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Consultation on costs to businesses and consumers of card payments in Aotearoa New Zealand

ASB appreciates the opportunity to provide feedback on the Commerce Commission's (**Commission**) consultation on costs to businesses and consumers of card payments in Aotearoa New Zealand (**Consultation**).

ASB's ongoing commitment to innovation and backing fintechs

ASB recognises growing demand from Kiwis for more options to move their money domestically and internationally and for New Zealand to keep pace with international payments developments. We also acknowledge the Commission's findings in its final report from the market study into personal banking services.

Each year, we invest hundreds of millions of dollars back into our business. We are undertaking significant work to update and upgrade our core systems along with implementing ISO20022 and modernising our cards platform. These are multi-year programmes of work and this investment will be key to unlocking innovative new products and services to our customers, including delivering further open banking capability in the future. We will be more agile in being able to adopt new technologies, making it easier to partner with innovative new market entrants. However, the pace and scale of innovation has been impacted by persistent and significant regulatory change which must be prioritised over other changes to ASB's systems to maintain regulatory licenses to operate.

Regulation over costs of payments may be premature given market developments and could have unintended consequences

We appreciate the Commission's engagement and close collaboration with industry to understand the intricacies of New Zealand's payments ecosystem and cost structures. We welcome the broad consideration the Commission has given to surcharging, interchange fees, scheme fees and other costs within the system. As a next step, we ask that the Commission reflect on feedback it receives in response to this Consultation, clearly articulate the problems they are seeking to solve (and the relative priorities for solving each) and its rationale for any further action it proposes to take in relation to the cost of card payments.

This Consultation takes place at a time when significant industry developments and regulatory reforms are being contemplated which will impact the payments landscape now and in the long term. We therefore consider that this Consultation is premature given that we are yet to fully understand the impact these developments will have on market participation, competition, consumer behaviour, regulatory oversight and subsequently costs and pricing models moving forwards. ASB considers that early moves to regulate pricing could have unintended consequences of disincentivising would-be new entrants, if price regulation reduces margins and impacts potential long-term commercial viability.

ASB's response to the Consultation

We provide our general comments on the Consultation in Schedule 1 which accompanies this letter. Our general feedback includes some potential interim measures the Commission could consider to address its concerns over costs, recognising that a full review of payment costs should be conducted once key market and regulatory developments have played out. Our responses to some of the Consultation questions are provided in Schedule 2. Where ASB has not responded to a question, this will be because ASB is not in a position to respond or does not have sufficient feedback to comment.

Conclusion

If you require any further information in relation to this submission, please contact Kristina Kilner, Head of Government Relations and Regulatory Affairs [redacted] We would be happy to discuss this further with the Commission if that would be of assistance as it considers the feedback it has received.

Ngā mihi,

[redacted]

Jonathan Oram
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Schedule 1 – ASB's general feedback

1. Timing and sequencing is key

ASB considers the timing of this Consultation is premature given there are significant industry developments underway and regulatory reforms contemplated which will impact the payments landscape now and in the long term. Examples of such developments and reforms are outlined below.

We are yet to fully understand the impact these developments will have on future market participation, competition, changing consumer behaviour, regulatory oversight and subsequently how this will influence market pricing and overall costs moving forwards.

2. Regulatory change and industry developments will likely impact costs of payments, potentially driving down fees for some payment channels due to market forces

Given the heavy regulatory change agenda, including open banking, payments modernisation, ISO20022, digital identity, confirmation of payee (these just relate to the digital economy) we consider the relevant costs for the ecosystem should be explored once there is more clarity on what the future market and regulatory environment is going to be.

It is also not yet clear how innovations like open banking will be utilised. Once there are more viable use cases for open banking that are attractive to investors, the likely impact on the cost of payments will start to become clearer.

There are key recent and upcoming developments that are relevant:

a) Apple is opening up the NFC chip technology that enables iPhone users to make contactless payments to third-party providers in a host of countries but will charge associated fees. It means that, starting with iOS 18.1, developers initially in Australia, Brazil, Canada, Japan, New Zealand, the UK, and the US, will be able to offer NFC contactless transactions using the Secure Element from within their own apps on iPhone, separate from Apple Pay and Apple Wallet. Developers, however, will need to enter into a commercial agreement with Apple, request the NFC and Secure Element entitlement, and pay the "associated fees". This announcement (on 15 August) is a key example of how quickly the payments landscape is evolving.

b) The Commission issued its final report on the market study on 20 August 2024, which contained recommendations as to the pace and delivery of open banking. Government has indicated it will act on all 14 recommendations but has not provided further details.

c) The Commission's recommendation to the Minister to designate the interbank payments network under the Retail Payment Systems Act. Minister Bayly has signalled his intention to designate during the press conference which followed the market study final report publication.

d) The Reserve Bank has recently consulted on proposals to develop a central bank digital currency.

e) Minister Bayly is collaborating with the Banking sector on fraud and scams, specifically to deliver confirmation of payee, review the Banking Code of Practice and consider a voluntary reimbursement scheme for victims of frauds and scams

f) The API Centre request for authorisation from the Commerce Commission (Competition Branch) to develop a streamlined partnering framework, where a final determination was issued on 20 August 2024.

g) Progress of the Customer and Product Data Bill, which at the time of writing is before the Economic Development, Science and Innovation Committee

h) Payments NZ will shortly release a consultation on the Industry Strategic Investment Case (**ISIC**) for Next Generation Payments. This paper is expected to take a long term view on the merits and options for modernising New Zealand's payments system.

All of the above will have significant direct and indirect impacts on the digital ecosystem and the costs for developing and maintaining its infrastructure.

In addition to the above developments there is significant uncertainty as to the impact of other market developments. For example, if more services transfer onto the open banking rails and 'screen scraping' is turned off, this change together with the ability to access Apple Pay NFC chip technology may significantly alter payment choices for consumers, reduce reliance on schemes which in turn avoids surcharging, but may also drive fees and pricing down.

3. Better alignment and sequencing is needed across regulators to ensure New Zealand has a cost-efficient, safe and resilient payments ecosystem

ASB would like to see the Council of Financial Regulators (**CoFR**) evolve to ensure regulators can deliver a coordinated and appropriately sequenced regulatory change agenda which cuts across traditional regulator mandates to deliver an efficient and safe digital economy. We also support closer collaboration between CoFR and the industry on designing impactful and efficient regulation that is appropriately sequenced, having regard to the significant programmes of work already in train.

We also see a role for the Ministry of Regulation regarding any future regulation to be imposed on the sector. Like CoFR Members, Ministers and government agencies need to have regard to the aggregate legislative and regulatory landscape, and how it may constrain market participants from innovating in ways that will benefit consumers and the economy.

With the new Ministry of Regulation now in place, we believe there is potential for these two agencies to work together (albeit with a structure to be determined) to ensure any regulatory change is right-sized, right-timed and delivers the most value to New Zealanders while minimising administrative and compliance burden.

4. The right level of revenue is needed to attract competition and investment in payments innovation

Efficiently priced payments are a key component of a payment system that works for all New Zealanders. Payments need a sufficient level of fee generation to attract new market participants, which drives competition and innovation. EFTPOS is a key example where investment and innovation declined once EFTPOS services were offered free of charge. Would-be new entrants were disincentivised to enter and compete in EFTPOS due to the lack of revenue generation to sustain commercially viable business models.

Fee generation/revenue provides market participants with the required resources to continually invest in new tools and solutions to combat rapidly evolving fraud and scams and keep New Zealanders safe when shopping online and abroad. The volume and sophistication of fraud and scams has risen rapidly across the globe. Banks, telcos, search engines and social media companies will need to continue to invest heavily in fraud mitigation tools to keep pace.

Further, there is a real risk that over regulation of interchange fees will impede card and payments modernisation and provision of new payment choices for consumers. As the 'default' mode of point-of-sale payments, the cap on interchange will act as a ceiling on market pricing across all payment methods. New entrants and payment methods will not be able to compete in the market if they charge above the interchange cap of incumbent and fully featured propositions. A customer will not choose a new payment methodology that is more expensive with fewer features at launch. This means that new payment methods will only be successful below the interchange cap. Without scale, these new propositions will not be able to compete with schemes on cost, thereby stifling further innovation and competition. Considerable ongoing investment is required to modernise New Zealand's payment system in order to keep up with international developments.

5. Clear definition of the problem(s) to be solved and prioritisation will be needed before the Commission produces pricing mechanisms to solve them

We ask that the Commission reflect on feedback it receives in response to this Consultation, clearly articulate the problems they are seeking to solve (and the relative priorities for solving each) and its rationale for further action it proposes to take in relation to the cost of card payments.

We know that the Commission is focused on safety (fraud and scams) and innovation in the payments space, as well as costs. Any further action by the Commission should be grounded in a clear problem statement and with an understanding of the impact on safety, competition, innovation and costs.

6. Regulate the activity, not the entity

While we consider the broader costs of card payments proposals are premature in light of the above uncertainty, if the problem (once clearly defined) identifies cost issues needing immediate redress, ASB considers there are measures which could be adopted while the above proposals/developments are underway.

The Commission should consider expanding the scope of the initial pricing standard to include American Express and commercial (business and corporate) cards, while retaining justified differentiation between credit and debit interchange fees. It is not clear why the Consultation is not considering any recommendation to designate the American Express network at this stage and is proposing only monitoring activity.

The current approach excludes key market participants and payment types, meaning not all payment providers operate on a level playing field. It also results in a distorted competitive landscape. These cards continue to charge well above the interchange cap and offer consumers highly attractive loyalty programmes that other market participants cannot compete with.

The exclusion of key market participants and payment types in the interchange regulation results in abnormally high surcharging at point-of-sale well above the actual cost of the payment. Regularly, merchants apply surcharging at the highest or blended interchange cost, resulting in abnormally high surcharges for low-cost payment types (e.g. applying a 2.5% payment surcharge to a contactless debit transaction where the actual cost is lower by a factor of 10). In Australia, consistently applied regulation over surcharging has meant merchants cannot charge beyond the cost of acceptance.

Expanding the scope of the initial pricing standard would create a simplified platform from which the Commission could consider any further changes required. This simpler landscape would also assist merchants to set their surcharges to reflect the real cost of payments.

As set out in our response to Question 7, credit card payments attract a higher interchange fee than debit cards because there is a cost of providing credit, additional risks (including fraud and scams) and the cost of cardholder rewards.

7. Set expectations of all market participants in relation to the simplicity, transparency and consistency of all aspects of merchant service fees

Aspects of the merchant service fee can be complex and comprise a number of different categories of fee that change over time. This makes it challenging to assess how the costs increase over time. If the Commission sets expectations of the payments industry more broadly, with a stronger expectation of all participants' compliance, this change would support fair outcomes for card users and merchants.

Schedule 2 – ASB's feedback in response to specific consultation questions

Q3: Is token portability an issue in New Zealand? If yes, what is stopping the implementation of the Reserve Bank of Australia's expectations here?
Token portability is an issue in New Zealand as it restricts merchants from moving acquirers. If merchants want to change providers, merchants need cardholders to re-enter their card details which could lead to declined transactions and customer attrition. Overall this dissuades merchants from shifting acquirers. For there to be effective competition in the market merchants should be able to move between providers with minimal friction. Our view is that token portability solutions should be developed under a consistent industry framework. We note that AusPayNet in Australia is developing an industry standard in collaboration with the Reserve Bank of Australia so there are learnings to be leveraged from across the Tasman.
Q5: What do you consider an appropriate methodology for determining interchange fee caps in New Zealand? Why do you think this best meets the purpose of the Retail Payment System Act, and how would it be practically implemented?
A competitive and innovative payments landscape requires incentives for participants to compete for business and allows costs/benefits to be distributed appropriately amongst participants. All parties involved in the transaction work together to minimise risks and ensure the safe processing of the payment. At the minimum, these incentives need to cover 1. the ongoing operation and support of the system including fraud prevention and dispute management 2. scope for ongoing innovation and enhancements 3. an appropriate margin for the participant to generate a return on their investment.
Q6: What is the rationale for the heavy discounting of interchange fees to large businesses and the evidence to support the extent of the discounting observed?
ASB is not involved in agreeing and setting strategic merchant rates. This is managed between the card schemes and the businesses.
Q7: What evidence is there to support higher interchange fee rates for credit versus debit card payments?
Credit card payments attract a higher interchange fee because there is a cost of providing credit, additional risks (including fraud and scams) and the cost of cardholder rewards.
Q8: We welcome quantitative evidence justifying higher interchange rates on domestic card not present transactions.
Customer not present (**CNP**) transactions allow various scamming techniques, particularly the use of scam bots, which are not available for in person transactions. Also many in person transactions involve Strong Customer Authentication which is used less often for CNP (particularly due to poor customer experience). There are also additional costs for use of the network and card scheme costs.
Q11: Who is liable for the fraud costs associated with transactions made using a foreign-issued card?
Dependent on the chargeback rules, the merchant processing the transaction.

Q13: We welcome evidence and rationale for why merchants are treated differently for interchange fee application.
The card schemes will be best placed to provide this information.
Q17: How would you provide your customers with an overview of the intended impact on them of further price regulation?
ASB's approach would be dependent on the changes but would likely include website updates, direct communications and bilateral conversations with key customers.
Q19: Please provide any evidence of other impacts a material reduction in interchange fees for Mastercard and Visa could have on the New Zealand retail payment system.
A material reduction may reduce investment into fraud prevention, security, resilience and innovation and inhibit incentives to develop new competing payment mechanisms