

# Legislative statement: Retail Payment System Bill

## Second Reading

### Overview

The Retail Payment System Bill (**the Bill**) introduces a regulatory regime to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers (including businesses) in New Zealand. The Bill will help ensure merchants and consumers pay no more than reasonable fees (including surcharges) for the supply of payment services, and that there is a reasonable degree of transparency in the retail payment system.

Retail payments are payments made by consumers to merchants for the supply of goods and services, such as payments made by credit and debit cards. These payments are central to the economy, hence the importance of a well-functioning retail payment system. The system itself is made up of payment networks, which are the participants and rules that facilitate certain types of retail payments. Some payment networks may only have one or two participants while others may consist of many classes of participants.

The Bill enables the Commerce Commission (**the Commission**) to regulate designated retail payment networks, and includes the following measures:

- A process and criteria to determine which retail payment networks should be designated. The Commission can then issue network standards that certain participants in designated networks must comply with, and can also give directions to participants regarding the rules of designated networks.
- Initial designations of the Mastercard and Visa credit and debit networks, and an initial pricing standard that requires reductions in interchange fees which underpin charges to merchants.
- The ability for the Commission to issue merchant surcharging standards to prevent surcharging above the costs to the merchant of accepting particular payment types.

The Bill also provides for a range of remedies and enforcement mechanisms for breaches of regulatory obligations, including pecuniary penalties, enforceable undertakings, injunctions, damages, and compensation. In exercising its powers under the Bill, the Commission will be able to use enforcement and functional powers similar to those set out in the Commerce Act, including monitoring and investigation powers.

The following briefly describes the substantive provisions in the Bill.

### Regulation of designated retail payment networks

The Bill allows the Commerce Commission, after applying a set of criteria and consulting with relevant parties, to make recommendations to the Minister of Commerce and Consumer Affairs as to which retail payment networks should be designated.

Once a network has been designated by Order in Council, the Commission will be able to impose standards requiring participants to provide certain information to merchants, consumers, the Commission, or the general public. The Commission can also issue standards to set access requirements for aspects of a designated network, such as requiring infrastructure access for market entrants. The Bill also allows the Commission to issue pricing standards for designated networks, which could relate to pricing principles and limits on fees charged by participants in a designated network, or pricing methodologies and formats.

In addition, the Bill enables the Commission to make directions to participants of designated networks regarding their network rules. This includes directing an operator to set, amend, or comply with network rules, notify the Commission of any amendments made to rules, or obtain the Commission's approval before making any substantive amendments to rules.

### **Initial pricing standards for Mastercard and Visa**

The Bill provides four initial designations. These are the Mastercard and Visa credit and debit networks. The Bill provides an initial pricing standard that requires reductions in interchange fees for transactions on these designated retail payment networks. The pricing standard will commence six months after enactment of this Bill to allow regulated parties sufficient time to make any necessary changes in order to comply.

The interchange fees capped by this initial pricing standard are defined as including any net compensation the issuer might receive from operators of these networks that can reasonably be attributed to a transaction. This includes the net value of any payments, rebates, incentives, or other means of monetary or non-monetary arrangements (such as reduced scheme fees, discounts, and rewards) that have a purpose of compensating the issuer for the effect of the initial pricing standard. This initial pricing standard will be replaced if and when the Commission issues a new pricing standard in respect of interchange fees for the Mastercard and Visa credit and debit networks.

### **Limits on merchant surcharging**

It is reasonably common for merchants to impose a surcharge in addition to the price of goods or services, for accepting a retail payment, or for using one payment method rather than another.

In order to prevent surcharging above the costs to the merchant of providing particular transaction types, the Bill provides for the regulation of merchants' payment surcharges. The Commission can do this by issuing merchant surcharging standards. These standards can include information disclosure and record-keeping obligations for merchants, as well as limits on payment surcharges. Standards may also set out the manner in which merchants must represent surcharges.