

**Settlement agreement** dated 1 October 2009

## **PARTIES**

**The Commerce Commission (“the Commission”)**

**TSB Bank Limited (“TSB”)**

(“the Parties”)

## **BACKGROUND**

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

## **AGREEMENT**

### **1 Definitions**

#### **1.1 In this Agreement:**

1.1.1 [        ]

1.1.2 [        ]

1.1.3 “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;

1.1.4 “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;

1.1.5 “Merchant service fee” means a fee payable by a merchant to an acquirer in respect of a New Zealand acquired transaction;

1.1.6 “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;

1.1.7 [            ]

1.1.8 “TSB domestic transaction” means a New Zealand acquired transaction that is initiated with a Visa or MasterCard branded credit card issued by TSB.

1.2 In clauses 3, 4 and 6 of this agreement references to “TSB” include references to any interconnected body corporate of TSB within the meaning of s 2(7) of the Commerce Act 1986 that carries on business in New Zealand as:

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

1.2.2 an acquirer.

## **2 Settlement of claims**

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

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

[            ]

#### **4 Other TSB commitments**

- 4.1 TSB will advise Visa that it may publish on its website the interchange rates posted from time to time by TSB in respect of TSB domestic transactions.
- 4.2 If TSB commences issuing MasterCard credit cards, it will advise MasterCard that it may publish on its website the interchange rates posted from time to time by TSB in respect of TSB domestic transactions.

#### **5 Disposal of proceedings**

- 5.1 The Commission will promptly following the date of this Agreement:
  - 5.1.1 seek leave to discontinue the proceeding as against TSB, and will discontinue the proceeding as against TSB 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;
  - 5.1.2 advise the Court that no relief is sought against TSB.
- 5.2 The Commission will not commence any new proceedings against TSB in respect of the TSB claims.
- 5.3 TSB acknowledges that this Agreement is not intended to settle or otherwise affect the Commission's claims against any other party in the proceeding.
- 5.4 TSB will pay NZ \$50,000 to the Commission on or before 15 October 2009 in respect of costs incurred by the Commission in connection with these proceedings.
- 5.5 To avoid doubt, nothing in this Agreement affects the ability of the Commission to bring proceedings against TSB in respect of any conduct engaged in by TSB after the date of this Agreement (apart from conduct that TSB is expressly required to engage in by this Agreement).

[       ]