

2 September 2024

Commerce Commission
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Wellington 6011
Sent by email to: RetailPaymentSystem@comcom.govt.nz

SUBMISSION on the Commerce Commission’s ‘Retail Payment System – Costs to businesses and consumers of card payments in Aotearoa New Zealand: Consultation Paper’

1. Introduction

Thank you for the opportunity to make a submission on the Commerce Commission’s (the Commission) ‘Retail Payment system – Costs to businesses and consumers of card payments in Aotearoa New Zealand: Consultation Paper (the Paper).

This submission is from Consumer NZ, an independent, non-profit organisation dedicated to championing and empowering consumers in Aotearoa. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

Contact: [Redacted]

2. General comments on the Paper

At Consumer NZ, we receive regular complaints from consumers about surcharges (see pages 3-5 below), so we strongly support further regulatory intervention to reduce the high costs consumers and merchants incur for debit and credit card payments.

However, given there are no incentives for merchants to improve their surcharging practices or pass on any savings they receive from further interchange regulation to consumers, we do not consider the proposed changes are sufficient.

Although open banking may go some way to creating greater efficiency within the retail payment system, we agree this is a medium to long-term solution. In the short term, further regulatory intervention is required to put an end to excessive credit and debit card surcharges and other unacceptable merchant surcharging practices.

The purpose of the Retail Payment Systems Act is to promote competition and efficiency in the retail payment system for the long-term benefit of merchants *and consumers* in New Zealand. However, we do not consider enough consideration has been given to ensuring the proposed interventions will benefit consumers, as well as merchants.

It is clear businesses will benefit from the proposed regulatory intervention. However, given many businesses continued to charge excessive surcharges after interchange was regulated in 2022, we are concerned that any further cost savings may not be passed on to consumers.

While some excessive surcharges may be attributable to the complexity and lack of transparency of the current system, we believe some businesses simply choose not to pass on savings to consumers.

Even with the proposed regulatory intervention, it appears merchants will be able to continue to get away with charging excessive surcharges, not offering alternative payment methods and not being transparent about surcharges. The only thing consumers will be able to do about this is to lodge a complaint with the Commerce Commission, which is unlikely to have the resources to be able to do anything about most complaints.

This is not acceptable for consumers. Therefore, we recommend the Commission issues a surcharging standard that:

- Bans excessive surcharges (i.e. any surcharge that exceeds the cost of acceptance). This should include a prohibition on charging flat fees for surcharges (like some airlines do) unless the flat fee costs no more than the cost to the business of accepting payment for that particular transaction.

- Bans surcharges when an alternative payment method is not offered (like Australia).
- Requires merchants to clearly display surcharges on their terminals, websites etc.

In our view, introducing a merchant surcharging standard is the only way to incentivise merchants to surcharge fairly and transparently, because if they don't, they could face pecuniary penalties of up to \$600,000 under the Retail Payment Systems Act.

Similar rules have been effective in Australia, so we urge the Commission to give further consideration to implementing clearer surcharging rules via a standard and imposing penalties on merchants who don't comply.

3. Answers to Questions

The questions in the Paper are largely aimed at merchants, schemes, issuers, and acquirers. We are disappointed the Commission hasn't focused more on the experiences of consumers or provided any evidence of how these issues are affecting consumers.

Despite the lack of questions aimed at further understanding consumer experiences with surcharges, we wish to make the following comments in response to question 4.

We welcome further evidence of any other issues within the New Zealand retail payment system.

Evidence of excessive surcharges

Consumer NZ has been collecting complaints about excessive surcharges since January 2023. In 2023, we received a total of 124 complaints about excessive surcharges (above 2–2.5%). We also received a handful of complaints about some merchants that were adding a surcharge for EFTPOS payments.

This year, we have received 103 complaints to date about excessive credit and debit card surcharges. The surcharges ranged from 2.5% to 20%, but the majority were between 3% and 4%. The complaints relate to surcharges charged by a wide range of merchants including accommodation providers, airlines, taxis, rental car companies, car parking providers, cafes/restaurants, dairies, and a variety of service providers.

We've also received several complaints from merchants telling us they pay more than 2.5% to accept card payments and expressing concern that we are asking people to complain if they are charged more than 2-2.5%.

Merchants not being transparent about surcharges

We have also noticed an increasing trend of merchants using terminals that simply state "surcharge may apply" but not providing any further information about what percentage will be charged, and in what circumstances. If consumers aren't advised specific details about a merchant's surcharges prior to the payment method being selected, they cannot make fully informed decisions about which payment method to use. We think this is problematic and needs to be addressed in a surcharging standard.

Buried surcharges

We are concerned many businesses are getting away with charging excessive surcharges by "burying" their surcharges in other additional "add on" fees.

For example, if a consumer uses the PayMyPark app to pay for parking and tops up their account with \$10 using a credit or debit card, the app will state "Top up \$10 incurs a \$0.77 fee". Many assume this is a 7.7% payment surcharge. However, according to the [PayMyPark website](#)¹, \$0.50 of the \$0.77 is a 'service fee' and the other \$0.27 (2.7%) is a 'transaction fee'. The service fee is said to reflect the cost of running the business and providing the service. The transaction fees are said to reflect the payment processing & merchant fees levied by the bank and payment providers. PayMyPark claims the payment fees are passed on at cost but given some of the transaction fees are closer to 3%, we think this is unlikely to be accurate.

Another example of excessive surcharges being buried with other fees can be seen when purchasing tickets to the WOMAD festival, through Ticketspace. A ticket to WOMAD on 14 March 2025 costs \$190 and a camping pass costs \$100. However, a 'booking fee' of \$7.50 is added to the ticket cost and another 'booking fee' of \$5.50 is added to the tent camping pass, taking the total to \$303.00. An \$8.99 'card processing fee' is also added to the total. According to WOMAD, it uses Stripe for processing its card payment and they pay 2.9% plus a 20 cent per transaction charge. This is then passed on to consumers.

¹ Retrieved from <https://paymypark.com/Help.aspx#FeeStructure> on 6 August 2024.

In our view, these additional fees are sneaky fees as they are added on late in the purchase process and disguise the true cost to the consumer. Consumer NZ has been calling for all-inclusive pricing rules for a long time, to mirror Australian rules. All-inclusive pricing rules would force businesses to disclose the full price upfront, rather than adding on sneaky fees during the booking process and disguising card surcharges in a myriad of additional fees.

Not all merchants offer an alternative payment method

In the example about WOMAD above, there appears to be no way to avoid the card fee when purchasing tickets online. Unfortunately, it is not unusual for merchants to force customers to pay surcharges by only offering debit or credit card payment options.

People have had similar experiences when booking tickets for the World of Wearable Arts performance. The WOW website states "Each booking incurs a 2.50% credit/debit card fee. This is applied automatically to the whole basket including any add-ons (such as show programmes) for all credit and debit card purchases." However, there are no other payment options.

In Australia, if there is no way for a consumer to pay without paying a surcharge, the business must include the surcharge in the displayed price of its goods/services. We'd think similar rules should apply here.

ENDS