

3 August 2023

Tēnā koutou

## Retail payment system – Merchant surcharging update

### Introduction

1. Promoting appropriate surcharging is one of our key focus areas for retail payments. This letter provides an update of our work on surcharging and focuses on our engagement with some large businesses or merchants. Our intention is to provide insight as to our progress to date whilst acknowledging that our engagement process is ongoing.
2. You can expect further reports on our work in respect of merchant surcharging.

### Our role in regulating payment surcharges

3. Our responsibility in respect of merchant surcharging comes from our role in regulating the retail payment system under the Retail Payment System Act 2022 (the **Act**). The purposes under the Act are as follows:
  - 3.1 to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand; and
  - 3.2 to ensure that surcharges for payment services are no more than the cost to the merchant of the payment services used for accepting retail payments.
4. We may regulate payment surcharges charged by merchants to consumers for certain payment services (eg, credit card or contactless debit card payments), and for investigation, monitoring and enforcement.
5. We are yet to determine whether regulation in this area is necessary and are currently using an engagement strategy that allows us to learn whilst encouraging payment service providers and merchants to do the right thing by their respective customers.

6. Our intent is not to promote or discourage surcharging but ensure that where merchants exercise the choice to surcharge and where surcharging does occur, it is not above cost. We consider it is important to set out our expectations to payment service providers and merchants, understand how surcharging currently operates in practice, and to explore ways to encourage the payments sector to surcharge appropriately.

## Background

7. In November 2022 the initial pricing standard came into effect capping certain domestic interchange fees. Interchange fees are the largest component of the merchant service fees charged to merchants to enable them to accept Visa and Mastercard card payments from their customers.
8. Any surcharge passed on to consumers should, in turn, represent the merchant service fees. Our expectation is that the fee reductions from interchange fee regulation is passed on to merchants through reduced merchant service fees and ultimately to consumers by way of smaller and more transparent surcharges.
9. To set out our expectation and develop a wider and better understanding of what we believe constitutes appropriate surcharging we produced and published:<sup>1</sup>
  - 9.1 a brief consumer guide to surcharges together with an accompanying timeline on aspects of payments in Aotearoa New Zealand;
  - 9.2 a brief merchant guide to appropriate surcharging; and
  - 9.3 an open letter to payment service providers outlining our expectations in respect of surcharges.
10. These guides provide a high-level timeline on aspects of how surcharging came about, what consumers should expect when experiencing surcharges and what merchants should consider when setting surcharges. The open letter to payment service providers sets out our expectations on how they might assist merchants and requesting their input on ways in which surcharges might be managed more efficiently.
11. We also selected a group of merchants to test our understanding of merchant surcharging practices and assess their responses. A key aspect of our engagement with the selected merchants is to test our understanding of how surcharges work in practice and to validate aspects we discovered in our merchant research.

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<sup>1</sup> See Commerce Commission “Surcharging” (4 May 2023) available at <https://comcom.govt.nz/regulated-industries/retail-payment-system/surcharging?target=documents#projecttab>

12. Through future engagement we want to better understand the following:
  - 12.1 what information are merchants supplied with to enable them to surcharge appropriately;
  - 12.2 do merchants understand their payment acceptance costs/merchant service fees;
  - 12.3 do merchants knowingly make a margin on their surcharges;
  - 12.4 how transparent are the surcharges to consumers; and
  - 12.5 to what extent are surcharge free payment options available and offered to consumers?
13. The impact of interchange fee regulation and, what we expect to be positive flow on effects to merchant service fees, is still being assessed. We have undertaken an engagement strategy that seeks to educate merchants on appropriate surcharging practices whilst also gaining insight as to the issues they face in setting surcharges.

### **Merchant selection**

14. We selected merchants (spanning local authorities, telecommunications, ticketing, travel and parking sectors) on the basis that we wanted to better understand how they managed their surcharging practices and consider whether further intervention is necessary.
15. We applied some broad, pre-defined criteria in our selection process such as:
  - 15.1 the merchants having sufficiently high transaction volumes that they should qualify for a non-default interchange fee category (therefore should have lower than average merchant service fees); and
  - 15.2 where we had indications that those merchants have surcharges greater than we would otherwise expect.
16. This group of merchants were sent letters in March 2023 requesting that they review their surcharging practices to bring them into line with our expectations and that we were seeking their feedback. In May 2023 we followed up our initial correspondence and provided those merchants with links to our brief merchant guidance on what we consider appropriate merchant surcharging practice.

## Merchant list and brief interaction summary

17. All the selected merchants responded to our initial letters and any subsequent follow up. The selected merchants have largely engaged positively in the review of their surcharging practices. The majority have taken steps to reduce their surcharges or have offered us reasons as to their current surcharging practices. Most merchants have indicated that they intend to regularly review their surcharges and adjust them, consistent with our surcharging information sheets.
18. We continue to engage with some of the selected merchants on their practices. Table 1 provides an overview of our engagement with merchants to date.

**Table 1: Engagement with merchants to date**

Merchant	Engagement summary	Engagement level	Surcharge reduction
<b>Air New Zealand Limited</b>	Appreciates the opportunity to discuss its surcharging practice. Considers its flat fee Card Payment Fee a reasonable estimate of the bank costs incurred and in practice represents an under-recovery of its card payment costs. Fees remain unchanged since 2020. Customers have several payment choices available which do not incur card fees (including EFTPOS, Airpoints dollars, POLi, cash, Travelcard or OneSmart card, depending on purchase channel). Ongoing engagement in progress.	✓	↔
<b>Auckland City Council</b>	Has reduced its in-person weighted average surcharge for credit and contactless debit to 0.67% from 1.75% with an implementation date of late July 2023. For in-person free transactions EFTPOS remains available.	✓	✓

Merchant	Engagement summary	Engagement level	Surcharge reduction
	<p>For online transactions it offers two surcharge free account to account options whereas credit and debit options remain at 1.75%. It is working with its bank acquirer to review and potentially reduce that level of surcharge.</p>		
<b>Dunedin City Council</b>	<p>Has reduced its surcharge to 1.35% from 1.80% with a commitment to further review its surcharging practice in September 2023. The surcharge reduction was actioned prior to receiving correspondence from us.</p>	✓	✓
<b>Hutt City Council</b>	<p>Up until 30 June 2023 it had a contracted service with its banking provider to provide a Convenience Fee service, whereby payers were charged a fee for using online payment facilities. This service was disestablished as at 30 June 2023, and Hutt City Council is now charged a merchant service fee from its bank which the Council is absorbing and funding. Engagement in progress.</p>	✓	✓
<b>Jetstar Airways Pty Limited</b>	<p>Has a booking and service fee which is a market-based fee that it does not consider a cost recovery mechanism and is not correlated to costs associated with acceptance</p>	✓	↔

Merchant	Engagement summary	Engagement level	Surcharge reduction
	of certain payment methods. This represents a variety of optional fees based upon their customers preferred travel choices. The optional fee is prominently disclosed. Engagement in progress.		
<b>New Plymouth District Council</b>	New Plymouth District Council use All of Government banking services which has a surcharge levied directly to the customer. That service has been retired and New Plymouth District Council will now absorb the cost of the merchant fees and not pass the convenience fee to customers.	✓	✓
<b>One New Zealand Limited</b>	A 2% surcharge is levied by One New Zealand for one off credit and debit card payments. One New Zealand has indicated that at present it is comfortable with its current surcharging practices although it has indicated it intends to regularly review its surcharging practices. Engagement in progress.	↔	↔
<b>PayMyPark (Arthur D Riley &amp; Co Limited)</b>	Has indicated that it passes on all merchant service fees at cost and does not make a margin on its surcharges. Engagement in progress.	✓	↔

Merchant	Engagement summary	Engagement level	Surcharge reduction
<b>Ticketek New Zealand Limited</b>	Said it appreciated the guidance we provided and that it operates in a complicated area in respect of the different methods of payment it accepts. Ticketek has confirmed that they have commenced rolling out revised rates. Engagement in progress.	✓	↔
<b>Ticketmaster NZ Limited</b>	Are actively engaged in working to reduce or eliminate its payment processing fee. Engagement in progress.	✓	↔
<b>2degrees</b>	Has reviewed its credit and debit card payment fees, which do not apply to purchases made in a store or Prepay Top Ups and intends to amend such fees later this year from 1.75% to 1%.	✓	✓
<b>Wellington City Council</b>	Has disclosed a mixed surcharge model depending on the service its customers use. Engagement in progress.	✓	↔

### Our focus on appropriate surcharging continues

19. Our process of engagement with merchants and payments service providers is ongoing. We monitor complaints on excessive surcharging and will engage with merchants as necessary. We continue to assess the issues that are also brought to our attention from the merchant community in connection with the payment services provided to them.

20. We continue to engage with some of the merchants signalled above and expect to expand our engagement to other merchants and/or market segments where surcharges appear inappropriate.
21. Payment service providers and merchants all have a role to ensure consumers are properly informed of surcharges, that the surcharges they face are appropriate and that wherever possible there are surcharge free options made available. However, if we see that merchants are failing to amend excessive or unreasonable surcharges, or there are systemic and entrenched issues in respect of surcharging that stem from payment service providers, we will consider options available to us under the Act.
22. We trust this letter provides a useful update on our recent work on merchant surcharging and our current engagement.
23. We look forward to your continued engagement in our work and will keep you updated as this progresses and if plans change in response to developments. Please email [paymentsteam@comcom.govt.nz](mailto:paymentsteam@comcom.govt.nz) with the subject line 'Subscribe RPS', if you would like to receive email updates on what we publish.
24. Please contact Matthew Lewer (Head of Payments, Market Regulation) at [paymentsteam@comcom.govt.nz](mailto:paymentsteam@comcom.govt.nz) if you have any questions on this letter.

Ngā mihi nui

**Dr John Small**

Commerce Commission Chair