

4 May 2023

Tēnā koutou

Open letter to Payment Service Providers – payment surcharges

1. This letter is to outline the:
 - 1.1 role of surcharges for payment services by merchants (**surcharges**) in the retail payment system and the Commerce Commission’s role in regulating them;
 - 1.2 concerns we have observed and the causes of them; and
 - 1.3 actions we consider will improve the appropriateness of surcharging and address the imbalances.¹
2. This letter will be of particular importance to the following classes of payment service providers:
 - 2.1 acquirers in the Visa and Mastercard networks;
 - 2.2 terminal providers; and
 - 2.3 credit network operators including, American Express, Afterpay, Zip, Laybuy, Openpay and Klarna.
3. Alongside this letter we have also published other documents including:²
 - 3.1 educational materials for merchants to assist them to surcharge appropriately (**merchant surcharging materials**);
 - 3.2 research we commissioned on merchants’ experiences with the retail payment system (**merchant research**); and
 - 3.3 our merchant research observations.

¹ In this letter “appropriate surcharging” means the surcharge is no more than the cost to the merchant of accepting the retail payment.

² These documents are available at - <https://comcom.govt.nz/regulated-industries/retail-payment-system>.

Payment surcharges

The role of surcharges in the retail payment system

4. Surcharges can help promote competition and efficiency in the retail payment system if done appropriately, at no more than the cost of payments. While surcharges can add costs and time to the payment experience, they also support more efficient outcomes as the costs and benefits of payment options are passed on to the consumer.
5. By facing the extra costs of their payment choices, consumers are well placed to make their own assessments of the available payment options which may vary in terms of cost, speed, and or more secure options.
6. Without surcharges consumers have strong incentives to move from lower cost payment options to the higher cost options, potentially leading to worse outcomes overall. This is because high-cost payment options often include consumer rewards, free credit, or greater convenience.

Our role in regulating payment surcharges

7. Our role in regulating surcharging comes from our specific role in issuing merchant surcharging standards and a more general role of regulating the retail payment system under the Retail Payment System Act 2022 (the **Act**).³ The purposes are as follows:
 - 7.1 to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand;⁴ and
 - 7.2 to ensure that surcharges for payment services are no more than the cost to the merchant of the payment services used for accepting retail payments.⁵
8. Our intent is not to promote or discourage surcharging per se - rather that merchants have the choice to surcharge and where surcharging does occur, it is done appropriately, so the surcharge is no more than the cost to the merchant of accepting the payment.

³ Further detail of our role under the Act can be found on our website - <https://comcom.govt.nz/regulated-industries/retail-payment-system>.

⁴ Section 3 of the Act.

⁵ Section 29 of the Act.

Our concerns with current surcharging practices

9. Where surcharging occurs for the Mastercard and Visa networks, it is frequently more than the level of merchant service fees. Our research points to several reasons:
 - 9.1 unclear information, and in some cases a lack of information, for merchants on how to surcharge appropriately;
 - 9.2 some merchants being unaware of their costs;⁶
 - 9.3 of those merchants that do think they know their merchant service fees, these are often higher than both the average rates and those rates publicly offered;
 - 9.4 some merchants knowingly making a margin on surcharges; and
 - 9.5 most merchants surcharge at a single rate for all surcharged payment types, despite most merchants facing different costs eg, merchant service fees for contactless domestic debit payments are generally no more than 0.70%, whereas domestic credit card payments are often more than double that.
10. Some higher cost retail payment networks contain no-surcharge clauses in their merchant contracts prohibiting surcharging. This can harm the competition and efficiency of the retail payment system by providing benefits to some consumers at the expense of others.
11. We welcome your feedback on whether we have understood these issues with surcharges correctly.

Addressing the issues identified with payment surcharges

12. Some of the imbalances with surcharges can be addressed by merchants themselves surcharging more appropriately. In addition to providing merchant surcharging materials to assist with this, we have written to some larger merchants whose surcharges appear higher than we would expect.
13. There are some imbalances we consider you, as payment service providers, are best placed to address. They can be summarised as merchants not having the:
 - 13.1 right information to surcharge appropriately; and
 - 13.2 the capability to surcharge appropriately.

⁶ The merchant research shows that many merchants are unaware of their merchant service fee rates. See Kantar Public “Kantar’s Merchant Research Report” (November 2022), slide 68 available at <https://comcom.govt.nz/regulated-industries/retail-payment-system>.

14. We welcome your feedback on the methods discussed below for addressing the imbalances with surcharges.

Improving information for merchants

Improved information on how to surcharge appropriately

15. We understand that **acquirers**, in their contracts with merchants, allow for surcharging of the Mastercard and Visa networks, but that the surcharging should have a reasonable relationship to cost.⁷ **Acquirers** may wish to use the merchant surcharging materials to clarify the merchant's contractual obligations with these provisions of their merchant contracts.
16. In addition, we encourage **terminal providers** that can identify those merchants that surcharge to advise them of our merchant surcharging materials.

Improved information on costs for merchants

17. In our published merchant surcharging materials, we encourage merchants to contact their acquirer to ensure that they understand their merchant service fee rates.
18. We have observed a range of levels of information provided to merchants on their merchant services and fees. We encourage **acquirers** to consider how they can improve the information for merchants so they can better understand and analyse their merchant services and the fees they pay. This will improve transparency for merchants and assist them with surcharging appropriately.
19. Where not already provided, some solutions to improve transparency could include:
- 19.1 A means for merchants to obtain a digital summary of their merchant service information, including:
- 19.1.1 each merchant service fee category;
- 19.1.2 the fee for each category;
- 19.1.3 the share of payments for each category over different time periods;
and
- 19.1.4 the average merchant service fee rate over different time periods.
- 19.2 Summary information at the top of the merchant service fee statement, such as the overall average merchant service fee and the average fees for credit and debit.

⁷ In the agreements acquirers have with merchants there is often a provision that allows for surcharging but requires that the surcharge has a reasonable relationship to cost. This provision stems from the Visa and Mastercard rules that allow for surcharging to occur in the New Zealand market.

20. We have also found that many acquirers publish their base rates for some of their merchant services online. In most cases this is only blended rates, and they are not always straight forward to find. We encourage **acquirers** to consider providing additional information and tools on their websites to allow merchants to compare different components of blended and unbundled (interchange plus) pricing.

Some merchant service fees are bundled

21. Some acquirers and other payment service providers provide a bundle of services to merchants who pay a single fee. These bundles are likely beneficial for some merchants for simplicity or other reasons, and sometimes include services such as data or financial management tools. We do not want to discourage these bundled offerings, but we are concerned this can make it difficult for merchants to surcharge for only the payment aspect of the fee. This may also make it difficult for merchants to compare offers between providers and understand how to minimise their costs.
22. We encourage **acquirers** and other **payment service providers** to provide more transparent information to their merchants including disaggregated information on what they are paying for payment services (of various types) and what they are paying for other services.

Surcharging capability

The ability to inappropriately surcharge

23. We are aware of surcharges in excess of 4% where it is highly unlikely that the merchant's costs are at that level. We encourage **terminal providers** to consider whether their terminals are enabling an inappropriate level of surcharging.

Terminals allowing for differential surcharging

24. We consider that the prevalence of single rate surcharging is due to either the lack of capabilities of the terminals or whether sales teams and merchants are unaware of the multiple surcharge functionality. At a minimum, we would expect some merchants would want to be able to surcharge differently for contactless debit compared with credit.
25. We would like to hear from **terminal providers** if we have understood this issue correctly and what solutions may be appropriate to resolve it, including how long it would take to offer this terminal capability to merchants.

Merchants are prohibited from surcharging for some retail payment networks

26. Merchants are able to surcharge for some higher-cost options such as the Visa and Mastercard credit networks but we understand merchant agreements generally prohibit surcharging, with some exceptions, for the following higher-cost networks: **Afterpay, American Express, Klarna, Laybuy, Openpay and Zip.**

27. We would like to hear from these network operators how they consider such prohibitions on surcharging support competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand.

Next steps

28. We see a role for payment service providers to make material changes to address the issues we have raised. We will continue to monitor these issues. If we consider it necessary, we will take steps under the Act to address them.
29. We invite feedback on this letter from each of the payment service providers, and would like to establish a dialogue, including on the changes you can make, and the feasibility and speed of delivering any potential solutions.
30. Please provide your feedback to Matthew Lewer (Manager, Retail Payment System Regulation) at retailpaymentsystem@comcom.govt.nz.
31. Further details of our Retail Payment System work programme can be found in our update published 20 March 2023.⁸ We will continue to publish updates on our website. Please email retailpaymentsystem@comcom.govt.nz with the subject line 'Subscribe RPS', if you would like to receive email updates on what we publish.

Ngā mihi nui

Dr John Small

Commerce Commission Chair

⁸ Retail Payment System "Work programme update" (20 March 2023) available at - <https://comcom.govt.nz/regulated-industries/retail-payment-system>.