

Retail Payment System Bill

Government Bill

As reported from the Economic Development, Science and Innovation
Committee

Commentary

Recommendation

The Economic Development, Science and Innovation Committee has examined the Retail Payment System Bill and recommends unanimously that it be passed. We recommend all amendments unanimously.

New regulatory regime for the retail payment system

This bill would introduce a new regulatory regime for the retail payment system. Its purpose would be to benefit New Zealand merchants and consumers by promoting competition and efficiency in the retail payment system.

How the retail payment system works

When exchanging goods and services, consumers pay merchants using various methods, such as cash, debit or credit cards, online bank transfers, or digital wallets. Each payment method is processed differently, with varying levels of complexity. Cash payments are relatively simple. On the other hand, facilitating secure online credit card payments from one bank to an account at another bank requires technical infrastructure.

The “retail payment system” refers to this web of technical infrastructure. It is made up of various “retail payment networks”, which are operated by different providers. For example, the Visa, Mastercard, and EFTPOS retail payment networks are separate from each other, and each network has its own standards and rules.

Within each card network are several “participants”:

- Issuer—provides debit and credit services to consumers, and issues debit, credit, and EFTPOS cards. Issuers are usually the consumer’s bank.

- Acquirer—financial institution that processes credit and debit card payments on behalf of merchants. Acquirers are often the merchant’s bank.
- Scheme—organisation, such as Visa or Mastercard, that provides the underlying card technology and branding, and sets the card network’s commercial model and rules.
- Switch—Infrastructure that sends information between network participants, so that funds can be taken from the consumer’s account and delivered to the merchant’s account. New Zealand’s three main switch service providers are Paymark, Verifone, and Windcave.

Problems that the bill seeks to address

A study has shown that aspects of the retail payment system lack efficient competition. This can limit innovation and the entry of new market participants. We summarise below the problems that the bill seeks to address.

High merchant service fees

For many types of payments, the acquirer must pay an “interchange fee” to the issuer, a “scheme fee” to the scheme, and a “switch fee” to the switch in exchange for clearing the payment. The interchange fee is usually a percentage of the transaction value. The acquirer wholly passes these fees on to the merchant as “merchant service fees” (MSFs). MSFs vary based on the payment method used. MSFs for credit card and online payments are significantly higher in New Zealand than in other countries.

High MSFs may cause merchants to not accept some payment methods. They may also pass MSFs on to customers through higher prices for goods and services, or surcharges for using higher-cost payment methods.

Lack of competition in the market

A few large banks dominate both sides of New Zealand’s largest retail payment networks, as acquirers and issuers. In their role as issuers, charging high interchange fees would increase profits. As acquirers, they have limited incentive, or ability, to negotiate for lower fees as they can simply pass these on to merchants.

New network participants must negotiate with switch providers to connect to the rest of the retail payment system infrastructure. However, New Zealand’s switch market is dominated by one company. This may limit competitors from accessing the market, thereby reducing competition.

Customers are incentivised to use high-cost payment methods

Many issuers provide rewards programmes and other benefits to customers for using their products. To pay for these programmes, issuers may charge acquirers higher interchange fees, which result in higher MSFs.

If merchants apply surcharges to these high-cost payment methods, they may lose customers to other merchants. If they do not apply surcharges, they must recoup these costs in other ways. Often, they do this through increased prices for goods and ser-

vices. Higher prices affect all consumers, meaning consumers who do not use high-cost payment methods may be subsidising other customers' rewards programmes.

The COVID-19 pandemic has caused a shift away from cash and towards higher-cost payment methods, such as contactless and online payments.

Disadvantages for small businesses

High MSFs disproportionately affect small businesses. Acquirers often charge small businesses more due to their smaller scale and limited bargaining ability. This places small businesses at a disadvantage and reduces their ability to compete and grow.

How the bill would address these issues

The bill would address these issues by providing for a retail payment network to be declared a designated network. This would allow the Commerce Commission to issue network standards in relation to that network. The standards could cover a broad range of matters, including:

- limits on fees for payment services
- requirements for participants to disclose information relating to the network or payment services
- access rules for parts of a designated network, such as requiring participants to provide network access to new participants or allowing a person to gain access to a network or become a participant.

The Commission could make directions to designated network participants regarding the network's rules. For example, directions could require scheme operators to set or amend network rules, or obtain the Commission's approval before amending the network rules.

It could also issue merchant surcharging standards, to limit surcharges that merchants can charge to accept different types of payments. The purpose of these standards would be to ensure that surcharges are no higher than the merchant's costs for providing that payment option.

To monitor and enforce these powers, the bill contains enforcement provisions and remedies available to the Commerce Commission.

Finally, the bill proposes initial designations for the Mastercard and Visa credit and debit networks. The bill would set initial pricing standards for these networks, which would cap interchange fees, and any net compensation (discussed further below), which issuers are able to receive for using these schemes.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We are satisfied that our concerns have been addressed. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

The rest of this commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Consultation with network operators and affected persons

Clause 12 would enable the Commission to recommend to the Minister that a retail payment network be designated. Clause 13 of the bill as introduced sets out the process the Commission must follow before making such a recommendation. One requirement is that it must “notify” the network operator and “consider any submissions made”.¹

We heard from several submitters, including the Commission, that the bill should expressly require the Commission to consult with affected parties before making recommendations. The Commission told us that clause 13 could suggest it would ‘notify’ the operator that a recommendation for designation had been made. However, it said in practice it would seek to first consult operators about any proposed designation.

We agree that this provision should be clearer. The intent of this provision was to protect the principles of natural justice, and good governance, by requiring consultation with affected parties. We believe it should more clearly reflect this intent, and expressly require the Commission to consult affected network operators before recommending that the network be designated.

Some submitters recommended that the bill should also contain specific requirements for consultation. For example, they suggested that the Commission be required to publish draft decisions and accept submissions for a set period of time.

However, we do not agree that it is necessary to include a list of steps the Commission must take when consulting. Different situations will require different levels of consultation and we believe that the Commission can determine an appropriate process, at its discretion.

We therefore recommend amending clause 13(1) by replacing paragraph (b) and removing paragraph (c). We recommend that new paragraph (b) require the Commission to consult affected network operators about the proposed designation before making a recommendation to the Minister.

Similarly, clauses 19(1), 26(1), and 31(1) outline the processes which the Commission must follow before issuing network standards, directions, and merchant surcharging standards, respectively. Under these provisions, the Commission must “send a copy” of the proposed instrument, and the Commission’s reasons for issuing it, to

¹ If the network comprised any part of the system that is a designated financial market institution within the meaning of the Financial Market Infrastructures Act 2021, the Commission must also consult the Reserve Bank of New Zealand.

affected persons or their representatives. It would also be required to “consider any submissions received” about the proposed instrument.

For the reasons discussed above, we believe that these clauses should all be amended to require the Commission to consult affected parties before issuing network standards, directions, or merchant surcharging standards. Accordingly, we recommend amending clauses 19(1)(b), 26(1)(b), and 31(1)(b) to align with the changes made to clause 13(1)(b) about consultation.

Amending and revoking designations

Clause 12(1) of the bill would allow the Commission to recommend to the Minister that a retail payment network be designated. Clause 12(2) lists factors which the Commission must consider when deciding whether to make a recommendation.

Under clause 16, a designation made under clauses 10 to 14 could be amended or revoked. However, clause 16 states that clause 12 does not apply to a revocation order, or an amendment order where the Commission is satisfied that the amendment is minor in nature.

We heard concerns that clause 16’s construction could lead to unintended procedural issues. Under clause 11, the Minister may only act after receiving a recommendation from the Commission. The Commission told us that, if clause 12(1) does not apply to revocation orders, then the Commission would need to infer from clause 11 that it can recommend revocation orders. Otherwise, there may be no way for designations to be revoked.

We recommend amending clause 16(a) and (b) to refer to clause 12(2) only, rather than all of clause 12. This would allow the Commission to recommend that a designation be revoked without needing to consider the factors in clause 12(2).

Clause 15 states that a designation order would also continue in force until it was revoked or replaced, or expired (which must be no later than 10 years after its commencement). However, the bill does not contain any express provision stating what would happen when a designation order ceased to have effect.

For clarity, we consider that the bill should expressly state that if a network ceased to be a designated network, any network standards or directions that applied to that network would also cease to apply to that network. We recommend inserting clause 15(3) to this effect.

Disclosure requirements in standards

Clause 20 details the matters that could be included in network standards. Under clause 20(1)(a), standards could require participants to disclose information relating to payment services, or the designated network, to “all or any of merchants, consumers, and the public”.

We are concerned that this list does not include the Commission. In the bill as introduced, a standard could require public disclosure of information, but there is no mechanism for private disclosure directly to the Commission. We believe that includ-

ing the Commission in this list would strengthen its regulatory oversight. We recommend amending clause 20(1)(a) to state that network standards could require participants to disclose relevant information to the Commission.

Clause 32 contains a similar provision regarding information disclosure requirements in merchant surcharging standards. We recommend amending this provision also.

Clarifying the purpose of merchant surcharging standards

Part 3, subpart 1 of the bill would regulate surcharges that merchants might apply to retail payments, such as a surcharge for using a credit card.

Clause 29, as introduced, states that the purpose of subpart 1 is to ensure that surcharges for payment services are “not excessive and reflect the cost to the merchant” of the payment services used for accepting retail payments. The intention behind this provision was to stop merchants from applying surcharges that are higher than the actual cost of accepting that payment. Under clause 29 as introduced, an “excessive” surcharge was intended to be one that was higher than the merchant’s actual cost.

Some submitters noted that the bill does not expressly define this intent, so the definition of “excessive” would be subjective. We agree that the term “excessive” may be subjective. We recommend amending clause 29 to clarify that merchant surcharges for payment services should be “no more than the cost to the merchant” for accepting that retail payment. This would provide a clear, objective purpose for this subpart.

Commission’s information-gathering powers

Clause 38 of the bill as introduced would give the Commission certain information-gathering powers. Among other things, they would allow the Commission to:

- investigate how effectively and efficiently a participant is supplying retail payment services
- investigate how any proposed standard or direction has been, or may be, applied
- require any participant to provide documents in relation to payment services, or their payment services’ prices or operations
- require any participant to prepare and produce forecasts, forward plans, or other information.

We consider that these monitoring and investigating powers are critical to the success of this legislation. However, under clause 38 as introduced, these powers would be limited to matters in Part 2 of the bill which relates to designating networks, and issuing network standards and directions. The Commission would not be able to use its information-gathering powers in relation to developing or monitoring merchant surcharging standards.

We are also concerned that the bill would limit these powers to “participants” of a retail payment network, which clause 7 defines as excluding merchants.

We recommend that clause 38 be expanded so that it also applies to subpart 1 of Part 3 of the bill, and so that it refers to “any person”, rather than “any participant”.

Crown liability and standard of proof

Clause 41 would allow the Commission to apply to the High Court for pecuniary penalties against a merchant for specified contraventions of the bill. Pecuniary penalties are a civil penalty, rather than a criminal sanction. As such, an applicant must prove their claim “on the balance of probabilities” rather than “beyond reasonable doubt”.

Clause 9(2) would exempt the Crown from paying pecuniary penalties. However, there could be situations where, for example, Crown agencies act as merchants and are subject to merchant surcharging standards. Under clause 9(3), the High Court could make a declaration that the Crown had contravened the legislation if it was satisfied of this “beyond reasonable doubt”.

We do not think it appropriate that civil applications against the Crown should require a higher standard of proof than for private individuals. We believe that the bill should apply a “balance of probabilities” standard to all alleged contraventions. We therefore recommend amending clause 9(3) to state that the Court may make a declaration if it is satisfied, on the balance of probabilities, that the Crown has contravened a provision of the legislation.

Defining “net compensation”

Subpart 3 of Part 1 of Schedule 1 would create an “initial pricing standard” which would come into force 6 months after the bill received Royal assent. The initial pricing standard would apply in respect of four initial designated networks listed in Subpart 2 of Part 1 of Schedule 1.² It would require these networks to cap interchange fees (which the issuer charges to the acquirer, and typically make up a large proportion of merchants’ servicing fees). Fees would be capped at levels defined in the bill for different payment methods, or their 1 April 2021 levels (whichever is lower).

In Schedule 1, clause 7(4) and (5) of the bill as introduced, the initial pricing standard prohibits scheme operators from providing “net compensation” to issuers. The intention behind this prohibition is to stop participants from avoiding the interchange fee caps. For example, a scheme operator could provide rebates or other monetary or non-monetary rewards to issuers to make up for lower interchange fees.

Several submitters told us that the prohibition on net compensation is unclear. They suggested that the broad wording of the clause, as introduced, could limit schemes’ ability to incentivise issuers to switch schemes. This may limit competition between Visa and Mastercard, and innovation.

We agree that this provision could be clearer. We recommend removing clause 7(4) and (5) in Schedule 1. Instead, we would amend the wording of the pricing standard in clause 7(2) and 7(3) to state that “total interchange fees” per transaction must not exceed the rates specified.

² These are the Visa credit and debit networks, and the Mastercard credit and debit networks.

We recommend inserting definitions of various terms in new clause 7(4). The “total interchange fees” would be the sum of the interchange fee and any net compensation that can reasonably be attributed to a transaction (for example, a monthly rebate could be split across transactions within that period). “Net compensation” would be defined as the net value of any monetary and non-monetary payments, rebates, or incentives that have a purpose of compensating issuers for the pricing standard’s effect.

We believe this would better link the net compensation provisions to retail payment transactions, similar to interchange fees. This would better serve the bill’s purpose of providing for competition between the retail payment networks and allowing for future innovation.

Initial pricing standard does not apply to commercial credit payment products

Clause 7 of Schedule 1 states that the initial pricing standard excludes “commercial credit payment products”, and “payment instruments that are issued outside New Zealand”.

Some submitters recommended that the bill include a definition of “commercial credit payment products” so it is clear which products the initial pricing standard’s interchange caps apply to. They suggested the bill adopt the wording of the Credit Contracts and Consumer Finance Act 2003 (CCCFA), section 11, which defines a consumer credit contract as one in which the “credit is to be used, or is intended to be used, wholly or predominantly for personal, domestic, or household purposes”.

We agree that adding a definition of “commercial credit payment products” would strengthen the bill. However, we believe that the definition used in the CCCFA is too narrow. That definition could preclude business consumers that use non-commercial products for business from benefitting from the interchange caps.

Instead, we recommend defining a “commercial credit payment product” in clause 7(4) of Schedule 1 as any credit product that is issued to businesses for use wholly for purposes other than personal, domestic, or household purposes, and that is charged directly to the account of the business.

ACT Party differing view

The language in the bill enables the Commission to request network operators (such as Mastercard and Visa) to set or amend their rules under the Commission’s direction, or require their approval before they make substantive changes to them. Given that they operate a global network this requirement is entirely impractical and is not a standard that operates in any other country. The Commerce Commission should not intervene into the rules that govern the network.

Schedule 1, subpart 3—Initial Pricing Standard. The language directly relates to the clause on prohibition on certain compensation. The way the clause is currently written has the potential effect to diminish competition, access to innovation, and may act as a deterrent to new market entrants.

ACT believes the bill should not place limits on other compensation provided by networks to banks. This could have the effect of limiting competition by constraining a

bank's ability to change providers and deter new market entrants. Subpart 3 of the initial pricing standard could reflect this.

It looks like two networks have been designated, but not all networks were designated; this could create an imbalance and drive up costs to shop owners; we believe all systems within a payment category are treated equally.

The Commerce Commission should be sensible and consider impacts to innovation and competition in their overview of changing practices in a New Zealand context.

A cost-benefit analysis should be conducted two years after the Act is introduced to see if the savings promoted by the Minister and advisers have delivered for New Zealand businesses. The CCCFA rules may also affect switching by business for services and curtail benefits.

Appendix

Committee process

The Retail Payment System Bill was referred to the committee on 26 October 2021.

The closing date for submissions on the bill was 25 November 2021. We received and considered 30 submissions from interested groups and individuals. We heard oral evidence from 4 submitters.

We received advice on the bill from the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Jamie Strange (Chairperson)

Glen Bennett

Naisi Chen

Hon Judith Collins (from 8 December 2021)

Melissa Lee

Hon Todd McClay (until 8 December 2021)

Andrew Bayly also participated in our consideration of this bill.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr David Clark

Retail Payment System Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Retail Payment System Act **2021**.

2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent. 5
- (2) However, **subpart 3 of Part 1 of Schedule 1** (initial pricing standard) comes into force 6 months after the date on which this Act receives the Royal assent.

Part 1 10
Preliminary provisions

3 Purpose

The purpose of this Act is to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand. 15

4 Purpose and principles of exercising functions and powers under this Act

- (1) The functions and powers of the Commission and the Minister must be exercised for the purpose set out in **section 3**.
- (2) In deciding whether to exercise their functions and powers, and in exercising them, the Commission and the Minister must take into account the following principles to the extent that the Commission or Minister considers them relevant:
- (a) that merchants and consumers should pay no more than reasonable fees for the supply of payment services; and
 - (b) that the retail payment system provides a reasonable degree of transparency.

Compare: 2021 No 13 s 13

5 Overview of this Act

This Act—

- (a) provides for the regulation of participants in retail payment networks (including via initial designations and an initial pricing standard); and
- (b) confers certain functions and powers on the Commission for that purpose, of which some apply to designated networks and others apply to all retail payment networks; and
- (c) enables the Commission to regulate fees charged by merchants in respect of certain payment services (for example, payment surcharges); and
- (d) provides for investigation, monitoring, and enforcement by the Commission.

6 Functions of Commission under this Act

In addition to the other functions conferred on the Commission by this Act, the Commission's functions in relation to the retail payment system are as follows:

- (a) to monitor competition and efficiency in the retail payment system;
- (b) to conduct inquiries, reviews, and studies into any matter relating to the retail payment system in New Zealand;
- (c) to make available reports, summaries, and information about the things referred to in **paragraphs (a) and (b)**;
- (d) to co-operate with and assist other law enforcement or regulatory agencies that carry out a role in relation to the retail payment system.

Compare: 1986 No 5 s 49; 1986 No 121 s 6

7 Interpretation

In this Act, unless the context otherwise requires,—

access standard means a network standard issued by the Commission under **subpart 2 of Part 2** relating to a matter referred to in **section 20(1)(c)**

affected persons, in relation to a proposed designation, standard, or direction, means the persons that the Commission considers will be substantially affected by the making of the designation, issuing of the standard, or giving of the direction, as the case may be

Commission has the same meaning as in the Commerce Act 1986 5

consumer means a person that acquires goods or services from a merchant

contravention of this Act includes a contravention of any standard or direction

designated network means any retail payment network that is—

(a) declared to be a designated retail payment network under **subpart 1 of Part 2**; or 10

(b) designated under an initial designation

designation order means both of the following:

(a) an Order in Council under **section 10** declaring a retail payment network to be a designated network: 15

(b) an initial designation

direction means a direction of the Commission under **subpart 3 of Part 2** in relation to network rules

goods has the same meaning as in the Fair Trading Act 1986

information disclosure standard means a network standard issued by the Commission under **subpart 2 of Part 2** relating to a matter referred to in **section 20(1)(a)** 20

initial designation means a designation in **subpart 2 of Part 1 of Schedule 1**

initial pricing standard means the initial pricing standard in **subpart 3 of Part 1 of Schedule 1** 25

make publicly available means to publish on an Internet site that is maintained by, or on behalf of, the Commission and is publicly available free of charge

merchant means a supplier (within the meaning of the Fair Trading Act 1986) of goods or services to consumers 30

merchant surcharging standard means a standard issued by the Commission under **subpart 1 of Part 3**

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 35

network means a retail payment network

network infrastructure means infrastructure that is necessary for the provision of the network's payment services

network operator or operator, in relation to a retail payment network, means any person that is or does 1 or more of the following:

- (a) is wholly or partly responsible to the participants (or any of them) for the network rules:
- (b) operates or manages the network or the core infrastructure of the network 5

network rules means rules that set out (among other things) the following:

- (a) how the network is to be constituted (for example, as a set of arrangements between its participants or as a legal person with whom its participants are to interact): 10
- (b) how activities on the network are to be carried out:
- (c) the rights and obligations under the network of its operators and participants

network standard means both of the following:

- (a) a standard issued by the Commission under **subpart 2 of Part 2**: 15
- (b) the initial pricing standard

participant, in relation to a retail payment network, means a person that is a network operator or any other service provider

payment means a transfer of monetary value

payment method means the form in which a consumer makes or is able to make a retail payment (for example, using a card online or without contact in person) 20

payment product means a class of retail payment within a retail payment network (for example, personal or commercial retail payments within a retail payment network) 25

payment services means services that facilitate retail payments

payment surcharge means an amount (however described) charged by a merchant, in addition to the price of goods or services,—

- (a) for accepting a retail payment; or
- (b) for using one payment method rather than another 30

pricing standard means both of the following:

- (a) a network standard issued by the Commission under **subpart 2 of Part 2** relating to a matter referred to in **section 20(1)(b)**:
- (b) the initial pricing standard

retail payment means a payment by a consumer to a merchant for the supply of goods or services 35

retail payment network means the participants, arrangements, contracts, and rules that facilitate a class of retail payment

retail payment system means the system comprising all retail payment networks

service provider, in relation to a retail payment network, means any person that provides or facilitates the provision of payment services in the network (for example, a payment or an infrastructure service provider), but does not include a merchant 5

services has the same meaning as in the Fair Trading Act 1986, except that it does include rights or benefits in the form of the supply of goods or the performance of work under a contract of service

standard means a network standard or a merchant surcharging standard. 10

8 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

9 Act binds the Crown

- (1) This Act binds the Crown. 15
- (2) However, the Crown is not liable to pay a pecuniary penalty under **subpart 3 of Part 3**.
- (3) Where it is alleged that the Crown has contravened any provision of this Act, the Commission or the person directly affected by the contravention may apply to the court for a declaration that the Crown has contravened that provision and, if the court is satisfied ~~beyond a reasonable doubt on the balance of probabilities~~ that the Crown has contravened that provision, it may make a declaration accordingly. 20

Compare: 1986 No 5 s 5

Part 2 25

Designated networks

Subpart 1—Designations

10 Designation of networks by Order in Council

- (1) The Governor-General may, on the recommendation of the Minister, make an Order in Council declaring a retail payment network (excluding the cash retail payment network) to be a designated network. 30
- (2) A designation order is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

11 Minister's recommendation

- (1) The Minister may recommend to the Governor-General that a retail payment network be designated only after receiving a recommendation from the Commission.
- (2) In deciding whether to make a recommendation that a designation order be made, the Minister may do any of the following: 5
- (a) accept or reject the Commission's recommendation:
 - (b) request that the Commission reconsider any matter (such as an error, an oversight, or competing policy interests):
 - (c) make any other decision that the Minister considers is in the public interest. 10

12 Commission's recommendation

- (1) The Commission may recommend to the Minister that a retail payment network be designated.
- (2) In deciding whether to make a recommendation, the Commission must take into account the following: 15
- (a) any features of the retail payment network, or any conduct of participants in the network, that reduce, or are likely to reduce, competition or efficiency:
 - (b) the nature of the network, including the number, value, and nature of the transactions that the network currently processes or is likely to process in the future: 20
 - (c) the Financial Market Infrastructures Act 2021 and any other regulatory requirements in other New Zealand laws that the Commission considers relevant. 25

13 Process for Commission's recommendation

- (1) Before making a recommendation under **section 12**, the Commission must—
- (a) consult the Reserve Bank of New Zealand if the network comprises any part of a system that is a designated FMI within the meaning of the Financial ~~Markets~~-Market Infrastructures Act 2021; and 30
 - (b) ~~notify an operator of the network; and~~
 - (c) ~~consider any submissions made.~~
 - (b) consult affected operators of the network about the proposed designation (including the Commission's reasons for proposing to make a recommendation). 35
- (2) The Commission must make the recommendation publicly available as soon as practicable after making it, including a statement of its reasons for making the recommendation.

14 Content of designation

- (1) A designation order must specify both of the following:
- (a) the network:
 - (b) at least 1 person that is an operator of the network.
- (2) A designation order may specify 1 or more of the following: 5
- (a) the payment products in the designated network:
 - (b) documents that set out some or all of the network rules (whether the documents are referred to by name or description):
 - (c) classes of participants.
- Compare: 2021 No 13 s 29 10

15 Duration of designation

- (1) A designation order continues in force until the date on which the order expires (the **expiry date**) or is revoked or replaced, whichever occurs first.
- (2) A designation order must state its expiry date, which must be no later than 10 years after the date on which the order commences. 15
- (3) If a network ceases to be a designated network, any network standard or direction that applies to the network—
- (a) expires if the standard or direction applies only to that network; or
 - (b) ceases to apply to the network in any other case.

16 Amendment and revocation of designation 20

A designation order may be amended or revoked under **sections 10 to 14**, except that—

- (a) **sections 12(2) and 13** do not apply to an order that amends a designation order if the Commission is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature only (for example, a name change of an operator): 25
- (b) **section 12(2)** does not apply to a revocation order.

Subpart 2—Network standards for designated networks

17 Commission may issue network standards for designated networks

- (1) The Commission may issue network standards. 30
- (2) A network standard may do either or both of the following:
- (a) impose requirements on participants in designated networks:
 - (b) set out requirements applying to designated networks with which the participants must ensure compliance.
- (3) A network standard may— 35

- (a) apply to all participants in designated networks, a particular participant, or a class of participants:
 - (b) apply to all designated networks, a particular designated network, or a class of designated networks:
 - (c) apply in all circumstances, particular circumstances, or a class of circumstances (for example, in relation to payment products or payment methods). 5
- (4) A network standard issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10
- Compare: 2021 No 13 s 31

18 Criteria for issuing network standards

In deciding whether to issue a network standard (the **proposed standard**), and in deciding on its terms, the Commission must,—

- (a) in the case of a proposed pricing standard or access standard, take into account whether there are any features of the retail payment network, or any conduct of participants in the network, that reduces, or are likely to reduce, competition or efficiency: 15
- (b) in the case of a proposed access standard, consider the effect on innovation in the retail payment system of issuing a network standard.

19 Process for issuing network standards 20

- (1) Before issuing a network standard (the **proposed standard**), the Commission must—
- (a) make the proposed standard publicly available; and
 - (b) ~~send a copy of the proposed standard, and the Commission's reasons for issuing the proposed standard, to affected persons or to persons that the Commission considers to be representatives of affected persons; and~~ 25
 - (c) ~~consider any submissions received about the proposed standard.~~
 - (b) consult affected persons, or persons that the Commission considers to be representatives of affected persons, about the proposed standard (including the Commission's reasons for issuing the proposed standard). 30
- (2) After issuing a network standard, the Commission must make the standard, and the Commission's reasons for issuing the standard, publicly available.

Compare: 2021 No 13 s 32

20 Subject matter of network standards

- (1) A network standard may deal with, or otherwise relate to, 1 or more of the following matters: 35
- (a) the disclosure of information relating to payment services or the designated network, including requirements for information to be provided—

- (i) by participants to all or any of merchants, consumers, the Commission, and the public; and
- (ii) by ~~one~~ class of participants to another:
- (b) pricing for payment services, including—
 - (i) pricing principles and limits on fees (or components of fees) charged by all or any participants or classes of participants in a designated network: 5
 - (ii) pricing method requirements, including requirements relating to pricing methodologies and how prices are expressed, and to pricing formats when prices are offered to merchants: 10
- (c) access requirements for aspects of a designated network, including—
 - (i) how a person may become a participant of a network or gain access to network infrastructure or services, including requiring any class of participants to allow new participants to access all or certain aspects of the network (for example, to allow access for new acquirers to a network or to provide for new entrants or acquirers to access switch infrastructure or for providers of new payment products to use the retail payment network): 15
 - (ii) how a participant may be required to provide access to network infrastructure or services to participants. 20
- (1A) A pricing standard may relate both to fees and to payments having an equivalent object or effect to fees.
- (2) A network standard may require participants to give to the Commission reports relating to any contraventions of requirements imposed by or under this Act. 25
Compare: 2021 No 13 s 34
- 21 Pecuniary penalty for contravention of network standard**
- (1) A participant who contravenes a requirement of a network standard is liable to a pecuniary penalty.
- (2) *See **subpart 3 of Part 3*** for further provisions about pecuniary penalties.
- 22 Duration of network standard** 30
- (1) A network standard continues in force until the date on which it expires (the **expiry date**) or is revoked or replaced, whichever occurs first.
- (2) A standard must state its expiry date, which must be no later than 10 years after the date on which the standard commences.
- 23 Amendment and revocation of network standards** 35
- A network standard may be amended or revoked under **sections 17 to 20**, except that—

- (a) **sections 18 and 19** do not apply to an amendment of a network standard if the Commission is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature only:
- (b) **section 18** does not apply to the revocation of a network standard.

Subpart 3—Rules of designated networks 5

24 **Commission may give directions about network rules**

- (1) The Commission may, by notice (a **direction notice**), direct 1 or more participants of a designated network to take specified action in accordance with the direction.
- (2) A direction may require 1 or more operators to do 1 or more of the following in accordance with the direction: 10
 - (a) set network rules:
 - (b) amend network rules:
 - (c) notify the Commission of any amendments made to network rules:
 - (d) apply for, and obtain, the Commission’s approval before making amendments to network rules that are of a type identified in the direction as substantive amendments. 15
- (3) A direction may require 1 or more participants to comply with 1 or more network rules.
- (4) A direction must state the reasons for which it is given. 20
- (5) A direction given to a class of participants is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2021 No 13 s 80

25 **Criteria for giving directions**

In deciding whether to give a direction that relates to setting or amending network rules, and in deciding on its terms, the Commission must take into account whether there are any features of the retail payment network, or any conduct of participants in the network, that reduces, or are likely to reduce, competition or efficiency. 25

26 **Process for giving directions** 30

- (1) Before giving a direction that relates to setting or amending network rules (the **proposed direction**), the Commission must—
 - (a) make the proposed direction publicly available; and
 - (b) send a copy of the proposed direction, and the Commission’s reasons for giving the proposed direction, to affected persons or to persons that the Commission considers to be representatives of affected persons; and 35
 - (c) consider any submissions received about the proposed direction.

- (b) consult affected persons, or persons that the Commission considers to be representatives of affected persons, about the proposed direction (including the Commission's reasons for giving the proposed direction).
- (2) After giving a direction, the Commission must make the direction, and the Commission's reasons for giving the proposed direction, publicly available. 5
- 27 Pecuniary penalty for contravention of direction**
- (1) A participant that contravenes a requirement of a direction is liable to a pecuniary penalty.
- (2) *See **subpart 3 of Part 3*** for further provisions about pecuniary penalties.
- 28 Amendment and revocation of directions** 10
- A direction may be amended or revoked in the same way in which it may be made, except that—
- (a) **sections 25 and 26** do not apply to an amendment of a ~~network standard and direction~~ if the Commission is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature only: 15
- (b) **section 25** does not apply to the revocation of a ~~network standard direction~~.

Part 3

Merchant surcharging, monitoring and enforcement, and miscellaneous provisions 20

Subpart 1—Merchant surcharging standards

- 29 Purpose of this subpart**
- (1) The purpose of this subpart is to ensure that payment surcharges for payment services ~~are not excessive and reflect~~ are no more than the cost to the merchant of the ~~payment services used for accepting the retail payment services used for accepting retail payments.~~ 25
- (2) The functions and powers of the Commission under this subpart must also be exercised for that purpose.
- Compare: Competition and Consumer Amendment (Payment Surcharges) Act 2016 (Aust), s 55
- 30 Commission may issue merchant surcharging standards** 30
- (1) The Commission may issue merchant surcharging standards.
- (2) A merchant surcharging standard may impose requirements on merchants that use payment services for retail payments.
- (3) A merchant surcharging standard may—

- (a) apply to all merchants that accept payment services from networks or a class of those merchants:
- (b) apply to all networks, a particular network, or a class of networks:
- (c) apply in all circumstances, particular circumstances, or a class of circumstances (for example, in relation to payment methods or payment products). 5
- (4) A standard issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
Compare: 2021 No 13 s 31
- 31 Process for issuing merchant surcharging standards** 10
- (1) Before issuing a merchant surcharging standard (the **proposed standard**), the Commission must—
- (a) make the proposed standard, and the Commission’s reasons for issuing the proposed standard, publicly available; and
- ~~(b) send a copy of the proposed standard, and the Commission’s reasons for issuing the proposed standard, to persons that the Commission considers to be representatives of affected persons; and~~ 15
- ~~(c) consider any submissions received about the proposed standard.~~
- (b) consult persons that the Commission considers to be representatives of affected persons about the proposed standard (including the Commission’s reasons for issuing the proposed standard). 20
- (2) After issuing a merchant surcharging standard, the Commission must make the standard, and the Commission’s reasons for issuing the proposed standard, publicly available. 25
Compare: 2021 No 13 s 32
- 32 Subject matter of merchant surcharging standards**
- (1) A merchant surcharging standard may deal with, or otherwise relate to, 1 or more of the following matters:
- (a) the disclosure of information relating to payment surcharges, including requirements for information to be provided— 30
- (i) by merchants to all or any consumers, the Commission, and the public; and
- (ii) by ~~one~~ class of merchants to consumers that acquire their goods or services:
- (b) requirements that merchants must represent payment surcharges in respect of payment services in a manner set out in the standard: 35
- (c) requirements that merchants must limit payment surcharges in respect of payment services in accordance with the standard:

- (d) requirements that merchants must keep records of how payment surcharges are calculated.
- (2) Requirements under **subsection (1)(b)** and **(c)** may be linked to—
- (a) principles and limits on payment surcharges (or components of payment surcharges) payable by consumers or classes of consumers to merchants: 5
- (b) requirements relating to surcharging methodologies and how payment surcharges are expressed, and to formats when payment surcharges are charged to consumers.
- Compare: 2021 No 13 s 34
- 33 Pecuniary penalty for contravention of merchant surcharging standard** 10
- (1) A ~~participant-merchant~~ who contravenes a requirement of a merchant surcharging standard is liable to a pecuniary penalty.
- (2) See **subpart 3** for further provisions about pecuniary penalties.
- 34 Amendment and revocation of merchant surcharging standards**
- A merchant surcharging standard may be amended or revoked in the same way 15
in which it may be made, except that **section 31** does not apply to—
- (a) a standard that amends another standard if the Commission is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature only:
- (b) a revocation of a standard. 20
- 35 Notice to take corrective action**
- (1) If satisfied that a merchant has failed to comply with any requirements of a merchant surcharging standard, the Commission may, by written notice given to the merchant, require the merchant to take any steps specified in the notice to— 25
- (a) remedy the non-compliance; or
- (b) ensure that the non-compliance is not continued or repeated.
- (2) The notice must specify a reasonable period (a **specified period**) within which the required steps must be taken.
- (3) A merchant given a notice must comply with the notice within the specified 30
period.
- (4) A merchant that contravenes a notice is liable to a pecuniary penalty.
- (5) See **subpart 3** for further provisions about pecuniary penalties.
- Compare: 2020 No 60 s 23

Subpart 2—Provisions of Commerce Act 1986 of general application

36 **Application of this subpart**

~~This subpart applies to all retail payment networks.~~

37 **Monitoring and investigation powers of Commission**

The following provisions of the Commerce Act 1986 apply with any necessary modifications: 5

- (a) section 98 (Commission may require person to supply information or documents or give evidence):
- (b) sections 98A and 98G (Commission's powers of search and seizure):
- (c) section 99 (powers of Commission to take evidence): 10
- (d) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):
- (e) section 106 (proceedings privileged).

38 **Powers of Commission based on subpart 8 of Part 4 of Commerce Act 1986** 15

For the purpose of carrying out its functions and exercising its powers under ~~Part 2~~ Part 2 and subpart 1 of this Part, the Commission may, in addition to exercising its powers under this Act and section 98 of the Commerce Act 1986, do any of the following:

- (a) investigate any of the following: 20
 - (i) how effectively and efficiently any participant person is supplying retail payment services:
 - (ii) how any standard or direction being considered by the Commission may be applied, or how any standard or direction has been applied, in considering standards or directions: 25
- (b) examine, consider, or investigate any activity, cost, revenue, transfer, asset valuation, circumstance, or event that is occurring or that has occurred during the previous 7 years:
- (c) by notice in writing, require any participant person—
 - (i) to prepare and produce forecasts, forward plans, or other information; and 30
 - (ii) to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information:
- (d) by notice in writing, require any participant person that the Commission has reason to believe may have information or documents relevant to an investigation, audit, or inquiry to do either or both of the following: 35

- (i) produce or supply to the Commission documents and information in relation to payment services or the prices or operations of the person in respect of payment services:
- (ii) answer any questions about any matter that the Commission has reason to believe may be relevant to the investigation, audit, or inquiry: 5
- (e) by notice in writing, require any ~~participant~~ person, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or a member of a class of appropriately qualified persons, as determined by the Commission in relation to the matters in **paragraphs (a), (b), (c), and (d)(i)**. 10

Compare: 1986 No 5 s 53ZD

39 Application of other provisions of Commerce Act 1986

The following provisions of the Commerce Act 1986 apply with any necessary modifications: 15

- (a) section 13 (termination of appointment of members):
- (b) section 15 (meetings of Commission):
- (c) section 16 (chairperson may direct Commission to sit in Divisions):
- (d) section 17 (assent to determination):
- (e) section 25 (functions of Commission in relation to dissemination of information): 20
- (f) section 26 (Commission to have regard to economic policies of Government):
- (g) section 79 (evidence not otherwise admissible):
- (h) section 79A (proceedings for pecuniary penalties): 25
- (i) section 88 (general provisions relating to granting of injunctions), as if the reference in subsection (3A) to acquirers were a reference to merchants:
- (j) section 88A (when undertaking as to damages not required by Commission): 30
- (k) section 89 (other orders):
- (l) section 90 (conduct by employees, agents, and others):
- (m) sections 99B to 99P (assistance to overseas regulators), as if references to an overseas regulator were a reference to an overseas body that has functions in relation to payment services corresponding to those of the Commission under this Act: 35
- (n) section 100A (Commission may state case for opinion of High Court):
- (o) sections 101 (notices) and 102 (service of notices):

(p) section 103 (offences), as if the reference to section 53ZD were a reference to **section 38** of this Act and as if the references to sections 53B(1)(c) and 53N were ignored:

(q) section 104 (determinations of Commission):

(r) section 106A (judicial notice): 5

(s) section 109 (Commission may prescribe forms).

Compare: 2020 No 60 s 33

Subpart 3—Pecuniary penalties

- 40 Pecuniary penalty orders for contraventions of network standards and directions** 10
- (1) The High Court may, on the application of the Commission, order a participant (A) to pay to the Crown a pecuniary penalty if satisfied that A has—
- (a) contravened a pricing standard; or
 - (b) been involved in a contravention of a pricing standard.
- (2) The amount of any pecuniary penalty under **subsection (1)** must not exceed,— 15
- (a) in the case of an individual, \$500,000 for each act or omission; or
 - (b) in any other case, \$5 million for each act or omission.
- (3) The High Court may, on the application of the Commission, order a participant (A) to pay to the Crown a pecuniary penalty if satisfied that A has— 20
- (a) contravened an information disclosure standard; or
 - (b) contravened an access standard; or
 - (c) contravened a direction to set or amend network rules under **section 24(2)(a) or (b)**; or
 - (d) contravened a direction to comply with 1 or more network rules under **section 24(3)**; or 25
 - (e) been involved in a contravention of any of those things.
- (4) The amount of any pecuniary penalty under **subsection (3)** must not exceed,— 30
- (a) in the case of an individual, \$200,000 for each act or omission; or
 - (b) in any other case, \$2 million for each act or omission.
- (5) The High Court may, on the application of the Commission, order an operator (A) to pay to the Crown a pecuniary penalty if satisfied that A has—
- (a) contravened a direction to notify the Commission of any amendments made to network rules under **section 24(2)(c)**; or 35

- (b) contravened a direction to obtain the Commission’s approval before making any substantive amendments to network rules under **section 24(2)(d)**; or
- (c) been involved in a contravention of either of those things.
- (6) The amount of any pecuniary penalty under **subsection (5)** must not exceed,—
- (a) in the case of an individual, \$15,000 for each act or omission; or
- (b) in any other case, \$150,000 for each act or omission.
- Compare: 1986 No 5 s 80; 2020 No 60 s 30
- 41 Pecuniary penalty orders for contraventions of merchant surcharging standards** 10
- (1) The High Court may, on the application of the Commission, order a merchant (A) to pay to the Crown a pecuniary penalty if satisfied that A has—
- (a) contravened a merchant surcharging standard; or
- (b) been involved in a contravention of a merchant surcharging standard. 15
- (2) The amount of any pecuniary penalty under **subsection (1)** must not exceed,—
- (a) in the case of an individual, \$200,000 for each act or omission; or
- (b) in any other case, \$600,000 for each act or omission.
- 42 Pecuniary penalties for contravention of notice to take corrective action** 20
- (1) The District Court may, on the application of the Commission, order a merchant to pay to the Crown a pecuniary penalty if satisfied that the merchant has failed to comply with a notice given by the Commission under **section 35(1)**.
- (2) The amount of any pecuniary penalty under **subsection (1)** must not exceed,— 25
- (a) in the case of an individual, \$10,000 for each act or omission; or
- (b) in any other case, \$30,000 for each act or omission.
- Compare: 2020 No 60 s 30(4), (5), (6)
- 43 Who is involved in contraventions**
- In this subpart, a person is **involved in a contravention** of any of the provisions of this Act if the person— 30
- (a) has attempted to contravene any of those provisions; or
- (b) has aided, abetted, counselled, or procured any other person to contravene any of those provisions; or
- (c) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any of those provisions; or 35

- (d) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any of those provisions; or
- (e) has conspired with any other person to contravene any of those provisions. 5

44 Proceedings for pecuniary penalties

- (1) Where conduct by any person constitutes a contravention of 2 or more provisions referred to in this subpart, proceedings may be instituted under this subpart against that person in relation to the contravention of any 1 or more of the provisions. 10
- (2) However, no person is liable to more than 1 pecuniary penalty under this subpart in respect of the same conduct.

45 Considerations for court

- In determining an appropriate penalty under this subpart, the court must have regard to— 15
- (a) the nature and extent of the contravention; and
- (b) the nature and extent of any loss or damage suffered by any person because of the contravention; and
- (c) any gains made or losses avoided by the person in contravention; and
- (d) whether the person in contravention has paid an amount in compensation or taken other steps for reparation or restitution; and 20
- (e) the circumstances in which the contravention or other act or omission took place (including whether it was intentional, inadvertent, or caused by negligence); and
- (f) any previous contraventions of a similar nature; and 25
- (g) any other relevant matter.

Compare: 2020 No 60 s 30(6)

Subpart 4—Other proceedings and enforcement

Compensation

46 Court may order compensation 30

- (1) The court may order a person to pay compensation to any person (an **aggrieved person**) who has suffered, or is likely to suffer, loss or damage as a result of the contravention of this Act.

Guidance note

A “contravention of this Act” includes a contravention of any standard or direction. See **section 7**. 35

- (2) An application for an order under this section may be made by the Commission or by an aggrieved person.
- (3) In proceedings under this section, the court may make any orders as to costs that it thinks fit.
- Compare: 1986 No 5 s 87A; 2013 No 69 s 494; 2020 No 60 s 32

5

Undertakings

47 Enforceable undertakings in connection with enforcement of this Act

The following provisions of the Commerce Act 1986 apply with any necessary modifications:

- (a) section 74A (Commission may accept undertakings): 10
- (b) section 74B (matters included in undertakings):
- (c) section 74C (enforcement of undertakings).

Injunctions

48 Court may grant injunction

- (1) The court may, on the application of the Commission or any other person, grant an injunction— 15
- (a) restraining a person from engaging in conduct that constitutes or would constitute a contravention of this Act:
- (b) requiring a person to do an act or a thing if—
- (i) that person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do that act or thing; and 20
- (ii) the refusal or failure was, is, or would be a contravention of this Act.

Guidance note

A “contravention of this Act” includes a contravention of any standard or direction. See **section 7**. 25

- (2) The court may at any time rescind or vary an injunction granted under this sub-part.
- Compare: 2013 No 69 s 480; 2020 No 60 s 35

49 When court may grant restraining injunctions 30

- (1) The court may grant an injunction restraining a person from engaging in conduct of a particular kind if—
- (a) it is satisfied that the person has engaged in conduct of that kind; or
- (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind. 35

- (2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.
- (3) **Subsections (1)(a) and (2)** apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind. 5
- (4) **Subsections (1)(b) and (2)** apply whether or not—
- (a) the person has previously engaged in conduct of that kind; or
 - (b) there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- Compare: 2013 No 69 s 481; 2020 No 60 s 36 10
- 50 When court may grant performance injunctions**
- (1) A court may grant an injunction requiring a person to do an act or a thing that they are required to do under this Act (including under a standard or direction) if—
- (a) it is satisfied that the person has refused or failed to do that act or thing; 15
or
 - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing.
- (2) The court may grant an interim injunction requiring a person to do an act or a thing that they are required to do under this Act (including under a standard or direction) if in its opinion it is desirable to do so. 20
- (3) **Subsections (1)(a) and (2)** apply whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing.
- (4) **Subsections (1)(b) and (2)** apply whether or not— 25
- (a) the person has previously refused or failed to do that act or thing; or
 - (b) there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.
- Compare: 2020 No 60 s 37
- 51 Commission’s undertaking as to damages not required** 30
- (1) If the Commission applies to the court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.
- (2) In determining the Commission’s application for the grant of an interim injunction, the court must not take into account that the Commission is not required 35
to give an undertaking as to damages.
- Compare: 2013 No 69 s 482; 2020 No 60 s 38

- 52 Limit on proceedings**
 Proceedings for civil pecuniary penalties or compensation may be commenced within 3 years after the contravention occurred.
 Compare: 1986 No 5 ss 86(6), 87(6)
- Subpart 5—Miscellaneous provisions 5
- 53 Authorisation for restrictive trade practices**
 Part 2 of the Commerce Act 1986 does not apply in respect of a network standard or direction or any matter reasonably necessary for giving effect to a network standard or a direction.
- 54 Applications, submissions, and other information given to Commission or other person in accordance with Commission’s requirement** 10
- (1) An application or a submission made, or any other information given, to the Commission, or to be made or given to another person in accordance with a requirement of the Commission, must be made or given in the way required by the Commission. 15
- (2) The Commission’s requirements may include (without limitation) requirements about 1 or more of the following: 20
- (a) the form in which the application, submission, or information must be made or given:
- (b) the information that must be given with the application, submission, or information: 20
- (c) the way in which any information referred to in this section must be verified.
- (3) Information to be given to the Commission or other person must be given within the period determined by the Commission. 25
- Compare: 2021 No 13 s 149
- 55 Regulations**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes: 30
- (a) requiring the payment to the Commission of fees and charges for obtaining the Commission’s approval for amendments to network rules that are of a type identified by the Commission in a direction under **section 24(2)(d)** as substantive amendments, and prescribing the amounts of the fees and charges or the way in which the amounts are to be calculated: 30
- (b) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 35
- (2) The Minister may make a recommendation only if the Minister has consulted persons that the Minister considers are likely to be significantly affected by the

regulations or persons that the ~~Commission~~ Minister considers to be representatives of those persons.

- (3) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (4) Regulations may authorise the Commission to refund or waive, in whole or in part and on any conditions as may be prescribed, payment of any fee or charge payable in relation to any person or class of persons. 5
- (5) The Commission may refuse to carry out a function until a fee or charge is paid.
- (6) Any fee or charge payable to the Commission is recoverable by the Commission in any court of competent jurisdiction as a debt due to the Commission. 10
- (7) If the regulations authorise the Commission under **subsection (4)**,—
 - (a) an instrument by which the Commission grants a refund or waiver is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named persons; and 15
 - (b) the regulations must contain a statement to that effect.

Compare: 2021 No 13 s 153

Schedule 1

Transitional, savings, and other related provisions

s 8

Part 1

Provisions relating to this Act as enacted

5

Subpart 1—Interpretation

1 Interpretation

In this Part, unless the context otherwise requires,—

acquirer, in relation to an initial designated network, has the same meaning that it has under the network rules of that network 10

card or **payment instrument** means any form of payment method (including virtual cards and tokenised credentials)

credit retail payment network, in relation to the initial pricing standard, means a designated network described in **clauses 3 to 6** that is known as Mastercard credit or Visa credit 15

debit retail payment network, in relation to the initial pricing standard, means a designated network described in **clauses 3 to 6** that is known as Mastercard debit or Visa debit

initial designated network means a designated network referred to in **subpart 2** 20

interchange fee, in relation to an initial designated network, has the same meaning that it has under the network rules of that network

issuer, in relation to an initial designated network, has the same meaning that it has under the network rules of that network

per transaction, in relation to a maximum percentage or amount, means calculated on a per transaction basis according to value. 25

Subpart 2—Initial designations

2 Initial designated networks

(1) Each of the retail payment networks that are described in a designation order in this subpart is a designated network (an **initial designated network**). 30

(2) A designation order in this subpart continues in force until the earlier of—

- (a) the date that is 10 years after the date on which this subpart commences:
- (b) the date on which the designation order is revoked or replaced under **subpart 1 of Part 2** of this Act (*see subpart 4*).

- 3 Mastercard credit designation order** 5
- The retail payment network known as Mastercard credit (including commercial and personal payment products) of which—
- (a) the person known as Mastercard International Incorporated is a network operator: 5
 - (b) the network rules include the rules called Mastercard Rules dated 11 December 2020 (as updated from time to time).
- 4 Mastercard debit designation order** 10
- The retail payment network known as Mastercard debit (including pre-paid and standard debit payment products) of which—
- (a) the person known as Mastercard International Incorporated is a network operator:
 - (b) the network rules include the rules called Mastercard Rules dated 11 December 2020 (as updated from time to time).
- 5 Visa credit designation order** 15
- The retail payment network known as Visa credit (including commercial and personal payment products) of which—
- (a) the person known as Visa Worldwide Pte Limited is a network operator:
 - (b) the network rules include the rules called Visa Core Rules and Visa Product and Service Rules dated 17 April 2021 (as updated from time to time). 20
- 6 Visa debit designation order**
- The retail payment network known as Visa debit (including pre-paid and standard debit payment products) of which—
- (a) the person known as Visa Worldwide Pte Limited is a network operator: 25
 - (b) the network rules include the rules called Visa Core Rules and Visa Product and Service Rules dated 17 April 2021 (as updated from time to time).
- Subpart 3—Initial pricing standard**
- 7 Initial pricing standard** 30
- (1) This clause sets out the pricing standard (the **initial pricing standard**) that applies to each initial designated network.

Limits on interchange fees

- (2) This standard requires that total interchange fees for credit retail payment networks (excluding commercial credit payment products and payment instruments that are issued outside New Zealand (for example, foreign-issued cards)) must not exceed the lower of— 5
- (a) 0.80% per transaction:
 - (b) ~~their 1 April 2021 levels per transaction.~~ the interchange fees per transaction as at 1 April 2021.
- (3) This standard requires that total interchange fees for debit retail payment networks (excluding prepaid payment products and payment instruments that are issued outside New Zealand (for example, foreign-issued cards)) must not exceed the lowest of— 10
- (a) ~~their 1 April 2021 levels per transaction.~~ the interchange fees per transaction as at 1 April 2021:
 - (b) whichever of the following applies: 15
 - (i) in the case of ~~interchange fees for any contacted-in-person payment method,~~ 0.00% per transaction:
 - (ii) in the case of ~~interchange fees for any contactless-in-person payment method,~~ 0.20% per transaction:
 - (iii) in the case of ~~interchange fees for any online or any other payment method,~~ 0.60% per transaction: 20
 - (c) if a contactless-in-person debit card interchange fee is charged by the cents (for example, a flat fee rather than a percentage of the transaction value), 5 cents per transaction.
- Prohibition on certain compensation* 25
- (4) ~~The initial pricing standard prohibits an operator providing, either directly or indirectly, net monetary or non-monetary compensation to an issuer in addition to interchange fees.~~
- (5) ~~In **subclause (4)**,—~~
- (a) ~~monetary compensation includes the effect of changes to scheme fees for issuers that are also acquirers:~~ 30
 - (b) ~~non-monetary compensation includes discounts on rewards and reward programmes offering prizes to consumers.~~
- (4) In this clause,— 35
- commercial credit payment product** means a credit product that is issued to a business (within the meaning of the Fair Trading Act 1986) for use wholly for purposes other than personal, domestic, or household purposes, and that is charged directly to the account of the business

monetary compensation includes the effect of changes to scheme fees for issuers that are also acquirers

net compensation means the net value of any payments, rebates, incentives, or other means of monetary and non-monetary compensation that are made after the date on which this Act receives the Royal assent and that have a purpose of compensating an issuer for the effect of this standard

non-monetary compensation includes discounts on rewards and reward programmes offering prizes to consumers

total interchange fee means the sum of the interchange fee plus any net compensation that can reasonably be attributed to a transaction (for example, by dividing net compensation for a period by the number or value of relevant transactions during the same period).

Duration of standard

- (6) This standard continues in force in respect of a designated network until the earliest of—
- (a) the date that is 10 years after the date on which this subpart commences;
 - (b) the date on which the standard is replaced in respect of the network under **subpart 2 of Part 2** of this Act (*see subpart 4*);
 - (c) the date on which the network ceases to be a designated network (*see subpart 4*).

Subpart 4—Replacement and revocation

8 Replacement and revocation of initial designations

- (1) The Governor-General may at any time make an order under **subpart 1 of Part 2** of this Act in respect of all or any of the initial designated networks.
- (2) If the Governor-General does so, the initial designation ceases to apply to the network to the extent that it is replaced or revoked in respect of that network.

9 Replacement and revocation of initial pricing standard

- (1) The Commission may at any time, under **subpart 2 of Part 2** of this Act,—
- (a) issue a pricing standard to replace the initial pricing standard in respect of all or any of the initial designated networks, with effect no earlier than 6 months after the date on which this Act receives the Royal assent;
 - (b) revoke the initial pricing standard in respect of all or any of the initial designated networks.
- (2) If the Commission does so, the initial pricing standard ceases to apply to the network to the extent that it is replaced or revoked in respect of that network.
- (3) For the purpose of this clause, **initial pricing standard** includes any term defined in **subpart 1** of this Part for the purpose of that standard.

Retail Payment System Bill

Legislative history

11 October 2021

26 October 2021

Introduction (Bill 80–1)

First reading and referral to Economic Development, Science
and Innovation Committee