

## **Settlement Agreement**

Dated        October 2009

### **Parties**

**The Commerce Commission ("the Commission")**

**Bank of New Zealand ("BNZ")**

("the Parties")

### **Background**

- A        The Commission has brought proceeding CIV-2006-485-2535 in the High Court against BNZ and other defendants ("the proceeding"). In the proceeding the Commission seeks relief against BNZ in respect of certain conduct alleged to have been engaged in by BNZ and others. BNZ denies any wrongful conduct and is defending the proceeding.
- B        The Commission has discontinued the proceeding as against Visa International Service Association ("Visa") and MasterCard International Incorporated ("MasterCard") as a result of agreements reached between the Commission and Visa and between the Commission and MasterCard ("the scheme settlements"). Under the scheme settlements, modifications are to be made to the way in which the rules of both Visa and MasterCard will apply in New Zealand, as set out in redacted settlement agreements available on the Commission's website. BNZ and other New Zealand banks, as participants in the Visa scheme and the MasterCard scheme, will be required to comply with those rules.
- C        The Commission and BNZ have agreed to settle the claims made against BNZ in the proceeding in so far as they relate to alleged conduct by BNZ prior to the date of this Agreement ("the BNZ claims"), on the terms set out in this Agreement ("Agreement").

## **1 Definitions**

1.1 In this Agreement:

1.1.1 [            ]

1.1.2 [            ]

1.1.3 "BNZ domestic transaction" means a New Zealand acquired transaction that is initiated with a Visa or MasterCard branded credit card issued by BNZ;

1.1.4 "Credit card" means a card issued under the rules of Visa or MasterCard that can be used for purchasing goods or services on credit, or any other article issued under the rules of that Scheme and commonly known as a credit card;

1.1.5 "Interchange rate" means a fee payable by an acquirer to an issuer in respect of a New Zealand-acquired transaction, expressed as a percentage of the value of the transaction;

1.1.6 "Merchant service fee" or "MSF" means a fee payable by a merchant to an acquirer in respect of a New Zealand acquired transaction;

1.1.7 "New Zealand acquired transaction" means a Visa or MasterCard branded credit card transaction for payment at the point-of-sale (including card present and card not present sales) that a merchant submits for processing and payment to any entity carrying on business in New Zealand as an acquirer;

1.1.8 [            ]

1.2 [            ]

1.3 In clauses 3, 4, 5 and 7 of this Agreement references to "BNZ" include references to any interconnected body corporate of BNZ within the meaning of s 2(7) of the Commerce Act 1986 that carries on business in New Zealand as:

1.3.1 an issuer of Visa or MasterCard branded credit cards; or

1.3.2 an acquirer.

## **2 Settlement of claims**

2.1 This Agreement is entered into by the Parties in full and final settlement of the BNZ claims.

2.2 The Parties will take such steps as may be necessary or desirable to give full effect to this Agreement.

2.3 The Commission acknowledges that nothing in this Agreement constitutes an admission of any wrong-doing or liability by BNZ and by entering into this agreement BNZ does not accept that it is liable for any breach of the Commerce Act 1986.

## **3 BNZ commitments in relation to interchange**

[            ]

## **4 BNZ commitments in relation to acquiring services**

4.1 In respect of each merchant with whom BNZ enters into a new contract for acquiring services, or in respect of whom it renews or rolls over a contract for

acquiring services, or who is not on a fixed term contract and requests that the option be made available to it, BNZ will offer:

- 4.1.1 with effect from 17 April 2010, the option to pay merchant service fees that are unblended as between Visa and MasterCard card transactions; and
  - 4.1.2 with effect from 31 October 2010 the option to pay merchant service fees that are fully unbundled in that they are specified by reference to the interchange rate payable in respect of the transaction, and a margin above that figure ('an interchange plus option'). BNZ may provide this option on an interim basis by periodically adjusting (for example, quarterly) a merchant's merchant service fees to reflect the mix of transactions in a prior period, with the prior written approval of the Commission as to the method adopted and the duration of the interim arrangement (such approval will not be unreasonably withheld).
- 4.2 BNZ will no later than 15 November 2009 communicate with all merchants to which it provides acquiring services, advising them of the options and timeframes described above in clause 4.1. From that date BNZ will also publish on its website the availability of these options and will maintain that information on its website for at least three years from publication.

## **5 Other BNZ commitments**

- 5.1 BNZ will not, with effect from the date of this Agreement, include in the terms and conditions on which it provides acquiring services to all merchants or to any class of merchants, any terms which prohibit or prevent surcharging by such merchants.
- 5.2 Nothing in clause 5.1 prevents BNZ from:
  - 5.2.1 agreeing with an individual merchant, or merchant group engaging in collective negotiations, that the merchant, or merchant group, will not surcharge any BNZ issued credit cards or any transactions or any class of transactions acquired by BNZ; or
  - 5.2.2 requiring that, if a merchant applies a surcharge for payment in respect of New Zealand-acquired transactions, the surcharge amount must be clearly disclosed to the cardholder at the time of purchase and must bear a reasonable relationship to the merchant's cost of accepting the surcharged products.
- 5.3 BNZ will advise Visa and MasterCard that each may publish on their websites the interchange rates posted from time to time by BNZ in respect of BNZ domestic transactions. This clause does not require BNZ to post interchange rates it may agree bilaterally with an acquirer, merchant or class of merchants.

