

Retail Payment System Act 2022

Monitoring compliance with the initial pricing standard

Response to submissions on Chapter 7 of the draft Guidance for the initial pricing standard

Date of publication: 2 May 2023

Associated documents

Publication date	Title
7 September 2022	Retail payment system – Draft guidance on the initial pricing standard (Commerce Commission)
15 December 2022	Retail payment system – Guidance on the initial pricing standard (Commerce Commission)
15 December 2022	Retail payment system – Response to submissions on the draft guidance for the initial pricing standard (Commerce Commission)
2 May 2023	Monitoring compliance with the initial pricing standard (Commerce Commission)

Index of submissions

The below list includes all submissions that were made on the draft Guidance on the initial pricing standard. However, some of these submissions may not have commented on the section that this document relates to.

Publication date	Title	Referred to in this document as
25 October 2022	ANZ Bank New Zealand – Submission on draft IPS guidance – 13 October 2022	ANZ
25 October 2022	ASB – Submission on draft IPS guidance – 13 October 2022	ASB
25 October 2022	BNZ – Submission on draft IPS guidance – 17 October 2022	BNZ
25 October 2022	Mastercard – Submission on draft IPS guidance – 13 October 2022	Mastercard
25 October 2022	Retail NZ – Submission on draft IPS guidance – 11 October 2022	Retail NZ
25 October 2022	Till Payments – Submission on draft IPS guidance – 13 October 2022	Till
25 October 2022	Visa – Submission on draft IPS guidance – 13 October 2022	Visa
25 October 2022	Westpac – Submission on draft IPS guidance – 13 October 2022	Westpac
25 October 2022	Worldline – Submission on draft IPS guidance – 13 October 2022	Worldline

Introduction

- 1.1 We published guidance on the initial pricing standard (the **IPS** or the **standard**) contained in subpart 3 of Schedule 1 of the Retail Payment System Act 2022 (**the Act**)¹ on 15 December 2022 (**the Guidance**).
- 1.2 The Guidance explains the scope and applicability of the IPS and how we interpret certain key provisions of the IPS.
- 1.3 This paper sets out our responses to points raised in submissions on Chapter 7 (information required to assess compliance) in our draft Guidance on the IPS, published on 7 September 2022.
- 1.4 The contents of Chapter 7 will be reflected in a new paper titled 'Monitoring compliance with the initial pricing standard' (**compliance monitoring paper**). This paper describes the information we consider relevant to assess whether the IPS is being complied with and explains the Commission's approach to monitoring compliance with the IPS.
- 1.5 The compliance monitoring paper has been published alongside this document.
- 1.6 We are not seeking submissions on this document. We expect that the responses provided here to points raised in submissions on Chapter 7 of the draft Guidance will assist stakeholders in understanding the Commission's position on certain topics.
- 1.7 Readers should bear in mind that we have not attempted to respond to every point made in submissions. Instead, this document intends to provide a summary of our views on the main substantive points raised by stakeholders with regards to Chapter 7 of the draft Guidance. Responses to submissions on aspects other than Chapter 7 were published on 15 December 2022 in our '[Response to submissions on the draft guidance for the initial pricing standard](#)'.²
- 1.8 We thank submitters for their submissions and engagement in the process of developing the Guidance and the separately published compliance monitoring paper.
- 1.9 All abbreviations and terms used in this document are either defined, or have the same meaning as in the Guidance.

¹ The Act can be viewed at: <https://www.legislation.govt.nz/act/public/2022/0021/latest/LMS528082.html>. All statutory references within this draft guidance are to the Act unless otherwise stated.

² https://comcom.govt.nz/_data/assets/pdf_file/0016/301822/Retail-Payment-System-Response-to-submissions-on-the-draft-guidance-for-the-initial-pricing-standard-15-December-2022.pdf.

Contents

1.10 Where submitters have answered these specific questions, we have broken them out as follows:

Question	Pages
7A We are interested in your views on the scope of the information we consider is required to assess compliance with the obligations under the IPS, including:	
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?	6-9
7A(ii) What alternative information, if any, can provide us with assurance that the IPS is being complied with?	10-11

Chapter 7: Information required to assess compliance

No.	Submitter	Main submission arguments	Changes from draft guidance	Response
<p>7A We are interested in your views on the scope of the information we consider is required to assess compliance with the obligations under the IPS, including:</p>				
<p>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?</p>				
1	ANZ	<p>"Based on the current draft of the Guidance we consider that the Commission has identified the right information to assess compliance with the obligations under the IPS. However, we are concerned that the proposal to create individual baselines for issuers, coupled with the collection and review of the information categories identified by the Commission post IPS implementation will create significant work for participants and the Commission and will fail to provide the efficiency that is one of the objectives of the Act."</p> <p>"We note our view, already expressed in 5C(ii), that any arrangements in place before 1 April 2021 cannot amount to Net Compensation on the basis that it predates the introduction of the Retail Payment Systems Bill... Once the Commission has identified the baselines for each issuer it may wish to ask the threshold question of whether any changes have been made before seeking the information categories it has outlined."</p>	Change.	<p>Chapter 6 of the Guidance includes clarification on our view in relation to compensation agreed before 13 May 2022.</p> <p>We consider that the identified information on interchange fees and net compensation is necessary for us to monitor compliance with the IPS.</p> <p>We have simplified our approach to net compensation information by seeking the same information but in aggregate amounts rather than a breakdown of compensation and payments, which should reduce the work required to both compile and review the information.</p>

2	ASB	“We agree from an Acquiring perspective because this is the only level of information available to assess compliance.”	No change.	In the first instance, we will seek this information from the schemes. However, this does not restrict us from seeking this information or any additional or alternative information from other participants, such as acquirers.
3	BNZ	“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.”	Change.	<p>Disagree. As noted above, we consider that the identified information on interchange fees and net compensation is necessary for us to monitor compliance with the IPS.</p> <p>In particular, we require information about the calculation of net compensation because:</p> <ul style="list-style-type: none"> • We do not otherwise have visibility of the information or methodology that participants are using to calculate net compensation. • Due to the nature of compensatory arrangements, it is unlikely that the Commission would have visibility to suspect a breach. <p>We have simplified our approach to net compensation information by seeking the same information but in aggregate amounts rather than a breakdown of compensation and payments, which should reduce the work required to both compile and review the information.</p>
4	BNZ	“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.”	No change.	<p>We acknowledge that we do not have a provision equivalent to clause 4.2 of the Australian Standard.</p> <p>However, we consider that average interchange fee information is an appropriate and low-cost mechanism (compared to looking at individual interchange fees) which enables us to monitor and detect potential non-compliance with the IPS.</p>

5	BNZ	<p>“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 if 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.”</p>	No change.	<p>Noted. We acknowledge that this information will be helpful in determining whether the broader purposes of the Act have been achieved. However, requesting this information is beyond the scope of what is required to monitor compliance with the obligations under the IPS.</p> <p>MSF information may be sought as part of our wider monitoring work, particularly when we consider the impact of the IPS.</p>
6	Till Payments	<p>“The information identified, if gathered correctly, should enable the Commerce Commission to assess compliance with the obligations under the IPS.”</p>	No change.	Noted.

7	Visa	<p>“The information listed in Section 7.8 should be adequate for the Commission to assess compliance with respect to the interchange fee caps:</p> <ul style="list-style-type: none"> • Total interchange fees paid – divided by the value of transactions at the issuer and interchange category level – will provide the effective rate levied for interchange categories where interchange is levied as a percentage of value. • Total interchange fees paid – divided by the number of transactions at the issuer and interchange category level – will provide the effective rate levied for interchange categories where interchange is levied as a per-transaction fee. <p>In addition, given that some fees are levied on a per-transaction basis and some are levied as a percentage of value, it may help to include an indicator alongside each fee category to ensure the fee type is clearly calculated.”</p>	No change.	Noted.
8	Worldline	<p>“There is nothing stopping the schemes from increasing the interchange fees on both prepaid and commercial cards which seems to go against the idea of promoting economic efficiency. If interchange fees on prepaid and commercial cards remain unregulated, it is only fair that merchants should be able to choose not to accept them. Currently, merchants that accept any scheme card product are required to accept all scheme card products, even though different costs attach to different card product types. This is due to the ‘Honour All Cards’ rule. This rule is imposed by the schemes and is essentially an anticompetitive tying practice. It forces merchants to accept the high interchange fee products alongside the less expensive ones.”</p>	No change.	Noted.

7A(ii) What alternative information, if any, can provide us with assurance that the IPS is being complied with?				
9	ANZ	"We believe the information identified would be adequate to provide the Commission with assurance the IPS is being complied with given its proposed approach."	No change.	Noted.
10	ASB	"Information about the work that parties have undertaken to support the objective of the RPS (e.g. changed pricing so customers benefit from interchange fee reductions. Customer communications) may provide this assurance. So to may information on parties' transition to the new requirements and related controls. Confirmation from parties that commercials have not changed (in response to the IPS) between the scheme and issuer could also demonstrate that there has been no activity (between the parties) to compensate for the impact (reduced interchange)."	No change.	Noted. As set out in the compliance monitoring paper, the Commission may ask participants for 'walk-throughs'. The purpose of these 'walk-throughs' is to understand the systems and processes participants have in place to ensure compliance with the IPS.
11	BNZ	"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 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"	No change.	We have clarified that, in the first instance, we will seek this information from the schemes. However, if required, we may seek this information or any additional or alternative information from other participants.
12	Retail NZ	"...what toolkits will be provided to retailers, to help ensure that businesses are being charged the correct interchange fees. We recommend that these tool kits are created with industry associations like us"	No change.	Noted.
13	Retail NZ	"It's important to maximise transparency when it comes to interchange fees"	No change.	Noted.

14	Retail NZ	"Retail NZ would be prepared, to help design and deliver resources for the goods and services sector, alongside the Commerce Commission, but may need some support for this."	No change.	Noted.
15	Retail NZ	"We strongly recommend that you require acquirers to disclose the total number of transactions for each payment type, the total merchant fees (including, inter alia, interchange) charged for each payment type. This is particularly important to ensure the benefits of the regulation are being passed on to merchants and consumers. It is not clear that this is happening."	No change.	<p>Noted.</p> <p>We acknowledge that this information will be helpful in determining whether the reduction in interchange fees are being passed on to merchants. However, requesting this information is beyond the scope of monitoring compliance with the IPS.</p> <p>This information may be looked at in the Commission's wider IPS impact monitoring.</p>
16	Mastercard	"the Commerce Commission has not identified information which will enable understanding of how net compensation is to be calculated for both the schemes and the issuers. Attestations regarding compliance with the IPS can then be given by both the scheme and the issuer in accordance with the agreed calculation to ensure compliance."	Change.	<p>Chapter 6 of the Guidance provides further clarification around net compensation.</p> <p>We do not consider that attestations regarding compliance with the IPS are appropriate given the nature of net compensation.</p>