



Media Release

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Commerce Commission and Visa reach agreement to settle credit card interchange fee proceedings

The Commerce Commission has signed an agreement with the Visa International Service Association and Visa Worldwide Pte Limited (Visa) settling the Commission's claims against Visa in relation to credit card interchange fees. The Commission's proceedings allege that the rules of the Visa scheme providing for the payment of multilateral interchange fees, together with related rules, breached the restrictive trade practices provisions of the Commerce Act.

As a result of the agreement, Visa will make changes to the way the Visa scheme rules will apply in New Zealand. Those changes are:

- Credit card issuers will now be able to individually set the interchange rates that will apply to transactions using their credit cards, subject to maximum rates determined by Visa. These rates will be publicly available.
- Merchants will no longer be prevented from applying surcharges to payments made by credit cards or by specific types of credit cards. Merchants will also be able to encourage customers to pay by other means.
- Visa has confirmed that non-bank organisations or companies who might wish to provide acquiring services to merchants are permitted to join the Visa network as acquirers if they meet relevant financial and prudential criteria.

“The Commission considers that the agreed changes to the Visa rules will, over time, improve competition between companies that provide credit card services to retailers in New Zealand. Those changes are in the long-term best interests of both New Zealand consumers and retailers,” said Commerce Commission Chair Dr Mark Berry. “The Commission considers that this increased transparency will assist retailers and customers in making decisions about their payment choices.”

“The Commission welcomes Visa’s initiative in approaching the Commission with a forward looking resolution to the competition concerns that the Commission’s claim raised. This has enabled a resolution to be reached which supports the Commerce Act’s goal of promoting competition for the long term benefit of New Zealand consumers,” said Dr Berry. The agreement also reinforces the Commission’s stated approach to resolving issues in the most timely, cost-effective way.

Visa has agreed to contribute NZD 2.6 million towards the Commission’s costs to date in bringing these proceedings.

On the basis of the settlement agreement the Commission will be seeking leave to discontinue its proceedings against Visa in the High Court.

The Commission’s claims against ANZ National Bank Limited, Bank of New Zealand, Westpac New Zealand Limited, ASB Bank Limited, Kiwibank and TSB Bank Limited in relation to interchange fees in the Visa scheme continues, as does its claim against those banks, MasterCard and The Warehouse Financial Services Limited in relation to the MasterCard rules. The Commission’s remaining claims will be heard at the High Court in Auckland in October this year.

The Commission will be making no further comment at this time, due to the remaining claims yet to be heard.

A public version of the settlement agreement can be found attached to this media release on the Commission’s website.

Background

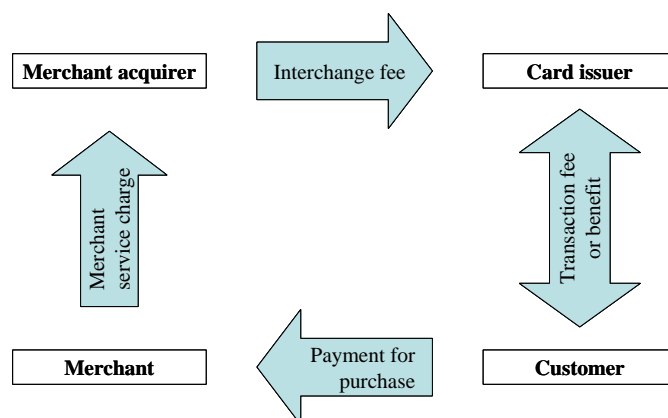
Interchange fees. Each time a New Zealand Visa or MasterCard cardholder makes a purchase, the card acceptor (usually a retailer or service provider) pays a fee to their own bank as part of the payment authorisation process. That fee is comprised mainly of the interchange fee, which is paid to the cardholder's bank.

Visa and MasterCard purchases occur in a four-party card system, which operates as follows:

- Cardholder purchases goods or services from a merchant;
- Merchant sends the transaction details to its own bank (*acquiring bank*);
- Acquiring bank sends the transaction details to the bank or financial institution that issued the card (*card issuing bank*);
- Card issuing bank pays the acquiring bank the retail price of the goods or services *less* the interchange fee;
- Acquiring bank pays the merchant the retail price less a merchant service fee;
- Card issuing bank debits the retail price from the cardholder's account.

The retailer or service provider that has incurred the interchange fee is not allowed to recover the fee from the cardholder, so must average out the cost of that fee across all of their sales. This increases the cost of every item or service sold by businesses which accept Visa or MasterCard. All customers of those businesses bear that averaged fee, regardless of whether the customer pays by credit card, cash, EFTPOS or another payment method.

Figure of Flow of Payments in a Credit Card Transaction



Credit card usage in New Zealand. Transactions on New Zealand Visa and MasterCard cards totalled \$19 billion in 2004. (NB: This figure covers transactions made anywhere in the world, but the Commission's action concerns only payments made in New Zealand.) In 2004 there were approximately 2.1 million Visa cards and 900,000 MasterCard cards in use in New Zealand. In 2004 Visa had 61 per cent of the New Zealand credit card billings, and MasterCard had 29 per cent of the market.

Relevant sections of the Commerce Act. The proceedings are brought under sections 27 and 30 of the Commerce Act 1986. Section 27 prohibits contracts, arrangements or understandings that substantially lessen competition. Section 30 prohibits price fixing, which is when people or businesses that are in competition with each other agree to control, fix or maintain the prices for the goods or services that they supply. Price fixing is deemed to substantially lessen competition under section 27 of the Commerce Act.

Penalties. The Commerce Act provides for penalties for price-fixing of up to the higher of \$10 million per breach, or either three times the commercial gain resulting from the breach or 10 per cent of a company's turnover.

International action on interchange fees. Interchange fees have been scrutinised by many international regulatory agencies. In 2003, the Reserve Bank of Australia moved to regulate the level of interchange fees, reducing the fees over time from 0.95 per cent of transaction value to less than 0.50 per cent. Public and private competition enforcement actions have also been brought in respect of interchange fee arrangements in numerous jurisdictions, including the United States and the UK.

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