

NON-CONFIDENTIAL VERSION

24 February 2020

The Registrar
Commerce Commission
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VERIFONE/SMARTPAY: SUBMISSION FROM PAYMARK ON THE STATEMENT OF PRELIMINARY ISSUES

1. Thank you for the opportunity to make a submission on the Commerce Commission's Statement of Preliminary Issues on Verifone, Inc's (**Verifone**) application for clearance (the **clearance application**) to acquire most of the New Zealand assets of Smartpay Holdings Limited (and its subsidiaries) (**Smartpay**) to operate the Smartpay business in New Zealand (the **proposed acquisition**).
2. In Paymark's view there are two main potential impacts of the proposed acquisition for the Commission to consider:
 - a. removal of one of the four current suppliers in the wholesale terminal market; and
 - b. possible removal of the availability in New Zealand of one of the three current terminal brands.
3. In this submission, Paymark also notes a number of other points the Commission may wish to explore further in the course of its analysis.

MARKET DEFINITION

4. Smartpay is the exclusive importer and distributor of PAX terminals in New Zealand.¹ PAX is a terminal manufacturer in China. Smartpay performs software development and obtains certification for the PAX terminal in New Zealand enabling PAX terminals to be utilised in New Zealand; it is a **Terminal Vendor**.² Once certified, Smartpay also sells terminals to merchants for use in bricks and mortar stores.

¹ [44] Verifone/Smartpay clearance application dated 1 January 2020.

² Footnote 5, Ingenico Group SA and Paymark Limited [2018] NZCC 18 (**Ingenico/Paymark**). A list of certified terminals (or EFTPOS payment devices that are approved for use in New Zealand) is accessible on the Payments NZ website: <https://www.paymentsnz.co.nz/resources/industry-registers/device-register/>

5. Verifone brings Verifone-manufactured terminals into New Zealand, provides payment application software development services and sells the terminals to resellers and merchants. As such it is also a Terminal Vendor.
6. Paymark understands that the Commerce Commission defines markets in the way that best isolates the key competition issues that arise from an acquisition. In this case, it is the aggregation of two Terminal Vendors, or participants in the national wholesale terminal market, that would have a potential effect on merchants (whether there is an intermediary on-selling the terminal to the merchant or not). Merchants will have one less choice of Terminal Vendor. PAX's willingness and ability to supply its terminals into New Zealand is also potentially affected by this aggregation.
7. Paymark notes that the Commission's terminals market definition in Ingenico/Paymark is of limited application in this case. That is because the Commission's assessment in Ingenico/Paymark did not turn on the precise boundaries of these product markets,³ as the Commission was readily satisfied there would not be a substantial loss of competition for the supply of terminals.⁴

POTENTIAL IMPACT OF CONSOLIDATION

Key potential effects on competition

8. The proposed acquisition would reduce the number of Terminal Vendors from four to three.
9. When looking at terminal types connected to the Paymark network by manufacturer, Verifone has [REDACTED], Ingenico has [REDACTED] and PAX has [REDACTED].
10. After the acquisition, assuming that PAX terminals continue to be supplied through the merged entity, Verifone will account for [REDACTED] of the terminals connected to the Paymark network.
11. For all New Zealand, Paymark estimates that presently there are:
 - a. [REDACTED] or [REDACTED] terminals on the Paymark network (with the breakdown set out in paragraph 9 above);
 - b. [REDACTED] of the market taken up by other payment acceptance methods (such as direct to international scheme, QR codes, e-wallets); which leaves
 - c. [REDACTED] or [REDACTED] Verifone terminals⁵ connected to the Verifone transaction processing network it owns and operates.
12. As such, Paymark estimates that Verifone will account for [REDACTED] of the terminals in New Zealand, post-acquisition.
13. In New Zealand, the top four Terminal Vendors (those that develop the software for terminal hardware) make up [REDACTED] of the terminals on the Paymark network and are as follows:

³ [88] Ingenico/Paymark.

⁴ [107] Ingenico/Paymark.

⁵ Paymark notes that Windcave has some terminals connected to the Verifone network but neither the number nor share of these is known to Paymark.

- a. [REDACTED] Verifone, using Verifone terminals. (Note this figure does not include the significant number of Verifone terminals developed to the Verifone specification and connected to the Verifone transaction processing network – see above.)
 - b. [REDACTED] Windcave, using Ingenico and Verifone terminals.
 - c. [REDACTED] Smartpay, using PAX terminals.
 - d. [REDACTED] Skyzer, using Ingenico terminals.
14. Invenco has [REDACTED] of terminals on the Paymark network, Perception [REDACTED], Quest [REDACTED] and the smaller Terminal Vendors make up the remaining [REDACTED].
 15. Verifone noted in its submission to the Commerce Commission for the Ingenico/Paymark acquisition statement of preliminary issues that “terminal markets are not as competitive as the clearance application suggests” and that the New Zealand terminal markets offer a relatively small number of options to merchants as compared with markets overseas. Verifone went on to say that over 90% of the terminals in New Zealand are produced by three terminal manufacturers (Verifone, Ingenico and PAX) and that PAX is the only credible potential competitor to Verifone and Ingenico in the New Zealand terminal market.⁶
 16. PAX may not wish to continue to supply its terminals to the merged entity. If that is the case, in addition to another distributor, PAX would need to find an entity that can develop software to go on the hardware (terminal). This would need to be an existing player with software capability (all of which currently supply other terminal brands), or a new such developer. Verifone has previously submitted that the barriers to entry for Terminal Vendors are high,⁷ largely due to software development and certification requirements.

Additional complexities

17. Verifone refers to BNZ Payclip terminals as a competitive constraint. These terminals are provided by Mint⁸ presently, however they need to be upgraded prior to 30 April 2020 to remain compliant with industry hardware and software requirements. [REDACTED]
18. In the clearance application, Verifone claims that new technologies impose a constraint on terminal providers: “Emerging new payment methods that do not require a merchant to have a terminal also impose a constraint on terminal providers”⁹ and that “while payment terminals are somewhat ubiquitous in physical retail environments, there are numerous new technologies that either reduce a merchant’s reliance on a payment terminal or involve new ways to make payments that do not require a payment terminal.”¹⁰

⁶ [69 - 72] Verifone submission on Ingenico/Paymark merger dated 4 May 2018.

⁷ [70] Verifone submission on Ingenico/Paymark merger dated 4 May 2018.

⁸ <https://www.mintpayments.com/index.php/2015/05/22/mint-bnz-payclip/>

⁹ [59] Verifone/Smartpay clearance application dated 1 January 2020.

¹⁰ [80] Verifone/Smartpay clearance application dated 1 January 2020.

19. The Commission in Ingenico/Paymark concluded that there is limited evidence that mPOS and QR payments are likely to be a significant part of the market in the short term.¹¹ Verifone has not at this stage demonstrated that this was incorrect, or that the position has changed since late 2018.
20. Finally, Paymark notes that there are a number of other areas where Verifone does not appear to have provided a full explanation or supporting evidence as to why its previous views were incorrect, or the position has changed:
- a. In the clearance application, Verifone states, “there are also other global terminal manufacturers that could (and in some cases already do) supply terminals in New Zealand, such as Castles Technologies, Spectra, the Newland Group, and Chinese manufacturers such as BBPOS”.¹² Verifone has noted previously that “the number of terminal providers around the world that might enter the New Zealand market is limited. Ingenico and Verifone are the only two major global providers of terminals and there are few international providers that could enter the market. Smaller providers from international markets would be unlikely to enter the New Zealand market, given the prohibitive cost of entry.”¹³
 - b. Verifone has previously downplayed the significance of the competitive constraint imposed by mPOS terminals¹⁴ yet in the clearance application mPOS is cited as a “significant competitor”.¹⁵ Paymark notes in this regard that on the Paymark network currently, [REDACTED] of the terminals are mPOS and [REDACTED] are unattended.
 - c. In the clearance application Verifone states, “there are segments of the payment terminal market where growth is significantly higher. For example, the provision of mPOS terminals to very small merchants and unattended payment terminals (for kiosks/parking etc) have seen good growth over recent years.”¹⁶ Verifone’s previous views were that:
 - i. “The cross-submissions overstate the availability and popularity of emerging technologies and alternatives to terminals that do not require access to Paymark’s switch ... Verifone expects that not only will the uptake of alternative solutions be slower than the cross-submissions suggest, but that merchants will treat those solutions as complements to, and not substitutes for, traditional payment solutions.”¹⁷; and
 - ii. “A large proportion of New Zealand merchants are extremely slow to adopt new technologies ... The high proportion of merchants that have been slow to accept change so far are also likely to be slow to accept new technologies following the proposed transaction.”¹⁸

Paymark notes in this regard that the growth in mPOS terminals has accounted for [REDACTED] growth on the Paymark network in the last year.
 - d. Verifone’s position of the use of application programming interface (API) appears to have flipped from:

¹¹ [196] Ingenico/Paymark.

¹² [76] Verifone/Smartpay clearance application dated 1 January 2020.

¹³ [71] Verifone submission on Ingenico/Paymark merger dated 4 May 2018.

¹⁴ [72(b)] Verifone submission on Ingenico/Paymark merger dated 4 May 2018.

¹⁵ [69(d)] Verifone/Smartpay clearance application dated 1 January 2020.

¹⁶ [34] Verifone/Smartpay clearance application dated 1 January 2020.

¹⁷ [41 - 43] Verifone submission on Ingenico/Paymark merger dated 1 August 2018.

¹⁸ [75 – 76] Verifone submission on Ingenico/Paymark merger dated 4 May 2018; [191] Ingenico/Paymark.

- i. “APIs are unlikely to be seen by bricks and mortar merchants as a real alternative to more traditional payment methods. APIs may be useful to make peer-to-peer payments, and possibly digital payments, but their utility is more limited for in-store payments.”¹⁹ to
 - ii. “New Zealand is moving to an "open banking" framework that supports real-time account-to-account payments (via a Standardised Application Programming Interface or API).”²⁰
- e. The move to open banking is not going to be as quick as many anticipated. Any competitive constraint may take a while to realise. The Government is concerned about the lack of pace and progress with the development of industry-led open banking initiative. These concerns were set out in a recent open letter from the Minister of Commerce and Consumer Affairs, Hon Kris Faafoi to the New Zealand banks.²¹
- f. In the clearance application Verifone proposes that “cash is also a substitute for card payments ... The presence of cash as an alternative payment method means that payment terminals need to be competitively priced to merchants so that, when combined with the acceptance cost of cards, the cost/benefit analysis is superior to a cash only proposition”.²² In a previous submission Verifone stated, “the submission by Paymark that the merged entity will be constrained by the ability of consumers to pay by cash is curious. In Verifone's view, the continued presence of cash as a payment method demonstrates the persistence of payment methods in, and difficulty associated with removing payment methods from, the market.”²³

¹⁹ [24] Verifone submission on Ingenico/Paymark merger dated 13 August 2018.

²⁰ [35] Verifone/Smartpay clearance application dated 1 January 2020.

²¹ <https://www.mbie.govt.nz/assets/open-letter-to-api-providers-regarding-industry-progress-on-api-enabled-data-sharing-and-open-banking.pdf>

²² [82] Verifone/Smartpay clearance application dated 1 January 2020.

²³ [25] Verifone submission on Ingenico/Paymark merger dated 13 August 2018.