Submission template

Regulating to reduce Merchant Service Fees

Your name and organisation

Name	[redacted]
Email	[redacted]
Organisation/Iwi	Ashburton Trading Society

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

☒ The Privacy Act 1993 applies to submissions. Please check the box if you do <u>not</u> wish your name or other personal information to be included in any information about submissions that MBIE may publish.

☐ MBIE intends to upload submissions received to MBIE's website at ***www.mbie.govt.nz***. If you do <u>not</u> want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE's website because… [Insert text]

Please check if your submission contains confidential information:

☐ I would like my submission (or identified parts of my submission) to be kept confidential, and **<u>have stated below</u>** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because… [Insert text]

1	Do you have any feedback on our proposed approach to this project?
	We have no specific comments on the proposed approach to the project subject to our observation that the focus is centred on card present payments, which does not reflect the growing trend towards card not present transactions.
2	Have we described the retail payments system accurately? Is there any additional information that you would like to provide?
	The paper provides a comprehensive explanation on the retails payment system and switch to acquirer and switch to issuer transactions. We note however, that although online credit and debit cards are referenced (paragraph 38), the description relates primarily to card-present scenarios (refer paragraph 47). Given the increasing reliance on e-commerce, we consider equal importance and focus should be given to all forms of payment as the public move increasingly to card not present, driven even more in the pandemic era.
3	Please provide information on your understanding of the levels of merchant service fees in New Zealand, any trends in relation to those fees, and how they compare to merchant service fees in overseas jurisdictions.
	Merchant fees are competition driven and retailers will often decline to accept methods of payments where they perceive that the fees are too high (so for example, they choose not to offer PayWave or accept Diners/Amex). It is common when assessing the levels of fees in New Zealand to reference international standards and practices. However, there are unique features of the New Zealand retail and payments sector which we consider can be overlooked or underestimated, and which limit genuine comparability with other jurisdictions. New Zealand has a relatively small consumer population. As with any economic model this means a higher fee per capita when costs are apportioned, rendering a direct comparison with financial systems in densely populated countries of limited value. EFTPOS was a New Zealand innovation that led the world. However, since its inception there has been minimal additional development or upgrade to the system. Quite simply, there has been no incentive for further innovation. Unlike other jurisdictions (including Australia) EFTPOS transactions attract no or minimal service fees in New Zealand. Innovation and development require the commitment of resourcing and funding. The current service fees in place for the scheme rails model has ensured continued technological development that has benefitted merchants and consumers alike. The significance of contactless and card not present capability has been highlighted during the pandemic, and reinforces the need to ensure that payment systems and capabilities continue to evolve. This depends on investment from those in the payment services sector. We also note that the cost of managing cash payments for merchants continues to increase (again impacted by the pandemic but actually increasing long before that) and it is therefore artificial to exclude cash payments from an evaluation of overall payment costs for businesses. It should be assumed that these costs will be factored into the retail pricing of any goods and services just as other scheme payment costs may be. While merchants can refuse cash, there are consumers who still prefer to pay with legal tender and, more significantly, may not have other forms of payment choice (unlike PayWave where the card can be utilised differently to finalise payment).
4	What is your view on charges incurred by cardholders for the use of payment methods?

When assessing the level of charges that consumers pay for different payment methods, we consider that "convenience" fees (we note they can be called by a variety of terms) that are charged by many service and utilities businesses should also be included in the analysis. These fees can be significant, and if not included in the scope of any regulation of charges may create inequities by enabling some businesses to increase revenue outside any capping system. This is particularly significant given that consumers purchasing in-store have considerable choice about how they pay in the event they are faced with a surcharge or fee. They can elect to conclude the transaction using EFTPOS or by inserting their card rather than using PayWave or a credit card. When paying online or booking services online, there is no means of avoiding a "convenience" fee.

In terms of the level of charges consumers face, this is difficult to accurately assess based on current practice and data as there is no consistency in approach. However, in general, merchants can use surcharging to recover multiple costs, not simply interchange fees, and there is currently little transparency in how such charges are derived. In our view, regulation of surcharging should focus on ensuring that such fees are limited to genuine cost recovery, similar to the approach of the CCCFA and fees charged for consumer credit.

Prohibiting profit from surcharges would in our opinion go a considerable way to enabling identification of the genuine costs to merchants of various payment schemes. Similarly, the components of any surcharge could be prescribed to better standardise fees. Extending this to "convenience fees" would ensure that consumers are not simply paying more for the primary services or goods through an alternative stream, and that fees are genuine cost recovery.

5 What impacts do you believe rewards and inducements have on the retail payments system?

We consider more data is needed to accurately assess the impact of rewards and inducements on the retail payments system, although anecdotal data supports the view that the majority of consumers choose payment methods for reasons of ease and/or perceived benefits. Cards with loyalty programmes that are identified as valuable may become a preferred method of payment, but ultimately the payment method is controlled by the consumer and is to a large extent unpredictable, particularly when surcharges may be a factor on particular transactions.

There will always be a time lag between the availability and uptake of new technology, but as is evidenced by PayWave, as a method becomes more familiar it is increasingly trusted and consumers generally come to expect these methods to be available to them.

6 What is your view on charges incurred by merchants for the use (acceptance) of payment methods?

	We have not seen any comprehensive data to support the notion that the availability or non-availability of specific payment methods changes a consumer's decision to purchase, meaning that merchants can still choose what payment methods to offer without losing sales. As noted, many businesses face costs associated with cash payments which are not being considered alongside other payment methods. A comparison may be also made to cafes who introduced a surcharge to cover increased wage costs on public holidays. While initially there was some criticism and some cafes/restaurants chose not to open rather than charge a surcharge or absorb the additional cost, ultimately the feedback (reported nationally) was those that opened and charged a surcharge were busy and did not suffer lost business. In our opinion, allowing merchants to steer customers to what are perceived to be lower cost methods should be approached with a high degree of caution. A purchasing decision should in our view be entirely a decision for the person purchasing, and there may be multiple influencers on their decision making which are not and should not, be known by the merchant. In terms of merchant control, we note that where a buy now pay later option is available, which is a more expensive payment option, merchants have total control to enable or disable charges. Similar capability in other payment options may be one way to provide more control to merchants if that is something seen to be lacking at present.
7	Please provide your views on barriers to merchants steering consumers to lower cost payment methods and the extent that steering occurs?
	As discussed above we consider empowering merchants to steer consumers to preferred payment methods should be approached cautiously. We also note it does not really take into account card not present transactions, where a merchant would not know what card or payment type was being used. Existing "honour all card" agreements between issuers and acquirers would create issues for merchants and there are also logistic problems in merchants requiring customers disclose their intended means of payment.
8	Please provide your views on the barriers to merchants surcharging and the extent that surcharging occurs?
	As indicated above, in our view there is little evidence to suggest that surcharges act as a genuine barrier and cause merchants to lose sales. The surcharges introduced by cafes several years ago support this assessment.
9	What is your view of the wealth transfer by merchants passing on merchant service fees in the price of goods and services to all their consumers?

The price of an item is the primary driver for consumer purchase and we consider it unlikely that prices are significantly influenced by the inclusion of merchant service fees. Anecdotally higher prices are often found in smaller businesses that likely do not offer the suite of payment options that larger and more price competitive businesses provide, indicating that buying power and volume is the primary driver of cost. Furthermore, consumers have the freedom to shop elsewhere – with online shopping making that ever easier no matter location.

In considering wealth transfer of merchant service fees to all consumers, there is also an assumption that there are no costs associated with other forms of payment that should properly be considered in the overall price of the goods/services. As we have already identified, receipt and management of cash payments is highly costly to businesses in terms of bank fees and time - costs that are arguably being passed on to non-cash paying customers.

10	What barriers do small businesses face to obtaining competitive merchant service fees?

There is evidence that suggests that smaller or non-strategic businesses statistically pay higher merchant fees. However, there are also options available to a number of these businesses, for example to use leverage through industry associations. It is also important to identify that the driver is rarely the size of the business but rather that the average ticket price drives the level of fee.

11	What information or assistance would assist small business to obtain better deals?

As above, the focus is on the ticket price of an item rather than the size of the business in terms of volume of transactions.

It may be that industry associations could provide advice on negotiating terms but ultimately it has to be up to businesses to take the time to understand the different options that are available to them. Potentially service providers could be required to disclose different offers/choices but this would render the relationship more like that of consumer to business rather than B2B.

12	What cost differences are there for providing merchant services to small businesses compared with larger businesses?

As with any business, economies of scale apply and larger businesses will most likely have transactional banking linked to the merchant service fee as a package driving this benefit. We note again the common link between transaction value and the level of fee, not simply the size of the business.

13	How much competitive discipline does EFTPOS provide on scheme debit card merchant service fees and are there any barriers to domestic EFTPOS providing more competitive discipline on merchant service fees?

	ETFPOS has limited application insofar as it cannot be used for wallet payments or for contactless payments, both technologies that are increasingly in demand as having greater efficiency, greater perceived security for the customer and health benefits. The primary focus is again the customer and what the customer wants, and removing "barriers" likely negatively impacts that as it requires limiting customer choice and control. Notably there has also been no driver to improve EFTPOS technology as it has not been based on the imposition of a fee on merchants. It does not therefore provide any genuine competitive discipline and is unlikely to do so given that there continues to be no incentive to innovate its use. From its inception, it was priced so cheaply that there was no driver for innovation which led in turn to the development of options that do carry cost/return, and which are options that consumers now expect and demand.
14	What impact is product innovation having on merchant service fees?
	As already noted, product innovation can only be achieved through long term investment in technological advancement. Investment will only be achieved where businesses identify a potential benefit – whether that be increased efficiency or income. The status quo of merchant fees has to date ensured innovation in scheme debit/credit card payment systems. New payments systems, open banking, Fintechs and closed loop and store cards are all alternatives to the Visa or Mastercard schemes, although notably fees would undoubtably still attach.
15	Is open banking likely to provide sufficient competitive discipline on scheme debt and credit fees?
	In the current climate we do not anticipate that open banking will significantly impact on scheme debit and credit card fees given the pace of change. Standards are in their infancy and it will inevitably take time for change to impact fees. Neither will open banking impact the potential for bi-lateral agreements.
16	Do you agree that there is a gap in regulatory governance of the retail payments system relating to promoting competition and outcomes that are in the long-term benefits of end-users?
	Regulatory governance is currently managed through various mechanisms and in particular competition is regulated through the Commerce Commission. As with all industries the Commission's ability to intervene is limited to non-compliance with the Commerce Act. As merchant service fees are currently unregulated there is no gap per se, but one will likely become apparent in the event of regulation with no bespoke specialist regulator.
17	Please feel free to provide information on any other issues of concern with the performance of the retail payments system.
	We have no additional comments at this time.
18	Do you agree with the objectives for the retail payments system in New Zealand?
	While we agree in principle with the objectives espoused, we note that delivery of those objectives is heavily reliant on the commitment and investment of the payment service providers and so there must also be recognition of their interests as legitimate businesses with obligations to their stakeholders.

19	Please provide feedback on the aspects of the proposal for interchange regulation, including any changes that would improve the impact of it, with supporting evidence of any benefits or costs.
	We think it is difficult to provide meaningful feedback on this at this stage. When there is greater specificity in the proposed regulation, gaps or perceived improvements are likely to be more readily identifiable.
20	Please provide feedback on which body or bodies would be best placed to act as the regulator for interchange fee regulation.
	As noted, there is currently no obvious body with the experience to regulate the sector. In our view, integral to the successful implementation of any regulatory system is a regulator with a breadth of practical and technical expertise to fully understand the challenges for service providers and merchants alike. We consider it critical that the regulatory body charged with oversight ensure that it employs independent, technical and practical experts from the payments industry. It is equally important that such experts be engaged to assist drafting the regulatory requirements to maximise seamless implementation.
21	Please provide your views on the impacts of the above classes of options, with supporting evidence of the benefits and costs.
	Any requirement that fees charged to merchants be closely connected to the activity for which the fee is charged (which resembles the CCCFA consumer fee test) is still relatively undefined and likely to result in differing interpretations and resulting approaches. If the intention is to create a prescriptive approach to cost recovery, the types of costs should be clearly stated to avoid confusion and potentially inconsistent application. Any limit on fees charged to merchants will impact funding and investing in innovation as has been seen with EFTPOS. Online payment gateways, Buy Now Pay Later, and other emerging payment systems should, in our view, also be captured to ensure an equal playing field for all market participants and a comprehensive solution. We do not agree with any proposal that includes merchants surcharging for higher cost payment methods or providing discounts for customers using lower cost payment methods given the impact this has on consumer freedom of choice, the inability for merchants to consistently identify the means of payment being chosen and absent any allowance for the costs associated with so called “low cost” or alternative methods (such as cash).
22	Please provide your views on any other feasible options that should be considered, with supporting evidence of the benefits and costs of these options.
	We have no other proposals at this time.
Other Comments	