

Settlement agreement dated 30 September 2009

PARTIES

The Commerce Commission (“the Commission”)

The Warehouse Financial Services Limited (“TWFSL”)

(“the Parties”)

BACKGROUND

- A The Commission has brought proceeding CIV-2006-485-2535 in the High Court against TWFSL and other defendants (“the proceeding”). In the proceeding the Commission seeks relief against TWFSL in respect of certain conduct alleged to have been engaged in by TWFSL and others. TWFSL has denied any wrongful conduct or liability, 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. TWFSL and other New Zealand scheme participants will be required to comply with those rules.
- C The Commission and TWFSL have agreed to settle the claims made against TWFSL in the proceeding in so far as they relate to alleged conduct by TWFSL prior to the date of this Agreement (“the TWFSL claims”), on the terms set out in this Agreement (“Agreement”). TWFSL makes no admissions of liability.

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 (and to avoid doubt does not include scheme debit or pre-paid cards);

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, including any fixed 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 “TWFSL domestic transaction” means a New Zealand acquired transaction that is initiated with a Visa or MasterCard branded credit card issued by TWFSL;

1.1.8 []

1.2 []

1.3 In clauses 1, 3, 4, and 6 of this Agreement references to “TWFSL” include references to any interconnected body corporate of TWFSL within the meaning of s 2(7) of the Commerce Act 1986 that carries on business in New Zealand as an issuer of Visa or MasterCard branded credit cards, other than Westpac New Zealand Limited (“WNZL”) and WNZL's interconnected bodies corporate (excluding entities that are interconnected bodies corporate of WNZL only because they are interconnected bodies corporate of TWFSL).

2 Settlement of claims

2.1 This Agreement is entered into by the Parties in full and final settlement of the TWFSL 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 amounts to any admission by TWFSL of any wrongful conduct or liability.

3 TWFSL commitments in relation to interchange

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4 Other TWFSL commitments

4.1 TWFSL will advise MasterCard that it may publish on its website the interchange rates posted from time to time by TWFSL in respect of TWFSL domestic transactions. This clause does not require TWFSL to post interchange rates it may agree bilaterally with an acquirer, merchant or class of merchants.

4.2 If TWFSL commences issuing Visa credit cards, it will advise Visa that it may publish on its website the interchange rates posted from time to time by TWFSL in respect of TWFSL domestic transactions. This clause does not require TWFSL to post interchange rates it may agree bilaterally with an acquirer, merchant or class of merchants.

4.3 []

5 Disposal of proceeding

5.1 The Commission will within 7 days following the date of this Agreement:

5.1.1 seek leave to discontinue the proceeding as against TWFSL, and will discontinue the proceeding as against TWFSL 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; and

5.1.2 advise the Court that no relief is sought against TWFSL.

5.2 The Commission will not commence any new proceedings against TWFSL in respect of the TWFSL claims.

5.3 TWFSL 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 To avoid doubt, nothing in this Agreement affects the ability of the Commission to bring proceedings against TWFSL in respect of any conduct engaged in by TWFSL after the date of this Agreement (apart from conduct that TWFSL is expressly required to engage in by this Agreement).

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