

Settlement Agreement

Dated September 2009

Parties

The Commerce Commission ("the Commission")

ANZ National Bank Limited ("ANZN")

("the Parties")

Background

- A The Commission has brought proceeding CIV-2006-485-2535 in the High Court against ANZN and other defendants ("the proceeding"). In the proceeding the Commission seeks relief against ANZN in respect of certain conduct alleged to have been engaged in by ANZN and others. ANZN 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. ANZN 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 ANZN have agreed to settle the claims made against ANZN in the proceeding in so far as they relate to alleged conduct by ANZN prior to the date of this Agreement ("the ANZN claims"), on the terms set out in this Agreement ("Agreement").

1 Definitions

1.1 In this Agreement:

1.1.1 []

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

1.1.3 []

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 "ANZN" include references to any interconnected body corporate of ANZN 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 ANZN 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 ANZN or Cards New Zealand Limited ("Cards NZ").

3 ANZN commitments in relation to interchange

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4 ANZN commitments in relation to acquiring services

- 4.1 In respect of each merchant with whom ANZN 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, ANZN 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 1 November 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'). ANZN 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 (which approval will not be unreasonably withheld).
- 4.2 ANZN will no later than 15 December 2009 send a letter to all merchants to which it provides acquiring services, advising them of the options and timeframes described above. From that date ANZN 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 ANZN commitments

- 5.1 ANZN will not:
- 5.1.1 with effect from the date of this Agreement, enforce any Visa rule or MasterCard rule or the terms of any existing merchant agreement which prohibit or prevent surcharging by merchants in respect of New Zealand acquired transactions; and
- 5.1.2 from 15 December 2009, include in the terms and conditions of any new contracts under which it provides acquiring services to any merchant or to any class of merchants, any terms which prohibit or prevent surcharging by such merchants in respect of any New Zealand acquired transactions.
- 5.2 Nothing in clause 5.1 prevents ANZN from:
- 5.2.1 agreeing with an individual merchant that the merchant will not surcharge any ANZN issued credit cards or any transactions or any class of transactions acquired by ANZN; 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 ANZN will advise Visa and MasterCard that each may publish on their websites the interchange rates posted from time to time by ANZN in respect of ANZN domestic transactions. This clause does not require ANZN to post interchange rates it may agree bilaterally with an acquirer, merchant or class of merchants.

6 Disposal of proceedings

6.1 The Commission will promptly following the date of this Agreement:

6.1.1 seek leave to discontinue the proceeding as against ANZN, and will discontinue the proceeding as against ANZN once leave is granted to the Commission to do so. This discontinuance will be on the basis that neither party seeks an order for costs against the other;

6.1.2 advise the Court that no relief is sought against ANZN.

6.2 The Commission will not commence any new proceedings against ANZN in respect of the ANZN claims.

6.3 Subject to clause 6.5, ANZN acknowledges that this Agreement is not intended to settle or otherwise affect the Commission's claims against any other party in the proceeding.

6.4 ANZN will pay NZ \$150,000 to the Commission on or before 15 October 2009 in respect of costs incurred by the Commission in connection with these proceedings.

6.5 []

6.6 Nothing in this Agreement affects the ability of the Commission to bring proceedings against ANZN in respect of any conduct engaged in by ANZN after the date of this Agreement (apart from conduct that ANZN is expressly required to engage in by this Agreement).

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