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Commerce Commission and MasterCard agree to settle credit card interchange fee proceedings

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The Commerce Commission and MasterCard International Incorporated (MasterCard) have signed an agreement settling the Commission's claims that MasterCard's credit card scheme rules providing for the payment of multilateral interchange fees, together with related rules, breached the restrictive trade practices provisions of the Commerce Act.

The Commission and MasterCard have agreed to resolve the Commission's claims on substantially the same basis as the Commission's settlement with Visa, which was announced on 12 August 2009.

The agreement with MasterCard requires MasterCard to alter the way its scheme rules will apply in New Zealand. The changes include:

- 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 MasterCard. 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. Any surcharges will be disclosed to cardholders at the time of sale and bear a reasonable relationship to the merchant's costs of accepting MasterCard products. Merchants will also be able to encourage customers to pay by other means.
- MasterCard has confirmed that non-bank organisations or companies who might wish to provide acquiring services to merchants are permitted to join the MasterCard network as acquirers if they meet relevant financial and prudential criteria.

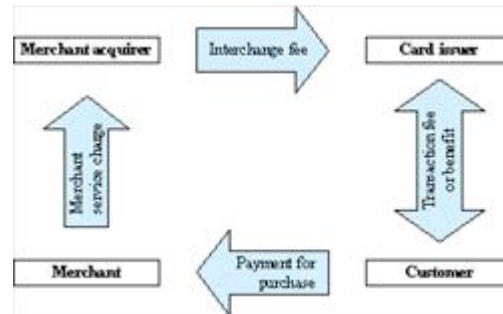
"The agreed changes to the MasterCard rules will boost competition in the provision of credit card services to retailers in New Zealand," said Commerce Commission Chair Dr Mark Berry. "The Commission is pleased that MasterCard has agreed to settle the Commission's claims on the same basis as Visa."

"The settlement can be expected to reduce overall costs to consumers of payment systems by driving down interchange fees and facilitating merchant steering towards lower cost payment methods. It will also ensure that costs of credit card use fall to a greater extent on the card users themselves, who can make informed choices about payment methods, and less on other consumers," said Dr Berry.

MasterCard has agreed to contribute \$3 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 MasterCard 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 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 with MasterCard can be found attached to this media release on the Commission's website.

Background

Settlement with Visa. The media release Commerce Commission and Visa reach agreement to settle credit card interchange fee proceedings is available on the Commission's website www.comcom.govt.nz under [Media Centre/Media Releases](#)

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.

See top of the page for a 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.