate geographic scope of the retail/resale markets outlined above is national.

With and without scenarios

34. To assess whether a merger is likely to substantially lessen competition in a market, we compare the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).[20]

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19 *Provenco Group Limited and Cadmus Technology Limited* (2008) Decision No 632 at [8].
20 *Mergers and Acquisitions Guidelines*, above n 3, at [2.29].

Without the acquisition

35. Verifone submitted that, if the Proposed Acquisition does not proceed, the Parties would likely continue to supply terminals as separate entities (ie, that the counterfactual is the status quo).[21] We agree that the likely counterfactual is the status quo.

With the acquisition

36. Verifone submitted that the Proposed Acquisition is likely to include:

    36.1 [

    36.2

    ]

37. When assessing the impact of the Proposed Acquisition on competition in New Zealand markets we take both of these matters into consideration as part of the factual by assuming that [ ].

How the Proposed Acquisition could substantially lessen competition

Unilateral effects

38. Unilateral effects arise when a firm merges with or acquires a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that a market participant can profitably increase prices above the level that would prevail without the merger and/or reduce quality.

39. We considered unilateral effects in the following markets relating to the supply of terminals:

    39.1 the importation market;

    39.2 the wholesale market;

    39.3 the retail/resale market for enterprise and commercial customers; and

    39.4 the retail/resale market for SMEs.

40. The Proposed Acquisition would mean that any existing or potential competition between Verifone and Smartpay in these markets would be lost. We have therefore

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21 The Application at [24].

assessed whether the merged entity would be able to raise prices or reduce service quality in any of these markets.

41. We are satisfied that the Proposed Acquisition is unlikely to substantially lessen competition in any of these markets due to unilateral effects. The main reasons for this are:

 41.1 in the importation market, there is no aggregation from the Proposed Acquisition as Smartpay is not a supplier of terminals to terminal vendors in New Zealand;[22]

 41.2 in the wholesale market:

  41.2.1 Verifone's main rival for the supply of terminals to resellers is Skyzer (supplying Ingenico terminals); and

  41.2.2 [ ];

 41.3 for the retail/resale market for the supply of terminals to enterprise and commercial customers:

  41.3.1 Verifone's main rivals are Windcave and Skzyer; and

  41.3.2 [ ]; and

 41.4 for the retail/resale market for the supply of terminals to SMEs, although competition from SmartPay will be lost from the Proposed Acquisition, there remains sufficient constraint on the merged entity from a combination of:

  41.4.1 resellers;

  41.4.2 Ingenico/Paymark;

  41.4.3 Windcave; and

  41.4.4 emerging payment technologies.

 We discuss each of these in more detail below.

The retail/resale market for SMEs

42. Resellers are likely to impose a constraint on the merged entity in the retail/resale market for the supply of terminals to SMEs. There are many resellers. We estimate

22 Although there is no direct aggregation, the transaction may result in the exit of PAX from the importation market. However, we consider that the resulting increase in concentration at this level would be unlikely to result in a significant lessening of competition because of the continued competitive constraint provided by Ingenico/Paymark both directly in the importation market and indirectly in downstream markets.

that they account for around half of the market, indicating many SMEs view resellers as a good option.[23]

43. In general, the evidence suggests resellers can compete with Verifone and Smartpay on price and service.[24] Resellers are often located close to merchants which means they can address technical problems with terminals swiftly and in person.[25] Some resellers also provide support services across multiple geographic areas by providing support over the phone and replacing terminals through overnight delivery. The number of resellers has been trending down in recent times, and may shrink further as a result of the ongoing economic impact of COVID-19.[26] However, we consider resellers are likely to expand their operations and take on more customers, if the merged entity raised prices to merchants. This would help to constrain the merged entity from raising prices to merchants.

44. This is the case even though some resellers are reliant on Verifone for a significant proportion of the terminals they obtain at the wholesale level. Most resellers offer both Verifone and Ingenico terminals. They are price sensitive and have an incentive to switch between Verifone and Ingenico if supplying one terminal brand became less attractive.

45. Ingenico operates in New Zealand through Paymark and Bambora. Ingenico does not at present seem to be competing to supply terminals directly to merchants [ ]. We considered whether Ingenico is likely to compete more directly for SME merchants over time. However, regardless of whether it does or does not, we consider that Ingenico will have a range of means, and the incentive, to protect its market share (particularly given the fall in transaction volumes as a result of the ongoing economic impact of COVID-19).

    45.1 If Ingenico does not enter the resale/retail market for the direct supply of terminals to SMEs and resellers continue to be a key channel to market, Ingenico has an incentive to ensure the terminal prices it offers to resellers remain attractive at the importer and wholesale levels to protect its market share and associated upstream switching volumes.

    45.2 Alternatively, if Ingenico enters the resale/retail market to supply terminals directly to SMEs, whether organically or via acquisition, and resellers start to exit the market, Ingenico will continue to have the same incentive and ability to compete to defend or increase its market share.

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23 One reseller estimated there were about 80 resellers in New Zealand. See Commerce Commission interview with [ ].

24 See for example Commerce Commission interview with [ ] and Commerce Commission interview with [ ].

25 See for example Commerce Commission interview with [ ].

26 The number of electronic payment transactions is linked to economic activity. The lockdown caused a fall in electronic payment transactions as consumers were unable to visit shops. There will be an ongoing economic impact from COVID-19 as a result of restrictions on such things as trade, international and domestic travel, and mass gatherings. See for example Tom Stannard, Gregorius Steven, Chris McDonald *Economic impacts of COVID-19 containment measures* (Reserve Bank, AN2020/4, May 2020).

46. Windcave is also likely to impose some constraint. Windcave has [ ] market share for SMEs. We consider Windcave is positioned to compete for SMEs if the merged entity was to increase prices and is likely to be incentivised to do so if it has lost merchants and transaction volumes as a result of the ongoing economic impact of COVID-19.[27]

47. Over the longer term, new technologies may impose some further constraint in retail/resale markets. There is a range of new electronic payment technologies emerging including QR code technologies, open banking, and software that turns consumer devices into card acceptance devices. Some of these forms of electronic payment currently complement terminals rather than provide a substitute. Merchants provide a range of technologies alongside terminals to provide a variety of ways for customers to make electronic payments. However, the emerging technologies may provide a substitute for terminals in some circumstances and may increasingly do so over time. As such, we consider these technologies impose a small constraint on the merging parties and we have taken account of this in combination with other constraints.

48. We consider that the combined constraint of the factors described above (resellers, Ingenico, Windcave, and emerging technologies) are likely to be sufficient to mean the merged entity is unlikely to be able to raise prices or reduce service quality post-merger. As such, we are satisfied that the Proposed Acquisition is unlikely to substantially lessen competition in the retail/resale market for SMEs due to unilateral effects.

Coordinated effects

49. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all, or some, of its remaining rivals to coordinate their behaviour and collectively exercise market power such that output reduces and/or prices increase across the market. Unlike unilateral effects, which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.

50. As a result of the Proposed Acquisition, Smartpay would no longer be an independent competitor in the markets that it currently operates. We considered whether this might make it more likely for the remaining firms in the markets to coordinate their behaviour. We have tested whether such effects might arise by asking:

    50.1 whether the markets in which the parties compete have features that make it easy to reach, and then to sustain an agreement and so make the market vulnerable to coordination;[28] and

27 We note that there is also an independent retailer, Perception Technologies, which imports a separate brand of terminals, Spectra. Perception Technologies may also be able to expand if the merged entity raised prices, albeit it currently has a limited presence in the market.

28 For more details on these features see Commerce Commission "Mergers and Acquisitions Guidelines" (July 2019) at [3.84].

50.2 whether the transaction will make coordination significantly more likely (for example, by removing an aggressive market participant).

51. We considered the potential effects of the Proposed Acquisition on the electronic payments sector as a whole, as it will likely result in Ingenico and Verifone, as the two main vertically integrated suppliers, holding stronger positions throughout the terminal sector than is currently the case.[29]

52. We are satisfied that the Proposed Acquisition is unlikely to substantially lessen competition in the electronic payments sector as a whole due to coordinated effects. The main reasons for this are:

52.1 the demand for terminals is somewhat unstable due to merchant churn, the effects of COVID-19, and future disruption from emerging payment technologies;

52.2 Verifone and Ingenico will continue to face strong incentives to increase or protect their market shares in terminals to drive transaction volumes to their switches;

52.3 there are notable asymmetries between Verifone and Ingenico in both their terminal and switching operations and these are unaffected by the removal of Smartpay. For example, Ingenico does not have a direct to market terminal service, and Verifone's switch at present cannot process all types of transactions; and

52.4 Windcave's position as a smaller third market participant within the payment sector more generally would likely have the effect of maintaining a disruptive presence.

53. We also considered the potential impact of the Proposed Acquisition on coordinated effects in the following specific markets relating to the supply of terminals:

53.1 the importation market;

53.2 the wholesale market;

53.3 the retail/resale market for enterprise and commercial customers; and

53.4 the retail/resale market for SMEs.

54. We are satisfied that the Proposed Acquisition is unlikely to substantially lessen competition in any of these markets due to coordinated effects both for the sector-wide reasons outlined above as well as:

[29] Ingenico and Verifone are the two main suppliers of switching services and supply the majority of terminals in New Zealand. The Proposed Acquisition will further consolidate this vertical integration.

54.1 the relative lack of price and volume transparency in both the importation and wholesale markets would remain largely unchanged post-transaction;[30]

54.2 within the wholesale market, the Proposed Acquisition would result in little aggregation and there is a higher degree of product differentiation in products at this level; and

54.3 within the retail market, there is a large range of suppliers of different sizes and business models that offer varying degrees of emphasis on price and service quality.

Vertical and conglomerate effects

55. A vertical merger is a merger between firms operating at different levels of a supply chain (for example, a wholesaler and a retailer). Vertical mergers can provide merged entities the ability and incentive to hinder (foreclose) downstream rivals, including by refusing to supply the services (known as total foreclosure) or raising the costs of those rivals (known as partial foreclosure). We have considered vertical effects in respect of the potential for Verifone to hinder:

55.1 resellers competing in the retail/resale market; and

55.2 [ ].

56. We considered whether the Proposed Acquisition would give Verifone the ability and incentive to hinder resellers of Verifone terminals competing in a retail/resale market, by raising the cost of Verifone terminals charged to resellers or refusing to supply them. We are satisfied that the Proposed Acquisition is unlikely to substantially lessen competition in this way. This is because resellers could switch to buying terminals from Ingenico if Verifone engaged in such conduct.

57. We also considered whether the Proposed Acquisition would give Verifone the ability and incentive to hinder [ ]. [ ] However, we are satisfied the proposed acquisition would not result in a substantial lessening of competition through either of these approaches.

58. We consider it unlikely that Verifone would have the ability to engage in such conduct for the following reasons:

58.1 [

[30] This would apply even at the importation level in which the potential loss of PAX would make this market materially more concentrated and where the terminals are relatively homogeneous products.

[31]

58.2

58.2.1

[32]

58.2.2

59.

59.1

59.2

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60. A conglomerate merger is a merger between suppliers (or buyers) of complementary products. The merged entity could provide bundled discounts (where customers buy the product together rather than separately) or may refuse to sell one product unless the customer buys another product (tying). This can harm competition because it may mean a competitor is denied access to sufficient market demand to achieve competitive scale and is hindered from competing (foreclosed) in the market.

61. We do not consider that the Proposed Acquisition would create any new opportunities for Verifone to bundle because Verifone already offers the same services that Smartpay offers and the Proposed Acquisition would not give Verifone significant market power for any of these services. As such we are satisfied that the

[31] [ ]
[32] [ ]

Proposed Acquisition is unlikely to substantially lessen competition due to conglomerate effects.

Determination on notice of clearance

62. We are satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

63. Pursuant to section 66(3)(a) of the Act, the Commerce Commission determines to give clearance to Verifone New Zealand to acquire the assets used by Smartpay Holdings Limited (and its subsidiaries) to operate the Smartpay business in New Zealand.

Dated 10 June 2020

Anna Rawlings
Chair