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Ministry of Business, Innovation & Employment
PO Box 1473
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By email: competition.policy@mbie.govt.nz

ASB response – Issues paper on reducing Merchant Service Fees

ASB Bank Limited (ASB) banks around 20% of New Zealand's small businesses and we are committed to their success. We aim to provide the best service, the best value and be responsive to their ever-evolving needs.

We appreciate merchant service fees are a significant issue for many small businesses and we want to get the balance right. At the start of this consultation we immediately introduced a merchant service fee rebate, until the outcome of this consultation is final.

With this in mind ASB welcomes the opportunity to provide feedback to the Ministry of Business, Innovation & Employment (MBIE) on the Issues Paper on regulating to reduce Merchant Service Fees.

We support a level of regulation around interchange, provided the elements of cyber security and innovation are enabled and a fair return for service is protected.

Our key submissions on the discussion document are set out in the enclosures to this letter.

We acknowledge that ASB's submission may be published on MBIE's website and may be released in response to a request under the Official Information Act. ASB does not seek confidentiality for any aspect of this submission, other than my direct contact details below.

If you require any further information in relation to this submission, please do not hesitate to contact me.

Yours faithfully,

Jennifer Bourne
Senior Manager, Government Relations & Regulatory Affairs
ASB Bank Limited
[redacted]

[redacted]

ASB's perspective on Merchant Service Fee regulation

ASB participates in the NZ payments system as both an issuer of cards to its customers to use to make transactions, and as an acquirer providing services to merchants who wish to accept card transactions. ASB has brought both these perspectives to the issues raised by MBIE on Merchant Service Fee (MSF) regulation. ASB previously submitted to MBIE's in 2016 on Retail Payment Systems, and we have re-stated some of the views we provided in that submission, which remain relevant.

The main points we make in relation to the Issues Paper ('the Paper') are:

- Small business is the backbone of New Zealand's economy. As a bank, supporting small business has been a priority for us, and this has never been more important in light of Covid-19. We understand that MSFs are a significant issue particularly for small business. Since 1 December 2020, ASB has provided a rebate to our small and medium sized merchants to reflect our desire to get the balance right.
- Because of the multiple parties providing services within card payment networks, MSFs incorporate a range of costs, over which individual parties can have limited control. We welcome overarching direction to the industry.
- We support a downward trajectory for interchange fees which acknowledges New Zealand's unique retail payments system, reflects the balancing role played by interchange fees in supporting innovation and improved customer experiences and appropriately reflects the risks involved in participating in payment networks. We think regulating MSFs beyond interchange would be complex and challenging.
- The proportion of transactions that are fee-free for merchants in New Zealand should be taken into account. Our own estimation of average MSF and interchange levels in NZ, shows these appear to be closer to regulated levels in Australia, once fee-free eftpos transactions are factored in. Nevertheless, we acknowledge the trend of displacing free eftpos transactions with contactless transactions that attract a fee will have an impact on merchant fees over time and now is an appropriate time to address that.
- As MBIE considers regulation, the role of card payment systems in balancing the benefits and needs of both consumers and merchants should be appropriately reflected. For consumers, this includes convenience, interest-free days, fraud protection and cyber-security, chargebacks and innovation. For merchants, this includes attractive payment options to offer consumers, without the need to also take on card issuing and acquiring functions and all that comes with it.
- Any regulation should be simple, proportionate, and fit for the future, ensuring that all payment providers operate on a level playing field. Specifically, we believe any regulation should also include Buy Now Pay Later (BNPL) providers, as well as considering payment types that do not currently exist in New Zealand. BNPL providers should operate within the regulatory perimeter in order to create a level regulatory playing field.

We have expanded on these points in our responses to the questions raised below.

Our responses to the Issues Paper questions

1. **Do you have any feedback on our proposed approach to this project?**

We agree that there should be a focus on clearly articulating the nature and extent of the policy problem to be addressed and the objectives that are sought to be achieved. We would like further detail from MBIE as to how some of the proposals suggested might achieve the objectives set out, given that there is limited analysis of this provided in the Issues Paper itself.

We note that in terms of a policy response, that the Government has already committed to moving to regulation, notwithstanding the policy development process outlined in the Paper. It would be helpful to understand MBIE's expected regulatory timelines following the Cabinet decision in April, so that those impacted by any regulatory changes have sufficient time to prepare for them.

2. **Have we described the retail payments system accurately? Is there any additional information that you would like to provide?**

We have commented below on some aspects where we feel additional detail could assist in MBIE's assessment of the issues.

<u>Benefits and costs</u>

The Paper does not provide a detailed analysis of the costs and benefits of card based payments, and we do think these are important for MBIE to recognise and balance when considering regulation in this area. This is particularly so when considering the relative benefits and costs with credit cards.

As we have previously submitted in 2016, although retailers pay transactional fees for some of their card-based payments, they also receive significant economic and related benefits from a 'bank-managed' credit card model. Payments cards that extend credit for purchases were originally a merchant-driven innovation developed by various merchants (albeit overseas) in the 1920s to enhance their own profitability. While those card programs proved attractive to consumers given the payment convenience and ready access to credit they provided, they were not very efficient for merchants since each merchant needed to:

- market its own program, process and evaluate applications, and issue its own cards;
- develop its own system for accounting and billing, including posting every transaction to the proper account, mailing billing statements, and tracking payments;
- operate its own customer service function to handle billing inquiries and disputes;
- incur the costs involved in funding the credit transactions;
- conduct its own underwriting to determine which customers qualified for credit and which did not;
- establish and maintain debt collection programs;
- bear all the credit losses; and
- develop and implement fraud prevention strategies.

Given the cost and resource, merchants therefore moved away from continuing to develop and operate their own systems, and instead took advantage of other options such as those offered by their banks using products and networks of Visa, MasterCard and others. The costs and risks outlined above are borne largely by issuers who rely on interchange paid by retailers as part of their revenue model to cover these costs.

Similarly, the Paper notes that there are costs on acquirers, but these are not detailed in depth. Acquirers take on risks associated with fraud, have significant compliance obligations, as well incurring costs in providing Eftpos acceptance services, the management of merchant compliance in relation to PCI-DSS (Payment Card Industry Data Security Standards) and the third party costs incurred for network services.

Merchants accepting credit card transactions also receive significant economic and related benefits. International credit card acceptance means merchants receive the funds as usable cash in their accounts overnight with ASB with the following benefits:

- Costly and administration-heavy Travellers Cheques acceptance removed
- International customers can purchase more than the converted cash they have on their person at the time
- Removed the requests from customers to pay in their home currency with the merchant left to exchange to NZD

Domestic credit card acceptance also provides a daily guaranteed cash flow, and minimizes some of the challenges and costs associated with cash, such as carrying out cash handling and reconciliation requirements, which comes with costs and potential for errors; and the risk of staff and armed theft.

Costs associated with other payment methods

At paragraph 44, the Paper discusses the use of other payment methods such as digital wallets. Costs related to the acceptance and maintenance of digital wallet-based transactions (such as Google Pay and Apple Pay) are covered by the issuers of the card being used in these wallets and not through merchant fees.

Rewards programmes incentivising high-cost payment methods

The paper identifies at paragraph 76, a concern that rewards programmes provide incentives to use higher cost payment methods such as credit cards. Although many customers may use credit cards to transact when they don't need the credit, in our experience this is not necessarily driven by a desire to earn rewards. Often it is to take advantage of the convenience offered by a card, underpinned by the chargeback protection offered by this payment method, or to utilise the interest free period to manage their cashflow. We provide further comment on rewards schemes in our response to question 5 below.

Interchange as a component of MSF

At para 49 of the Paper, it is stated that interchange is the largest component of MSF. While interchange fees are generally the largest component of the MSF, for merchants that have a low average transaction size, the switching and scheme-related costs can be a significant portion of the MSF. This is because these fees are typically charged to acquirers as a cents per transaction fee, rather than basis points on the value of a transaction. This creates some of the complexity and range seen within MSFs. We have made some further observations about interchange fees in our response to question 19 below.

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.**

We do not have an aggregate view of MSF levels in New Zealand as the pricing information is sensitive. We would expect the recent trend for MSFs to be that they have been moving downward in response to recent moves by banks to implement capped rates for certain transactionsfor example, ASB moved last year to a capped pricing rate of 0.70% for SMEs accepting debit contactless transactions; and a range of credit interchange fees also reduced.

We think that any assessment of the levels of MSFs, and interchange levels within that should take into account the proportion of transactions via eftpos that are fee-free for merchants in New Zealand. Our own estimation of average MSF and interchange levels in NZ, factoring in fee-free eftpos transactions, shows these are appear to be closer to the regulated levels in Australia than the most recent Retail NZ survey suggests. Nevertheless, we acknowledge the trend of displacing free eftpos transactions with contactless transactions that attract a fee will have an impact on merchant fees over time and now is an appropriate time to address that.

We also note that the greater scale and number of players in the Australian and European markets provides a greater ability to negotiate costs and benefit from pricing based on volume, which is typically how card schemes and third parties charge for their services.

4. **What is your view on charges incurred by cardholders for the use of payment methods?**

There are costs (and benefits) associated with all payment choices, either directly or indirectly. Our experience is that a cardholder's decision to use a payment method will depend on their perception of value they receive. For consumers using scheme cards, we know from our own insights that this includes the convenience of access to a credit line, interest-free periods, the acceptance of the payment method, how it fits with how they want to manage their finances and the reputation of the card-issuing institution. The scheme card offerings in the market and the costs customers face, such as an annual card fee, will reflect this reality and differ across different customer segments depending on how these will appeal and how they meet a customer's needs.

Cardholders can of course also incur surcharges. We have provided some views on surcharging in our response to question 8 below.

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

Rewards and loyalty schemes are widely offered to consumers and the financial services sector has long been active in providing rewards schemes to customers.

Whilst these schemes have been instrumental in helping banks differentiate their cardholder offerings and compete for customers, ASB has seen over time (and as rewards and loyalty schemes become the norm) that cardholders also value features such as convenience, low interest rates, and security, and factor in the costs of the card, alongside rewards and loyalty programmes. The extent to which reward schemes act as an incentive to encourage the use of higher cost payment methods, is in our view less significant than is suggested by MBIE at paragraph 76 of the Paper and a more complex issue tied to an overall perception of value.

Rewards schemes or inducements represent a form of value delivery to the cardholder side of a payment card network. The value received by a consumer is linked to their willingness to adopt and use a card proposition which is essential in driving a network effect.   Rewards and inducements have undoubtably played an important role in the growth and popularity of card schemes amongst consumers, and in turn with merchants. It is however, difficult to separate this from the other features of cardholder offerings as consumers make a choice based on all the benefits a card brings. On the acceptance side, the more popular and prevalent a way of paying is among customers the greater the value merchants will see in accepting that payment method which in turn feeds more consumers also seeing value in using the method because of its widespread acceptance. In this way the value delivered to cardholders, including through rewards, has helped establish card payments and has supported the benefits received by merchants and consumers.

In addition to rewards or inducements, we have seen that low fee or low interest rate card products with interest free periods, but no rewards, are a segment which has experienced strong growth in recent years in NZ through its appeal to consumers. This product set also represents value being delivered to the cardholder side of the network through the economic model which includes interchange revenue. This in turn also creates value for merchants.

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

We know that MSFs has been a significant issue for smaller merchants, and we support a downward trajectory for interchange fees, which acknowledges New Zealand's unique retail payments system, reflects the balancing role played by interchange fees in supporting innovation and improved customer experiences and appropriately reflects the risks involved in participating in payment networks. We note that there are costs and benefits associated with all payment choices that merchants offer, be they cash, card or electronic methods, and we support a fair return for the payment service provided.

As we note in our response to question 4 above, a merchant, like a consumer, will consider the value offered for the payment method. For example, for merchants accepting credit cards, they will balance the costs against the benefit of having access to a greater number of customers who make purchases which otherwise may need to be financed in other ways. There is also some evidence that the average spend on credit cards is higher when compared to debit cards.[1]

The quick and relatively recent merchant adoption of emerging payment methods such as BNPL, illustrates the value to merchants of attracting a greater number of customers, though these methods can come with relatively high acceptance costs.[2]

7. **Please provide your views on barriers to merchants steering consumers to lower cost payment methods and the extent that steering occurs?**

While there is a relatively low amount of steering in New Zealand, merchants are free to accept credit card and contactless debit transactions or not. Some of our merchants choose to only accept free Eftpos transactions, or a combination of credit card, contactless debit and free debit transactions. In this way, those merchants are steering consumers to lower cost payment methods. Other merchants are surcharging more expensive transactions to steer consumers, or at least recoup the MSF they pay.

As alternatives such as API-facilitated methods (for example, Paymark's Online Eftpos solution) become more mainstream, merchants may have more ability to influence customer's choice of payment method. However, we have seen that merchants can be unwilling to take up new payment methods unless there is a critical mass of acceptance from consumers.

8. **Please provide your views on the barriers to merchants surcharging and the extent that surcharging occurs?**

[1] The Fed - The Federal Reserve Payments Study: 2017 Annual Supplement: this study provides analysis of Average value of remote and in-person general-purpose card payments, by card type, 2012, 2015, and 2016, showing credit card spend is roughly double that of debit cards.

[2] Fees charged to merchants for BNPL services are not publicly available, however this article provides some indicative costs to merchants: https://www.interest.co.nz/personal-finance/101238/we-look-what-different-buy-now-pay-later-providers-are-offering-new-zealand

While we do not have visibility over the level of merchant surcharging, it is our perception that there is an increasing number (albeit the minority) of merchants now surcharging.

It may often depend on the level of competition a merchant faces and what channels they compete or exist in. Where it is a low choice option (paying a fine etc) there may be a propensity for surcharging but where consumers are able to shop around, then a merchant may wish to offer many options to increase appeal to broad range of consumers. For example, some online merchants may not wish to surcharge where they see it as a barrier, and indeed may view card payment methods as preferable over other alternatives, given the protection it provides the merchant.

We also note that merchants are increasingly able to introduce surcharging automatically, with terminals having the functionality to surcharge at different rates based on card type. As MBIE notes in the Paper at paragraph 112, safeguards against excess surcharging should be in place.

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?**

Like other costs that merchants incur in the course of doing business, merchants will face a choice in how they offset MSFs. This will vary by merchant, and the way in which merchants price is likely to be more complex that a simple cost-input approach, which underpins the wealth transfer argument.

We suggest if this is a key driver of regulation and the intended outcomes for retail payments then further work into its prevalence and significance is undertaken.

We also note that this theory could equally be applied to other choices merchants make around how they position their businesses for consumers. Merchants who offer loyalty programmes will recognise that while the benefits of providing loyalty offers may fall to only a proportion of customers who see the value in participating and engaging with the programme, but that costs of such offerings are ultimately spread across the business cost base. This applies equally to other service offerings (e.g. free parking) which will not necessarily be used by all customers but are commonly allocated costs.

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

We recognise that smaller merchants can lack the same bargaining power as larger merchants. One of the key inputs to determine pricing for our merchants is the volume they process, not the size of their business. Another key pricing input is the mix of transaction type (e.g. e-commerce, contactless), average transaction size and card types (e.g. Platinum, Standard).

Certain business types such as small e-commerce retailers which small businesses often fall into, can present a higher risk to acquirers as they may have less secure solutions in place to reduce the risk of accepting fraudulent transactions or preventing data breaches.

They may also be unable to provide information on key pricing inputs (referred to above) which are used to help calculate MSFs.

ASB, like other banks, has also been proactive in providing relief to small business through Covid-19 in the form of waiving debit contactless related MSFs and then subsequently capping MSF fees for SMEs on debit contactless transactions from August. We also promote unbundled pricing as the preferred pricing option so that merchants have clarity as to the fees they are paying. Since 1 December 2020, we have chosen to provide a 20% rebate on MSFs to our small and medium merchant customers, until the outcome of MBIE's review.

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

Detailed transactional information such as historic merchant statements help acquirers price merchant acquiring services more accurately for the types of transactions that they process. For new businesses, ASB would review business plans to help determine appropriate pricing. We set out at our response above to question 10, key inputs which determine pricing.

Further merchant education around what drives lower MSF i.e. volume, transaction type (e.g. online or instore), the value of the transaction, risk profile could assist in demystifying how banks calculate these fees and why they differ between merchants.

We also think transparent pricing can help small business to understand the best pricing deal for their business. ASB has worked hard to ensure transparency and flexibility around merchant pricing for our customers and in the last few years have introduced new pricing options for customers to choose from:

Fixed pricing – offers the same rate for all transactions which provides greater certainty of transaction costs. Some small businesses prefer to have the certainty of transaction costs and therefore choose to have the Fixed Pricing option.

Interchange Plus – where the merchant pays the scheme interchange rate for each transaction plus an agreed MSF. The MSF covers processing costs and a Margin. Businesses sometimes choose Interchange Plus as they prefer to pay the interchange rates applicable to the transaction type rather than an average, fixed amount.

Semi Bundled - where the transactions are grouped in different buckets based on the transaction type and card type with similar interchange rates. Semi bundled is a good option for those that have a good understanding of the mix of cards they accept and want to avoid paying a higher fixed rate that would factor in card types that their customers do not use.

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

There are some cost differences we see for providing merchant services to small businesses.

One example is that typically greater levels of support are required for smaller merchants. A larger proportion of time is spent by staff in assisting and educating small businesses as to how merchant acquiring works, what solutions are available and industry best practices. A portion of MSF also prices for risk. As per our response to Question 10 above, some small businesses have a higher risk profile.

Additionally, in many cases, small businesses have lower transaction values which results in higher costs per transaction, as we refer to in our response to Question 2 above.

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?**

As we note in our response to question 3 above, merchants have benefitted from the presence of fee-free Eftpos and this should be factored into assessments about MSFs. ASB's experience is that Eftpos transactions (including scheme dipped or swiped cards) continue to make up 30-40% of the total transactions value processed in New Zealand, which remains significant.

However, Eftpos is an example of a fee-free payment option, which has suffered, due to a lack of a sustainable economic model, from low investment and innovation. There has been minimal investment in Eftpos since the 1980s and as a consequence, there are now significant functionality gaps when compared to scheme debit (i.e., no chip or contactless, it cannot be included in a digital or mobile wallet, and it cannot be used for online transactions).

Without an economic model which provides an incentive for investment, the functionality gap for Eftpos is likely to widen. An example of where Eftpos is likely to fall behind is in the 'tokenisation' of card data, a security method used to protect a customer's credit or debit card information while a payment is being processed.

As we highlighted in our 2016 submission, API-based next-generation retail payments will ultimately provide a point (or points) of difference and therefore create competition. Paymark's Online Eftpos API offering is an example of an alternative online payment solution for merchants. For various reasons – not least of which is building up a 'network effect' – such API-based payment solutions have taken longer to gain momentum than hoped for. Nevertheless, we expect that over the next few years more non-scheme, next generation payments providers will emerge to provide competition.

14. **What impact is product innovation having on merchant service fees?**

There have been a number of innovations over the past few years which ASB has incorporated and provide benefits to merchants, all of which require significant resource to implement and manage on an ongoing basis. A portion of MSF go towards this innovation. Examples of this are supporting network tokenisation to provide more security over customer card data, acceptance of UnionPay transactions, 7-day settlement of payments and connections into switching providers such as MPGS, CyberSource and Windcave.

15. **Is open banking likely to provide sufficient competitive discipline on scheme debt and credit fees?**

As banks build out their API capability, solution providers will connect new solutions, but these will all take time to get established and build critical mass. We do not therefore expect any significant competition from Open Banking over the next two years. We note that an open banking model which has commercial value to participants is more likely to see more rapid adoption and support.

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?**

We agree there is an opportunity for regulatory direction in the retail payments system. However, we also see an important role for Government in promoting competition and driving positive outcomes in the retail payments system by enabling those departments and state entities that are significant receivers of payments to become early adopters in accepting new payment types, thereby providing the much needed transaction volume growth to accelerate the establishment of new competitive offerings in market.

17. **Please feel free to provide information on any other issues of concern with the performance of the retail payments system.**

As we noted in our submission to MBIE's 2016 Issues Paper, it is important the issues identified in retail payments are considered in a broader context than just card acceptance pricing, otherwise there is a risk that opportunities to provide a regulatory environment which supports a range of payment methods are missed if too narrow a view is taken. Regulation should be fit for the future, ensuring there is consistency of approach in regulating what can be charged by payment providers.

18. **Do you agree with the objectives for the retail payments system in New Zealand?**

While ASB is broadly supportive of objectives set for the retail payments system, we note the Issues Paper has a narrow focus on the pricing of a sub-set of retail payment products. A robust payment system should balance the objectives of open accessibility, safety, efficiency and interoperability. As noted in our response to question 16 above, we think it is important to consider the broader context of the retail payments system, especially in light of the emerging and next generation of payment methods and the changing dynamics of the payments market.[3] The retail payments system should enable healthy and *fair* competition between payment providers and payment products.

We think strong emphasis should be placed on beneficial innovation and network cyber security, because this should help facilitate the other objectives, and will lead to the next step change in payments.

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 welcome a downward trajectory on interchange fees. At the same time, it is important to ensure that there is allowance to maintain investment in innovation and cyber-security, and a fair return for service, given interchange plays a role in bringing benefits for both merchants and cardholders alike. As we referred to in our response to question 3 above, our analysis suggests that the average interchange level in New Zealand may be closer to Australian regulated interchange levels, when Eftpos is factored in.

We think an appropriately balanced level of interchange will continue to offer benefits to merchants and consumers. MBIE should also consider how a reduction on interchange should be expected to flow through to other payment providers that sit outside, but may utilise scheme rails.

More generally, we are mindful, as noted in our response to question 18 above, that issues in and regulation of the retail payments system should consider wider developments in the payments ecosystem, such as the emergence of next generation payments, which may or may not operate over scheme rails, to ensure that regulation is fit for the future.

As we noted in our response to question 2 above, it is important to recognise that while interchange fees can be a significant component of the MSF, for merchants that have a low average transaction size, (and this may apply more often to smaller merchants), the switching and scheme related costs can be a significant portion of the MSF; these are costs which issuers and acquirers do not set, or have little control over. This is because these fees are typically charged to acquirers as a cents per transaction fee, rather than basis points on the value of a transaction. This creates some of the complexity and range seen within MSFs. If regulation was to apply to MSFs generally, then a potential unintended consequence may be that it becomes unprofitable for acquirers to provide acquiring services to these merchants with low transaction sizes.

Regulation of interchange by hard caps per transaction type

We note that regulating interchange by the use of hard caps is simpler to administer from a practical perspective, while a mix of hard caps and average weighted interchange allows for differentiation both between transaction types and products within those types, to reflect individual costs and risk profiles, which we see benefit in.

[3] For example, the New Zealand Herald ran an article recently reporting credit bureau data showing a decline in use and issue of credit cards over the period from January 2019 and December 2020.

In relation to the proposal to target different classes of merchants through caps, we note that segmentation in this way could be difficult to administer in practice, as merchants can move between segments throughout their business lifecycle.

Given the high-level nature of the proposals, we anticipate and welcome further engagement and consultation to ensure appropriately targeted regulation.

Impacts of regulation

As with any regulation, it is important to understand any impacts and unintended consequences. We have noted some of these below.

A trans-Tasman comparison on a platinum credit card shows that currently, New Zealand has a lower annual fee but higher reward scheme generosity.[4] We therefore expect that replicating an Australian regulatory model in relation to interchange is likely to lead to similar outcomes, being higher annual fees and reduced rewards levels.

We note that interchange has been used as tool to balance the two-sided market that the Paper describes at para 29, to balance the different levels of value provided to merchants and consumers. While interchange has often been perceived as a way of funding rewards schemes, we expect to see impacts from interchange caps wider than rewards offerings. For example, other cardholder benefits such as the extent of interest-free periods may be impacted.

20. **Please provide feedback on which body or bodies would be best placed to act as the regulator for interchange fee regulation.**

We have a preference for the Reserve Bank to have a role given their wider financial and payment system oversight remit, though appreciating that they would need to build capability to carry out such a role. The Reserve Bank already oversees the payments system in terms of meeting other important systemic objectives. A key feature of the retail payments system is the need to invest in maintaining system availability and combatting cyber-crime. Extending the Reserve Bank's regulatory role would ensure that pricing regulation will not be managed in isolation, but in the context of overall system stability, safety, efficiency and interoperability.

21. **Please provide your views on the impacts of the above classes of options, with supporting evidence of the benefits and costs**.

Our overarching preference is for simple regulatory intervention which is not more complicated or directive than required. We have commented below on some key principles that reflect this. We have also made some high-level comments in relation to some of the supplementary options presented in the Paper, noting that these are less detailed in terms of how they would target the policy problems identified. We would welcome further engagement and analysis of these options.

Key principles

Principles that we feel should be considered in regulating MSF include:

- That the regulation is simple and easy to understand and implement
- That regulation appropriately balances the value of maintaining a a cardholder proposition, as well as investment in security and innovation.

[4] We compared ASB platinum credit card offerings to CBA equivalents.

- Regulation needs to reflect the dynamics of the New Zealand market, in particular the existence of Eftpos as a fee-free low-cost payment method for merchants.
- Regulation should also be fit for the future. We believe any regulation should include new and emerging payment methods, and the changing dynamics of the market, allowing all players to operate on a level regulatory playing field.

Supplementary options - other price regulation

Merchant service fees generally

As we have stated earlier, our preference would be that regulation targets interchange fees. As we note in our response to question 19, MSFs incorporate a range of different inputs, some of which reflect the merchant's business and transaction profile, and would be more complex to regulate.

Consumer card fees

We would welcome more detail on any policy proposal on consumer card fees. We note that card fees are set in a competitive market which includes interchange fees as a key revenue. As we note in our response to question 19, interchange regulation may impact card fee levels but this will still occur in competitive context and card issuers will adapt their offering to reflect any impacts.

No net-compensation test

We support anti-avoidance measures in principle. We would welcome further detail on the policy proposal.

Regulating other product types

We believe that regulation within the retail payments system should ensure that all payment methods are on a level playing field. For example, if interchange fees are regulated downward, we would expect to see that any reductions are passed on by all providers (for example, BNPL providers) who have interchange fees built into in their charging models. As noted above, we would also expect consistency of approach in regulating what can be charged by payment providers.

Information disclosure

ASB supports transparent pricing, however we would like to understand more about what types of information MBIE see as suitable for disclosure, as some information is commercially sensitive. For example, we would support providing average MSF levels, but we would be concerned at publicly providing the number and profile of merchants that we provide acquiring services for, which would be commercially sensitive.

Collective bargaining

On page 33 of the MBIE submission, collective bargaining is considered within a suite of potential supplementary options alongside the regulation of interchange fees. We note that some collective bargaining already occurs in the retail industry through Retail NZ[5], as well as the Tourism Association and Hospitality Association. As merchants are priced based on a range of factors including individual risk profile, our observation on collective bargaining is that it may lead to some cross-subsidisation, with some merchants paying more in some cases than they might under an individual agreement. In our view, clear pricing structures which

[5] https://retail.kiwi/our-partners/westpac/

enable fees to be priced fairly according to individual merchant profiles would lead to better outcomes for small businesses.

Codifying rules and practices to support transparency

We note that MBIE contemplate an option to include rules to limit the extent of rewards and loyalty schemes. We would expect that interchange regulation will have a natural impact on limiting the extent of rewards and loyalty schemes - this has been the experience in Australia.

Requiring merchant surcharging or discounts

Generally we support having a choice for merchants, rather than mandating surcharges and discounts. If surcharging was to be required, we support monitoring of the levels of surcharging applied by merchants to ensure that consumers are not overcharged.

Setting requirements in relation to product development and technology

We note that proposals in this space will need to reflect the changing dynamics of the payments market to ensure they are 'future-proofed'. If product development and technology considerations are considered an appropriate area for focus for regulatory intervention then this mandate should be considered in the context of any decision made on the appropriate regulatory agency.

Payments involve complex ecosystems and the balancing of the various participants' positions and interests with the outcomes desired for the retail payments systems should be included in any regulatory mandate. Per our response above we consider this could sit with an expanded Reserve Bank role.

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.**

As we noted in our response to question 18 above, options for regulation of the retail payments system should consider wider developments in the payments ecosystem, which may or may not operate over scheme rails, to ensure that regulation is fit for the future.