COMMERCE COMMISSION – INGENICO/PAYMARK

INGENICO SUBMISSION ON COMMISSION'S 11 JULY 2018 LETTER OF ISSUES

1 Ingenico welcomes this opportunity to comment on the Commerce Commission's 11 July 2018 letter of issues.

Summary of this submission

2 Paymark does not have switching services market power. It cannot unilaterally foreclose payment switching competition. The commercial reality is that Paymark is constrained by Verifone and Payment Express. Each has switching and link assets. And each firm is an aggressive, full-service competitor with growth ambitions:

2.1 Verifone and Ingenico are multi-billion dollar global players and compete in New Zealand and in hundreds of other countries around the world.

2.2 Payment Express can continue to leverage its [ ] share of digital payments to expand across the board as it competes in every part of the NZ merchant market.

2.3 The trend to STA benefits Verifone and Payment Express too, because they can leverage their existing infrastructure to compete more effectively for STA transactions, while falling back to Paymark wholesale access (either directly or indirectly) to cover STI transactions as required or desired.

The overall result is that Verifone and Payment Express are head-on Paymark competitors. Each has gauged an efficient capital investment strategy and asset mix. Each is winning new merchants all the time at Paymark's expense. And together their pricing constrains Paymark all across the market and for all payment types, not just STA.

3 Aside from current market infrastructure, any major player—Verifone, a major acquirer or a new entrant—could readily build out new links. Indeed, Paymark is sure that Verifone could construct new links to New Zealand institutions: Verifone announced it would do so in 2012, but then chose to fall-back on Paymark wholesale access, presumably for commercial reasons at the time. **[ ]**. Against this evidence the Commission should not second-guess the feasibility of new link builds.

4 Moreover, it bears emphasis that the big banks pay the majority of processing fees. Naturally, they demand the lowest prices and best available payment services to enhance their merchant offerings. The banks' substantial countervailing power can be seen in, for example, their insistence on [ ], support of emerging payment systems like Alipay, the open API initiative, and innovative mPOS systems such as PayClip and FastPay. Some of these payment methods bypass the switch entirely; others could do so easily in future. The banks have both the incentive and capability to support new link infrastructure investment if, for instance, they considered Paymark's offering was too expensive or otherwise below par.

5 In short, Paymark is threatened both by vertically integrated rivals, Verifone and Payment Express, and the reality that banks, merchants and consumers are increasingly looking to emerging payment technologies which bypass the switch. Paymark's incentives are, in essence, to keep as many merchants on the switch, for as many transactions as possible, for as long as possible. The Commission's analysis in the LOI focusses too heavily on market dynamics of the past, and risks overlooking the change sweeping the payments environment. Those changes will imperil Paymark unless it makes its processing offer as attractive as possible – by, for example, investing in STI service enhancements and ensuring that all hardware vendors can seamlessly integrate and use its platform.

6 For all the above reasons, the Commission should be satisfied that Ingenico would not have the incentive or ability to use Paymark ownership to benefit itself in the hardware market. Any attempt to do so would instantly compromise transaction volumes, harm its relationships with the banks (its biggest customers), and speed merchant transition to either an existing rival or a new technology.

7 We provide further commentary and evidence below.

Constraints on Paymark

8 The Commission cannot assume that Paymark has market power for the supply of switching services.[1] Paymark is plainly constrained by a raft of powerful market forces which are keeping its pricing in check today and will continue to do so in future. Those forces include:

8.1 First, Verifone and Payment Express: they can each process transactions using their own switching and link assets, plus wholesale/aggregation access to Paymark to cover the balance of STI transactions.

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1 Issues letter at [36].

8.2 Secondly, there's the reality that a player like Verifone—or a new entrant—could construct new issuer links to develop a standalone Paymark alternative. Payment Express's [

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8.3 Thirdly, the tremendous power wielded by the banks. They pay the lion's share of the processing fees today and are continuously hunting for the best payment options for merchants and consumers.

8.4 And then there is the threat of emerging technologies which are direct substitutes for card-present methods like STI, and in some cases bypass the switch altogether.

—Verifone and Payment Express are viable alternatives now

9 Verifone is a multi-billion dollar company which is creating the "*world's largest infrastructure for rapid deployment of alternative payments.*"[2] ENZ trades off Verifone's name and expertise, promoting itself in the New Zealand payment systems market as follows: "*With Verifone as our parent company, we have the benefit of the latest payment technologies at our fingertips, enabling us to provide you with the widest range of quality terminals, at the best possible price*."[3]

10 Verifone is vertically integrated and offers full service payments switching and processing services to:

10.1 ANZ and to ANZ-acquired merchants (both STI and STA transactions),[4] via its own switch and other links; and

10.2 all other merchants (for STI transactions), via a combination of its own assets and its wholesale/aggregation arrangements with Paymark.

11 Verifone promotes its offerings to New Zealand merchants in the following terms:[5]

> *EFTPOS New Zealand operates its own network and we provide payment processing of debit, credit, proprietary and loyalty cards. Our network is highly secure and fully compliant with the latest industry security standards.*

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2 http://global-old.verifone.com/company/press-room/press-releases/2011/verifone-to-acquire-point-to-build-out-alternative-payments-infrastructure/

3 https://eftpos.co.nz/eftpos-advantages

4 Verifone 4 May 2018 submission at [24].

5 https://eftpos.co.nz/network-options

12 In short, Verifone can provide payments and terminals services to all New Zealand merchants, regardless of their acquiring institution.

13 The Commission would not be correct to conclude that Verifone only offers a viable Paymark alternative for ANZ-acquired merchants.[6] Verifone can and does offer a credible STI payment processing alternative for all merchants—regardless of acquirer—using a combination of its own assets and its Paymark access arrangements. It also offers STA payments services for ANZ-acquired merchants.

14 Moreover, and as the NERA report makes clear, Verifone's full service offering to ANZ-acquired merchants is competitively significant for merchants acquired by all other banks as well, not just those on ANZ.[7] In addition to its existing infrastructure, Verifone has from time to time (as Ingenico understands) threatened to build out its own links to other banks. Ingenico understands that [ ] Reflecting that dynamic is Paymark's stated view is that Verifone has a "*credible bypass option and as such is able to extract competitive terms from Paymark in order to compete effectively using Paymark's own assets*."[8]

15 The Commission should not assume that Verifone is, by some accident or unforeseen market development, reliant on access to Paymark assets to compete effectively. The true position is that Verifone is a massive global player which chose to acquire ENZ in 2012. Since then, Verifone has apparently chosen to use Paymark infrastructure rather than investing in its own assets. By choosing to use Paymark assets, Verifone is effectively meeting its service costs as operating expenditure (fees paid to Paymark) rather than by upfront capital investment.

16 Verifone boasts of being the market leader in New Zealand EFTPOS and offering terminals on the "*cutting edge of technology in the payment solutions industry*".[9] Verifone was recently acquired by a private equity giant which believes it offers attractive long-term growth prospects.[10] It competes hard against Ingenico in

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6 Commission's 11 July 2018 Issues Letter at [38].

7 NERA *Ingenico/Paymark: review of the Commission's letter of issues* dated 3 August 2018 (the "NERA report") at para 62.

8 Paymark 7 June 2018 cross-submission at [3].

9 https://eftpos.co.nz/eftpos-advantages

10 *Private equity firm to acquire Verifone for $3.4B* https://www.zdnet.com/article/private-equity-firm-to-acquire-verifone-for-3-4b/

almost every market in the world, including New Zealand: Ingenico operates in 170 countries around the world and Verifone in 155. They are truly global rivals.[11]

17 Verifone is always hunting for new customers and Ingenico's anecdotal experience is that its sales representatives offer sharp deals to sign new merchants like [ ] (see para 25 below). Verifone's aggressive pricing strategy in New Zealand is consistent with its behaviour in other markets like Australia, where, for example, it just won major customer [ ]. Indeed, ENZ presently offers a price beat guarantee across its entire terminal range:[12]

> *We're committed to offering you the best solution at the best price, so if you find a cheaper advertised price or have a written quote for the same, or a similar, terminal on an equivalent contract term,* ***we guarantee to beat it when you sign-up with us****.*
>
> *This guarantee applies to our full eftpos terminal range, from our low cost options right through to our mobile and integrated solutions. It applies to terminals connecting to both the EFTPOS New Zealand and Paymark networks. Check out our full terminal range.*

18 Verifone acquired ENZ in 2012. That acquisition was hot on the heels of Verifone's $1 Billion spend in the previous year for the Point switching business.[13] And indeed when Verifone bought ENZ, it intended to provide transitional services using existing switch infrastructure while it deployed its new Point infrastructure into New Zealand.[14] Any Verifone "dependency" on Paymark today reflects its own post-2012 decisions to purchase access services from Paymark rather than build out its own links and/or deploy the Point infrastructure as it had initially intended to do in 2012. Verifone now seeks to gain leverage—presumably to [ ] by creating issues during the clearance process.

19 In any event, though, Verifone's existing switching assets and Paymark access rights enable it to compete effectively today, both with its full service offer to ANZ-

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[11] Ingenico and Verifone compete in Latin America, Europe, Asia, North America, and the Pacific. Ingenico believes there may, however, be some countries in Africa where one or the other is not present.

[12] https://eftpos.co.nz/pricebeatguarantee

[13] Verifone, 14 November 2011: "*Verifone to Acquire Point to Build out Alternative Payments Infrastructure*" http://global-old.verifone.com/company/press-room/press-releases/2011/verifone-to-acquire-point-to-build-out-alternative-payments-infrastructure/

[14] https://www.nzx.com/announcements/231216

acquired merchants and more generally by its full STI processing capability for all other merchants.

20 Payment Express likewise offers a standalone and viable payment processing alternative to Paymark today. Payment Express is far and away the market leading provider in digital payments with about [ ] share among New Zealand merchants.

21 Payment Express can switch STA transactions [ ]. Payment Express also has:

21.1 links with at least two of the four major New Zealand trading banks [ ];

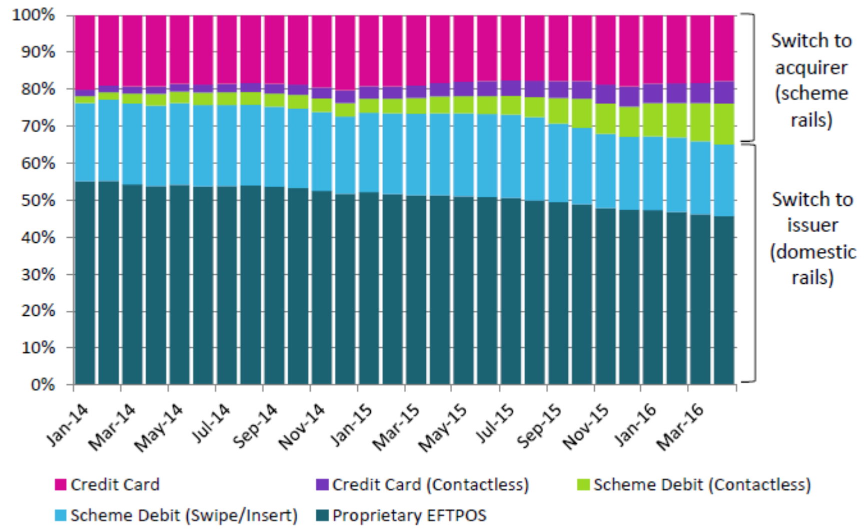
21.2 the capability to process card present and card-not-present STA transactions for [ ] acquired merchants, and card-not-present STA transactions for [ ] acquired merchants; and

21.3 a contractual arrangement with Verifone that Ingenico understands allows it (Payment Express) to process STI transactions through Verifone [ ].

—The shift to STA

22 As the MBIE review of retail payment systems makes clear, the proportion of STA transactions is rapidly increasing at the expense of STI (particularly domestic EFTPOS) transactions:

Figure 4: Number of electronic card transactions by card type (New Zealand switch data)



Source: MBIE issues paper "Retail payment systems in New Zealand", October 2016 at page 23.

23 There are various factors underpinning the shift towards STA, including historic underinvestment in EFTPOS, consumer preference for contactless, the banks' relationships with the schemes and the schemes' and banks' offers of customer incentives (e.g. reward points) for credit card transactions. [.] The banks' goal is presumably to retain it as a high-quality service which is a meaningful STA alternative.

24 Regardless of the reasons, the shift to STA is competitively significant for Paymark because both Verifone and Payment Express have their own infrastructure for switching STA transactions. The shift is well underway and reflects the banks' ability and incentives to move customers from STI to STA cards.[15] That said [ ] the banks are also responding to merchant preferences to maintain a high-quality and low-cost STI service. Even so, Ingenico expects that the trend to STA will continue and potentially accelerate once the banks no longer receive a Paymark dividend stream, which may be expected to further weaken any existing bank support for STI except insofar as their merchant customers may prefer STI options. [[16]]

25 The trend towards STA effectively enables Verifone and Payment Express to better leverage their existing infrastructure and compete more effectively for STA transactions, while still using Paymark for STI processing). More STA transactions opens the door for major merchants (e.g. [ ]) to shift away from Paymark either entirely or [ ] By way of example:

25.1 Payment Express recently struck an arrangement with **[** **]**; and

25.2 Verifone recently won the rights to process transactions for [

[15] NERA report at paras 19 to 21.

[16] [ ]

].

26 The accelerating threat of STA means Paymark must ensure STI remains attractive both now and in the future – [ ]:

26.1 [ ];[17]

26.2 [ ]].

27 To meet these requirements and service enhancements, Ingenico has factored operational expenditure of [ ] over the next 5 years.

28 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.[18] 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.

29 The proposed acquisition will not change the above dynamics or the overall trend towards STA.

—Build or buy threats

30 The Commission is not satisfied that Verifone's continuing threats to build out links are sufficient to impose a significant constraint on Paymark. Although it does not

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[17] See, e.g., Ingenico's initial business plan in [ ].

[18] Issues letter, para 50 and particularly 50.1.

squarely address the issue, the Commission seems to assume that those threats are not credible or realistic. Ingenico immediately observe that:

30.1 Paymark is best placed to gauge whether Verifone could in fact construct its own links. And Paymark itself appears to believe that Verifone's threats are credible, and that it could quickly and cheaply build out links to issuing banks.[19] Indeed, Paymark considers that the commercial terms of its arrangements with Verifone reflect its view that Verifone could credibly bypass its switch, even if it (Verifone) has not actually exercised its bypass alternative – and Paymark has a direct financial incentive to accurately gauge the probability of such bypass.

30.2 Verifone is not the only entity building links today or that could build links in future. Ingenico understands that [ ] It therefore seems plausible that other major financial, telecommunications or retail players, such as the credit card schemes or a consortium of major acquirers, would construct if dissatisfied with Paymark service or quality.

31 More generally, Ingenico is concerned that the Commission has not obtained the best available evidence of link building costs. Verifone is obviously pursing commercial self-interest in its submissions to date: by claiming that link building costs are prohibitive and that it does not have credible bypass options, it stands to gain a costless opportunity to [.] We urge the Commission to see Verifone's position for what it is. We respectfully suggest that, if nothing else, the Commission request further evidence and business records from Verifone, Payment Express and others about their link building cost analyses and ambitions. The Commission should also request details from Verifone about [ ].

32 The Commission should reject Verifone's evidence that it would be commercially unrealistic to construct links enabling an STI processing alternative to Paymark, and Verifone's suggestions that such building would be an extremely difficult undertaking requiring engagement with and cooperation of dozens of counterparties, with prohibitive costs and high risks. The Commission should not rely on that evidence because:

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19 Paymark's 7 June 2018 cross-submission at [4].

32.1 Verifone, despite being a company present in 150 countries and employing 6,000 people globally, has apparently been unable to provide much, if any, written evidence underpinning its ballpark estimates of link building costs at $500k to $1m per link when that is the business it is in.[20]

32.2 Verifone's stated estimates are inconsistent with [ ].

32.3 Verifone's public statements when it acquired ENZ suggest that it intended then, and had assessed the merits and cost-effectiveness of building its own links: "*ANZ NZ will provide transitional services using its existing switch infrastructure as VeriFone begins deployment of its Point platform*." Verifone, a multi-billion dollar company which boasts itself as a world leader in payment technology, appears to have concluded in 2012 that link construction was viable. It follows that the Commission should treat Verifone's current suggestions that such construction would be costly, risky and unlikely to occur with extreme scepticism.

32.4 Constructing a credible STI alternative would not require engagement with all 29 issuers. Ingenico understands that, for example, building links to the "top five" issuers (the big four Australian banks, plus Kiwibank) is sufficient to cover about [ ] of transaction types. Verifone and Payment Express [ ] new links would be needed for either to achieve full coverage across the big five.

32.5 The major banks will support and part-subsidise new links if they believe they will benefit. In Australia, for example, [.] It no doubt did so because it believed new link would enable it to achieve a better overall processing offer for merchants.

32.6 Once that link infrastructure was in-market, it would enable the owner to provide an independent Paymark alternative for STI transactions acquired by the five banks, with the result that:

(a) the infrastructure owner could, rather than building out 24 more links, seek Paymark access to cover the [ ] of payments on cards from the smaller issuers other than the five banks. It (the access seeker) would

[20] Commerce Commission (Shararudin) email to Ingenico/Chapman Tripp (Fife) dated 18 July 2018 regarding evidence supporting paragraph 44 of Issues letter (link building costs).

have a *prima facie* competition law remedy if Paymark did not grant access on reasonable terms;

(b) other issuers would have an incentive to join the five banks on the new links. They would do so to ensure their personal banking offerings remained competitive for consumers (account holders) looking to use their cards at merchants, and to obtain the best possible processing rate for themselves (recall that banks, not merchants, pay the bulk of processing fees in New Zealand); and

(c) an offering which covered only [ ] of STI transactions might well be attractive to merchants if it was cheaper than Paymark – and in this regard Ingenico notes that many cards from smaller issuers also have scheme debit functionality.[21] Most consumers also have a scheme card in their wallet in addition to an EFTPOS card. These realities together suggest that some merchants might be willing to offer a payment method that did not provide total coverage of STI card issuers in the knowledge that most consumers would have a scheme payment method available alongside cash if the consumer happened to have a more obscure card.

32.7 Ingenico's own experience and estimates are that link building takes between [ ] depending on regulatory and user requirements such as security features. Ingenico developed this estimate from its experience in Australia, which has stringent obligations and so is likely to be at the higher end of the range globally for link building costs. Ingenico's estimate aligns with its understanding of [.]

33 Moreover, the banks have the resources and ability, and would have the incentive, to invest in link building if they wished to support a non-Paymark alternative. Again, the trend to STA is evidence that the banks have the incentive and ability to 'steer' transactions away from STI now. Each of the big four banks is a multi-billion dollar company in the hotly competitive business banking market. The banks' decision to sell Paymark is strong evidence that each is confident they could generate and support a non-Paymark infrastructure option if necessary. And if a player wished to

21 For example, Aotearoa Credit Union's AccessDebit cards offer both EFTPOS and MasterCard functionality: "With an AccessDebit card you can use ATMs and EFTPOS machines, you can Tap & GoTM if you're in a hurry, you can enjoy shopping online, but you can't spend what you don't have." http://www.acu.nz/Everyday-Banking/access-cards.html

invest in infrastructure to provide a Paymark standalone alternative, securing the big four banks would offer sufficient committed volume to overcome the collective action problem identified by the Commission in its issues letter.

Banks' countervailing power

34 The Commission is examining whether the banks' countervailing power is sufficient to prevent adverse competition effects.

35 Ingenico notes at the outset that the banks, not the Commission, are best placed to evaluate whether they would exercise countervailing market power. The banks together acquire more than one billion transactions a year.[22] They have, by electing to divest Paymark plus [ ] acted in their own self interest. Each bank presumably considered that [ ]. The Commission cannot reasonably second-guess those conclusions.

36 In any event, the banks are also strongly incentivised to ensure they support the lowest-cost and most-prevalent payment methods. Their merchant business banking customers will pressure them for payment systems which enable acceptance of those methods.

37 All of the banks' payment websites promote STA (contactless) payment support. Indeed, the banks' offerings and promotional materials underline their focus on ensuring a full range of best-in-market options for their merchants, regardless of whether the payment method is routed via Paymark or some other network like Eftpos New Zealand, or bypasses the switch entirely, as the following website statements demonstrate:

> **ANZ**: "We can help you get paid anytime and anywhere, whether in person, online, or by phone, fax or mail. We offer Visa, Mastercard and UnionPay credit and debit card processing, and can arrange EFTPOS terminals, through our close partnership with EFTPOS New Zealand, and connections to either the EFTPOS New Zealand or Paymark networks."[23]
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> **BNZ**: "*Give your business the competitive edge*. Get ahead of the game by managing purchases and payments quickly and easily and gain valuable market insight with our analytics tools. … Open up your business to more than

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22 https://www.paymentsnz.co.nz/resources/articles/new-zealand-payments-stats-2017-review/

23 https://www.anz.co.nz/business/products-services/merchant-services/?pid=mkt-pbr-text-bhp-apr13-merchatservices

400,000 Chinese visitors expected in New Zealand each year. We've partnered with online payment platform Alipay, and the terminal vendor Verifone, to enable Alipay transactions.[24]

ASB: "No matter what type of business you're in, we can help you accept contactless, chip or swipe payments. We have great options available from small pinpads that pair with your smartphone or tablet to fixed terminals that integrate with your point of sale (POS) system.[25]

Westpac: "Make accepting payments in your business quick, convenient and secure. Whether you want to accept payments on-site, online or on-the-go – or all three, our merchant services team will help to design a solution tailored to your business. It's as easy as 1,2,3.[26]

38 We described above the reality that the trend away from STI (Eftpos) to STA is rapid and is quickening: the banks' promotion of contactless payment methods and mobile payment solutions like FastPay (ANZ), Payclip (BNZ) and GetPaid (Westpac) and mPOS LIte (ASB) is evidence of the accelerating shift to STA payment methods. Nor is the Commission correct to assume that any major acquiring bank wishing to offer STI payment solutions to its customers is, or would be, beholden to Paymark:[27] Ingenico says that because:

38.1 link building is viable, cost-effective and occurs regularly, as the recent [ ]; and

38.2 the banks want the best possible deal for their merchants. They have sponsored [ ]. Verifone has chosen to compete via wholesale access to Paymark, rather than by investing in its own capital assets.

39 Again, the vendor banks are very large and sophisticated entities. It is highly unlikely that each chose to [ ] (when the banks will make a fresh assessment of their best available options).

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[24] https://www.bnz.co.nz/business-banking/payments/alipay

[25] https://www.asb.co.nz/business-banking/accepting-payments.html

[26] https://www.westpac.co.nz/business/payment-solutions/

[27] Issues Letter at [50.2].

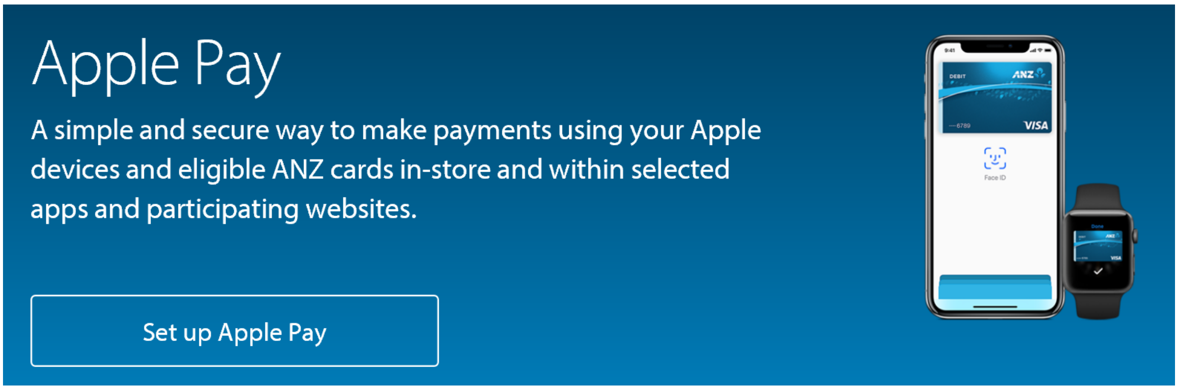
Emerging technologies

40 The Commission's letter focuses far too heavily on the payment landscape as it has been up until today. It adopts a static and backward-looking analysis that appears to ask only whether for example, EFTPOS will continue to constrain Paymark. That was not the competitive dynamic when Paymark and Verifone agreed a wholesale access deal in 2012, and it will be even less the case into the near term which is the period the Commission must consider in its forward-looking assessment of the factual as compared with the counterfactual. Only in paragraph 71 is there a passing reference to the possible constraint from technology change and fast emerging payment methods.

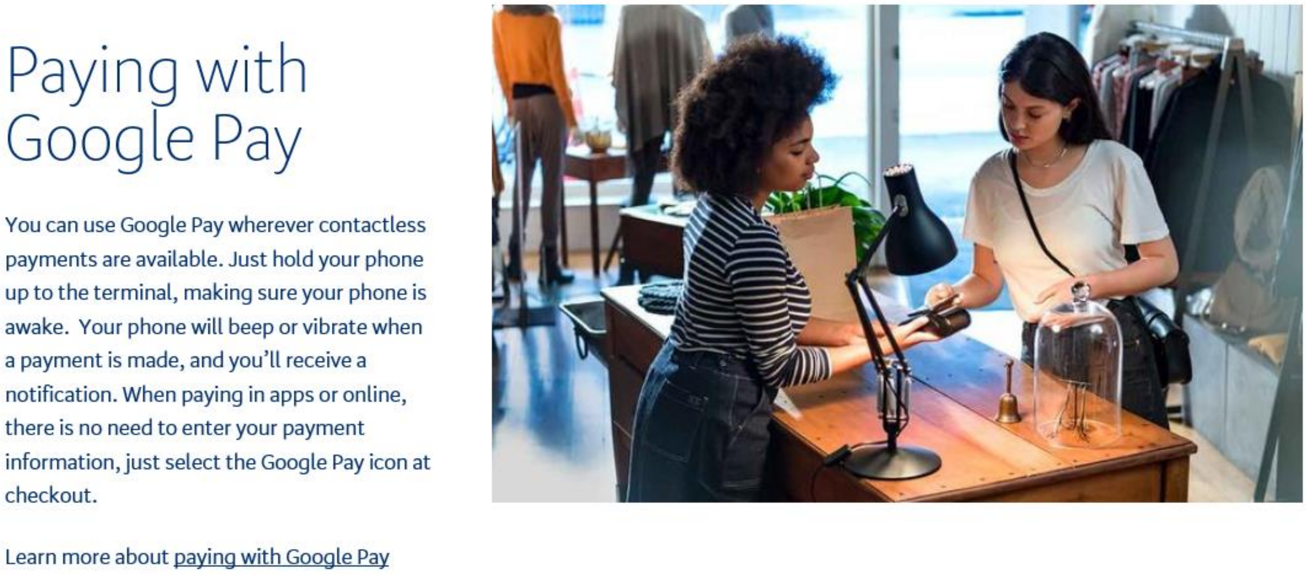
41 Ingenico submits that, by adopting this backward-looking analysis, the Commission is obscuring and risks overlooking the change sweeping the payments environment. In addition to the constraints on card-based payment processors like Paymark from direct competitors (other switch owners), there is also meaningful rivalry from service providers that enable transactions to be settled directly between financial institutions or between individuals, bypassing the switch altogether.

42 Paymark's incentives are, in essence, to keep as many merchants on the switch for as many transactions as possible for as long as possible. In doing so, it may partly meet the threat from emerging payments which will take transactions off the switch altogether. Important emerging payment methods include:

42.1 Apple Pay: consumers use their Apple device instead of using a card. Apple Pay utilises existing scheme rails. Apple Pay can be used at any terminal that accepts contactless payments. Apple Pay is currently only available in New Zealand for ANZ and BNZ customers:

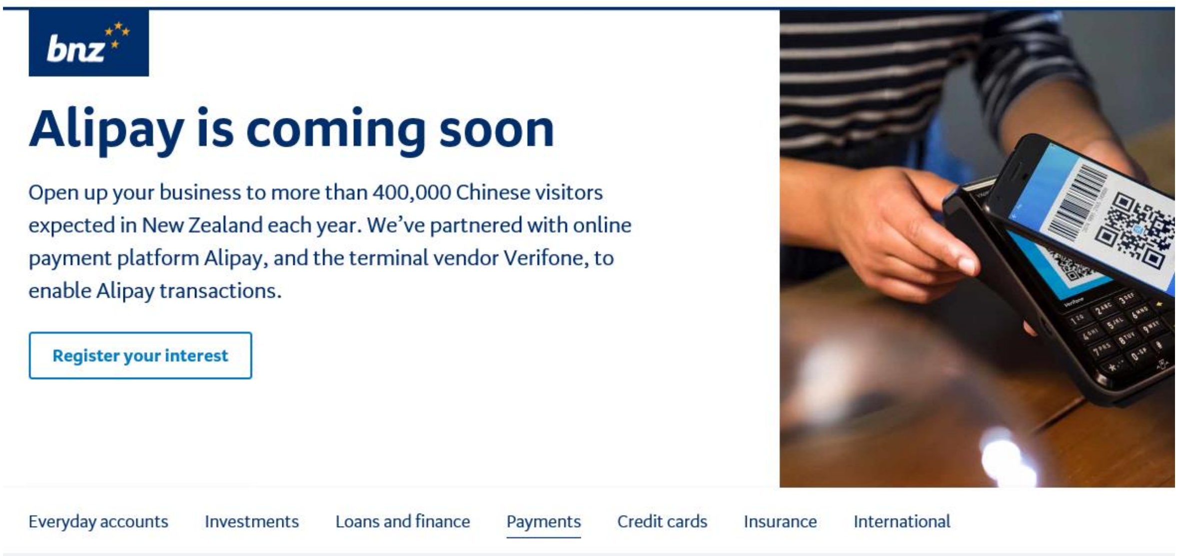


42.2 Android Pay: similar to Apple Pay except using Android devices. This option is only available in New Zealand for BNZ customers and is branded as "Google Pay":



42.3 PayPal: this method enables consumers to pay for goods and services online by entering an email address and password. Some major New Zealand retailers like The Warehouse now accept Paypal for online purchases.

42.4 other global payment options such as WeChat Pay, Paypal, and Alipay (some of which are already available in New Zealand) could expand their market share. These payment options totally bypass the need for a switch. BNZ has partnered with Alipay to launch in New Zealand:



43 In New Zealand, Payments NZ is piloting the use of APIs to replace some traditional payment methods.[28] The goal of the initiative is to open up payments to a broad range of service providers at a lower cost. The pilot includes ASB, BNZ and Westpac on the bank side, and Paymark, Datacom and Trademe as technology vendors. It covers ecommerce (retail) payments, bill payments and peer to peer payments. As the Commission may be aware, MBIE and the Minister of Commerce and Consumer Affairs are highly supportive of this initiative.[29] While the API pilot is at early stages, Ingenico believes that in time this type of process, alongside other emerging methods, could ultimately replace debit transactions in NZ.

44 Any one of the above emerging payment technologies could be an existential threat to Paymark. So too could a technology not yet known. But as the NERA report makes clear, both Paymark and the banks are strongly incentivised to keep transaction volumes 'on the switch' rather than lose them to a rival technology: "*Payment mechanism innovation also threatens revenues of the banks. Accordingly the banks are incentivized to ensure the Paymark switch and complementary terminals market are as competitive as possible. If that system is not competitive and innovative, there is a risk that consumers will shift to payment mechanisms that bypass not just the switch, but also the banks.*"[30]

Paymark would not be incentivised to foreclose

45 Again, Paymark does not have market power today, for the reasons above. So the Commission need not worry that the merged entity would have the ability to foreclose its rivals in the terminal market. Nor will Ingenico's terminal supply business give it an incentive to foreclose. On that front, Ingenico is concerned that the Commission is incorrectly evaluating its post-merger incentives to continue dealing with players like Verifone and Payment Express.

46 First and foremost, the proposed transaction will not deliver to Paymark a better market position than it enjoys today. It will still face head-on competition from Verifone, Payment Express, and a myriad of emerging payment technologies which enable switch bypass. Ingenico strongly disagrees with the Commission's suggestion that the acquisition could somehow cause Verifone and Payment to face greater barriers to competition.[31] Rather, Verifone's and Payment Express's ability to offer a competitive alternative to Paymark will not be affected by the merger:

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28 https://www.paymentsnz.co.nz/documents/204/Payments-NZ-API-Pilot-Launch-Media-Release.pdf

29 https://www.beehive.govt.nz/speech/speech-payments-nz-conference-26-june

30 NERA report at para 4.

31 Issues letter, at [26].

46.1 Verifone and Payment Express will retain and continue to utilise all their existing assets, customers, input services, Paymark certifications, and contractual rights to use Paymark infrastructure for wholesale services. None of those things change.

46.2 [[32]]

46.3 [ ].

47 Secondly, the change of Paymark ownership will not affect Paymark's incentives to honour its existing commitments to Verifone for switch access. [[33] .] But in any event, Ingenico-owned Paymark would be no more or less likely to breach (or agree) those contracts than Paymark would be today.

48 Ingenico says that because its objective is to maximise switching volumes through Paymark and guard against payments going via methods (such as ANZ GoMoney) which bypass the switch. It is best able to do so by encouraging the largest possible number of terminals and transaction volumes on its switch to make the POS offering as attractive as possible, rather than by hindering or impeding certain types of terminals from connecting.

49 Thirdly, Ingenico's experience in its businesses around the world is that its switching assets are better served by remaining vendor neutral as to terminals, in order to maximise transaction volume.[34] For example, in Germany Ingenico acquired the Easycash business in 2009. Easycash is a German payment services provider covering the whole payment value chain (terminal + switching + acquiring). Since completing that acquisition, Ingenico has remained agnostic from a terminal standpoint, proposing to merchants the full scope of terminals available in the

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[32] [ ]

[33] [.]

[34] See details in [.]

market, including Verifone devices.[35] It intends to do the same in New Zealand to ensure that as many transactions as possible stay on the switch.

50 Ingenico wishes to meet with the Commission to discuss the points in this submission and give more details on its perspective of the New Zealand market. Could you please let us know, via our advisors, when you are available for that meeting – we suggest sometime in the week commencing 6 August 2018, subject of course to your availability and timing preferences.

Yours faithfully

Grégory Lambertie
SVP, Strategy and M&A
Ingenico Group

3 August 2018

[35] https://ingenico.de/payment-services/produkte-und-leistungen/terminals#stationare-terminal