MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Scott Simpson	**Portfolio**	Commerce and Consumer Affairs
Title of Cabinet paper	Ban on merchant surcharges for accepting payments	**Date to be published**	17 September 2025

List of documents that have been proactively released		
Date	**Title**	**Author**
July 2025	Ban on merchant surcharges for accepting payments	Office of Minister of Commerce and Consumer Affairs
16 July 2025	Ban on merchant surcharges for accepting payments ECO-25-MIN-0106 Minute	Cabinet Office
17 June 2025	Regulatory Impact Statement: Ban on merchant surcharges for accepting payments	MBIE
23 May 2025	Competition analysis of banning card surcharges	Axiom Economics

Information redacted **YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982 (OIA). Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of commercial information and constitutional conventions.

Regulatory Impact Statement: Ban on merchant surcharges for accepting payments

Decision sought	Analysis produced to inform Cabinet decisions on policy proposals to amend the Retail Payment System Act 2022 to ban payment surcharges
Agency responsible	Ministry of Business, Innovation and Employment
Proposing Ministers	Minister of Commerce and Consumer Affairs
Date finalised	17 June 2025

Briefly describe the Minister's regulatory proposal

To ban payment surcharges on EFTPOS cards and domestic-issued Visa and Mastercard debit and credit cards when used in-store, and introduce regulation-making powers to allow for the initial ban to be extended to additional payment cards, methods, and/or networks in future.

Summary: Problem definition and options

What is the policy problem?

The Commerce Commission (**the Commission**) estimates that New Zealanders pay $45 – $65 million a year in excessive surcharges, with the average surcharge almost double the average fee paid by the merchant.[1] Surcharges frequently frustrate consumers, complicate price comparisons and enable online drip-pricing. Merchants almost always apply a single percentage rate across all payment instruments – despite wide differences in underlying acceptance costs – and many of those rates materially exceed net costs.

One of the key justifications for allowing surcharging is its potential to place downward pressure on interchange fees (the major component of the fees merchants pay). The argument is that surcharges that reflect the net cost of accepting different payment types would force card schemes, such as Visa and Mastercard, to lower their interchange fees to remain competitive.

However, this outcome has not materialised, and many jurisdictions, including New Zealand, have acted to cap interchange fees. These interventions have typically aimed to reduce merchants' net cost of acceptance. As a result, the need for merchants to surcharge has theoretically diminished.

Several jurisdictions have revisited their regulatory approaches to surcharges in recent years. Surcharges have been banned outright by the European Union, United Kingdom and Malaysia. Other countries, such as the United States and India, have prohibited surcharges on debit

[1] Commerce Commission (2024) *Interchange fee regulation for Mastercard and Visa networks - Draft Decision and Reasons Paper*, https://comcom.govt.nz/__data/assets/pdf_file/0032/363848/Retail-Payment-System-Interchange-fee-regulation-for-Mastercard-and-Visa-networks-Draft-Decision-and-Reasons-Paper-18-December-2024.pdf, p.6.

cards. Australia is currently reviewing its regulatory framework and is actively considering a surcharging ban.
What is the policy objective? The policy objective is to deliver long-term benefits for consumers by promoting trust and confidence in the retail payment system and transparent retail price settings. The secondary objectives that will assist in meeting the main objective are: a) limiting over-recovery of the cost to merchants for accepting retail payments through payment surcharges, and b) future-proofing the legislation by introducing a flexible, targeted toolkit to address issues with payment surcharges.
What policy options have been considered, including any alternatives to regulation? We have limited our analysis to regulatory amendments to the Retail Payment System Act 2022 (**RPS Act**) given the Government's desire to quickly address excessive surcharging. The Regulatory Impact Statement presents the following options: • **Option One (counterfactual):** No change. The Commission retains its existing powers to set "merchant surcharging standards" that limit surcharges to no more than the cost to the merchant of the payment services used for accepting retail payments. • **Option Two:** Ban surcharges on EFTPOS cards and domestic-issued Visa and Mastercard debit cards when used in-store. Introduce regulation-making powers that would allow for the initial ban to be extended to additional payment cards, methods, and/or networks in future. • **Option Three (Minister's preferred option):** Ban surcharges on EFTPOS cards and domestic-issued Visa and Mastercard debit and credit cards when used in-store. Introduce regulation-making powers that would allow for the initial ban to be extended to additional payment cards, methods, and/or networks in future.
What consultation has been undertaken? In the time available, we have not been able to consult with stakeholders. Our analysis is informed by submissions to recent Commission consultations on related issues including interchange fee regulation and external consultant advice. Agency consultation has been undertaken with the Parliamentary Counsel Office, the Commerce Commission, the Reserve Bank of New Zealand, the Ministry of Regulation, the Department of the Prime Minister and Cabinet, the Treasury, the Ministry of Business, Innovation and Employment (Small Business), and the Ministry of Justice. It is intended that the proposed RPS Act amendment bill will be subject to a select committee process, which will allow for substantive consideration of stakeholder views.
Is the preferred option in the Cabinet paper the same as preferred option in the RIS? Yes.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

Merchants would experience an ongoing reduction in cost recovery from payment surcharges, with the effects concentrated on smaller business merchants. Where merchants choose to pass the cost of their payment services on through higher prices for goods and services, this is expected to lead to increased regressive wealth transfers from consumers who use low-cost payment options towards consumers who use high-cost, reward-based payment options. Alternatively, merchants may elect to turn off contactless and/or credit functionality.

There are also likely to be competition impacts in both the banking and payment markets as consumers switch to scheme products, away from lower cost alternatives like EFTPOS and open banking account-to-account products. The competitive position of the major banks (as majority issuers of scheme products), the schemes, and digital wallet providers will be reinforced. It will also be harder for small banks and fintechs to sustain card-based growth strategies, as there would no longer be any in-store price-based differentiation to incentivise use of alternative payment methods.

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

The primary benefit of the proposed option is a significant improvement in the consumer experience due to increased price transparency. Consumers would be able to accurately assess and compare goods and services across different retailers, and would no longer be subject to excessive, opaque or hidden surcharges for payments in scope of the ban.

Regulated parties (merchants) would also have a much greater degree of certainty about how to appropriately surcharge, and strengthened incentives to shop around for better payment services. This could lead to increased competition in the acquiring market, as banks more aggressively seek to retain and attract merchants.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

International precedent suggests high certainty of qualitative benefits for consumers. Caution is required in the New Zealand context, however, because the difference in pricing approach for the EFTPOS network (compared to equivalent networks overseas) means that New Zealand's balance of payments is likely to deteriorate as consumers switch to the international scheme networks.

New Zealand consumer and general public sentiment also indicates that a high value is placed on avoiding surcharges. This is difficult to quantify in terms of 'utility value', but is the principle reason that the benefits are considered to outweigh any adverse economic consequences.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

The Commission is New Zealand's retail payments regulator. It is expected that the establishment of a regulatory regime that bans surcharges, rather than simply limiting them to cost, would be easier for the Commission to monitor and enforce. The Commission would be expected to absorb the costs of monitoring and enforcing the ban within baselines.

The proposal would require primary legislation to be passed by Parliament. It is proposed that the initial targeted ban would take effect on and from 1 April 2026, approximately one month after enactment.

A key implementation risk is potential practical difficulties with implementing a selective ban through payment terminals. This risk could be further investigated during the select committee process.

Limitations and Constraints on Analysis

There are significant time constraints on this project, due to the Minister's desire to quickly bring consumers relief from excessive surcharges, which has impacted the advice we can provide as well as the options that we can recommend. We have not been able to consult with stakeholders, and there is no available quantitative data to inform our analysis of the costs and benefits of the proposed option.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

CMontague

Catherine Montague
Competition Policy
17 June 2025

Quality Assurance Statement

Reviewing Agency: MBIE	**QA rating:** Partially meets
Panel Comment: The panel considers that the RIS partially meets quality requirements.	

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Background to the retail payment system and nature of the market

1. New Zealand's retail payment system brings together a range of parties that enable consumers to pay for goods and services electronically. These include the people making and receiving payments, as well as the banks, card schemes and infrastructure providers that support the movement of funds.

2. The retail payment system is the most used financial service in New Zealand and consists of multiple payment networks – including debit and credit card networks, bank transfer networks, digital wallet networks, and buy now, pay later networks. This assessment focuses primarily on the EFTPOS, Visa debit and credit, and Mastercard debit and credit networks, but other networks – including potential emerging disruptors – are also considered.

3. The main classes of participants in retail payment networks are:

    a) **Consumers** (individuals or businesses) purchase goods and services from merchants in exchange for payment. They initiate transactions and choose among the payment instruments offered by merchants, based on factors such as convenience, functionality and cost.

    b) **Merchants** supply goods or services in exchange for payment. They include large retailers, sole traders, wholesalers, and government agencies.

    c) **Issuers** provide consumers with payment instruments (including EFTPOS, debit and credit cards) and provide debit and credit services to consumers. Typically issuers are banks – ie, the bank used by the consumer.

    d) **Acquirers** process transactions on behalf of merchants and settle the proceeds into their accounts. Typically acquirers are banks – ie, the bank used by the merchant.

    e) **Schemes** provide card branding, develop technology and base card product features, and set the commercial model and card system rules. Visa and Mastercard operate 'open' systems, in which cards are issued and merchants are signed up through participating banks. American Express and Diners Club operate 'closed' systems, where the scheme deals directly with both cardholders and merchants.

    f) **Switches** move electronic payment information between banks and other participants. They make sure funds are taken from the consumer's account in the issuing bank and delivered to the merchant's account in the acquiring bank.

4. The specific combination of parties involved – and how they interact – depends on the type of payment instrument being used. Some instruments rely on global card networks and bank-issued products, while others use domestic infrastructure or newer account-based systems.

5. Card transactions are the main method of retail payment in New Zealand and are routed through either the switch-to-issuer or the switch-to-acquirer systems:

   a) The switch-to-issuer system (EFTPOS network) is used for all contacted (swiped or inserted) debit card transactions. The transaction is not routed through the card schemes. Use of this system does not incur a direct transaction cost for merchants (a key difference from comparator jurisdictions).

   b) The switch-to-acquirer system (scheme rails) is used for all contactless debit card, online debit card, and credit card (online, swiped, inserted, and contactless) transactions. The acquirer recovers the cost of processing a transaction from the merchant through a merchant service fee.

6. Account-to-account (**A2A**) payments are an emerging category of digital payments that allow money to move directly between bank accounts without relying on scheme rails or the domestic EFTPOS network. They are typically used for online bill payments, peer-to peer transfers, or recurring transactions, and seen as a potentially lower-cost alternative to card-based payments. The Customer and Product Data Act 2025 establishes a legal framework for customer-directed payment initiation and is designed to accelerate the roll-out of open banking.

7. Other types of instruments include:

   a) Mobile wallets, such as Apple Pay and Google Pay, which build on the existing card scheme infrastructure. They support both in-person contactless payments and online transactions.

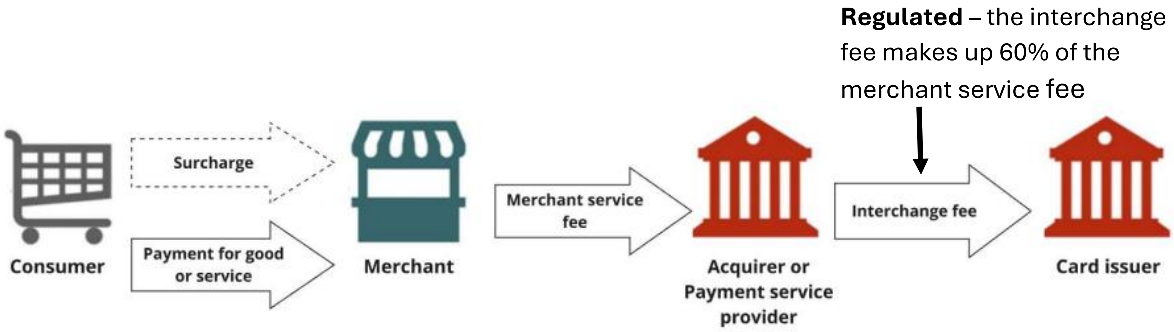
   b) Buy now, pay later services offered by third-party providers, which integrate directly into the merchant's checkout process, both online and in-store.

Merchants face costs to accept Visa and Mastercard payments

8. Merchants pay $1 billion in merchant service fees to their acquirers each year for accepting Visa and Mastercard credit and debit (online or contactless) payments, as well as other costs, such as terminal hire. The merchant service fee typically includes an interchange fee, scheme fee charged by the card networks, switch fee, and the acquirer's margin. It is usually expressed as a percentage of the transaction value.

9. Figure 1 shows the flow of money from the consumer through to the merchant to cover the cost of card payments.

Figure 1: The flow of card payment fees for using Mastercard and Visa networks[2]



10. The cost of accepting payments varies depending on the size and structure of the business. Among small businesses, some are currently paying more than 2.5% of the transaction value in fees when consumers use Visa or Mastercard credit or debit cards, while others – typically on simpler pricing plans – are paying closer to 1.5%[3]. Large businesses, which process higher volumes of transactions and have greater negotiating power, are often charged significantly lower rates.

11. Interchange fees are the largest component of merchant service fees, estimated to account for 60% (approximately $600 million each year) on average.[4] Revenue from interchange fees compensates the consumer's card issuer to participate and grow the card scheme. Interchange revenue covers a range of matters, including cardholder rewards and loyalty promotions, credit interest free periods, fraud losses, anti-fraud investments, and paying Visa and Mastercard the issuers' share of scheme fees.

12. Regulation of interchange fees under the RPS Act was intended to bring relief to small businesses. The Commission estimates that the initial pricing standard (**IPS**) resulted in over $130 million in annual savings for acquirers, $105 million of which was passed onto merchants through lower merchant service fee rates.[5] While not all of those savings would have been passed through to consumers, it is reasonable to assume that the

[2] Commerce Commission (2024) *Interchange fee regulation for Mastercard and Visa networks - Draft Decision and Reasons Paper*, https://comcom.govt.nz/__data/assets/pdf_file/0032/363848/Retail-Payment-System-Interchange-fee-regulation-for-Mastercard-and-Visa-networks-Draft-Decision-and-Reasons-Paper-18-December-2024.pdf, p.9.

[3] Commerce Commission (2024) *Interchange fee regulation for Mastercard and Visa networks - Draft Decision and Reasons Paper*, https://comcom.govt.nz/__data/assets/pdf_file/0032/363848/Retail-Payment-System-Interchange-fee-regulation-for-Mastercard-and-Visa-networks-Draft-Decision-and-Reasons-Paper-18-December-2024.pdf, p.6.

[4] Commerce Commission (2024) *Interchange fee regulation for Mastercard and Visa networks - Draft Decision and Reasons Paper*, https://comcom.govt.nz/__data/assets/pdf_file/0032/363848/Retail-Payment-System-Interchange-fee-regulation-for-Mastercard-and-Visa-networks-Draft-Decision-and-Reasons-Paper-18-December-2024.pdf, p.10.

[5] Commerce Commission (2023) *Retail Payment System Observations on the impact of interchange fee regulation*, https://comcom.govt.nz/__data/assets/pdf_file/0019/324541/Retail-Payment-System-Observations-on-the-impact-of-interchange-fee-regulation-8-August-2023.pdf, pp.5-6.

prices of goods and services were nonetheless lower than they would have been in the absence of the IPS.[6]

What is the policy problem or opportunity?

Where merchants choose to surcharge, it does not reflect their costs

13. Some merchants choose to pass on the cost of payments to consumers via a surcharge, with the Commission estimating that consumers pay up to $150 million in surcharges each year.[7] Although this is a large sum in aggregate, the per-person impact is modest. The average cardholder likely pays around $35 in surcharges annually – less than 70 cents per week.[8]

14. According to a 2022 Kantar Public survey of just over 1,100 merchants, around 22% of the respondents who accept credit or contactless payments currently apply a surcharge.[9] Other surveys have produced significantly higher numbers.[10] For example, in a recent submission to the Commission, Mastercard noted that RFI Global's research of 500 New Zealand merchants in August 2023 showed that 50% of them surcharged.[11]

15. In the absence of surcharging, merchants typically bundle the cost of payments into the prices of goods and services they sell – meaning all consumers, regardless of how they pay, contribute to the cost of expensive cards and the rewards attached to them. This is typically viewed as inefficient and regressive, particularly for lower-income consumers who tend to use EFTPOS.

16. Almost all merchants that choose to surcharge set a single flat percentage rate across all cards. Few distinguish between debit and credit, between standard and 'premium' cards, or between different card networks. Deliberate steering – where merchants actively encourage consumers to use lower-cost payment methods, beyond simply applying a surcharge – is rare.

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[6] It is only in very limited circumstances that full pass-through of an input cost reduction can be expected. For further detail see: Axiom Economics, *Review of Retail Payment Systems Issues Paper, A report for the NZBA*, Retail payment systems issues paper | Ministry of Business, Innovation & Employment, pp.13-17.

[7] Commerce Commission (2024) *Interchange fee regulation for Mastercard and Visa networks - Draft Decision and Reasons Paper*, https://comcom.govt.nz/__data/assets/pdf_file/0032/363848/Retail-Payment-System-Interchange-fee-regulation-for-Mastercard-and-Visa-networks-Draft-Decision-and-Reasons-Paper-18-December-2024.pdf, p.46.

[8] Approximately 96.4% of New Zealanders aged 15 and above own at least one debit card (https://www.oberlo.com/statistics/debit-card-penetration-by-country). Assuming an adult population of 4.3 million, that would imply the $150 million annual cost was spread across approximately 4.2 million people: $150 million ÷ 4.2 million = $35.71.

[9] Kantar Public (2022) *Retail Payment System Research*, https://comcom.govt.nz/__data/assets/pdf_file/0016/315034/Kantar-Public-KantarE28099s-Merchant-Research-Report-November-2022.pdf, p.14.

[10] The various studies differ in their sample sizes, methodology and, sometimes, in their definitions of surcharging practices. There is therefore no singularly authoritative study conclusively demonstrating the current percentage of merchants that apply surcharges.

[11] Mastercard (2024) *Mastercard response to Commerce Commission consultation: Retail Payment System*, https://comcom.govt.nz/__data/assets/pdf_file/0029/363782/Mastercard-Submission-on-Retail-Payment-System-Consultation-on-Costs-to-businesses-and-consumers-of-card-payments-2-September-2024.pdf, p.14.

17. The available evidence suggests that, in aggregate, surcharges in New Zealand are often set above cost, resulting in significant over-recovery. The discrepancy appears to be significant, with Mastercard estimating that consumers pay more than $90 million in excessive surcharges each year.[12]

18. The Commission offers an alternative estimate of $45 million – $65 million in annual over-recovery. This range is based on the Commission's assessment of the gap between what many merchants charge and what it estimates it costs them to accept card payments. In December 2024, the Commission reported that the average merchant service fee was around 1.1%, while the average surcharge was approximately 1.9%.

19. Despite occasional, widespread recalibrations in surcharge levels, such as during Covid-19 or following the initial interchange caps, practical frictions remain, causing rates to drift away from underlying acceptance costs.

20. This is particularly concerning for payment methods with:

    a) **No underlying costs:** Despite merchants not facing any per-transaction charges to accept EFTPOS transactions, research from Kantar Public suggests 9% of merchants that surcharge claim to also apply a surcharge to EFTPOS.[13]

    b) **Lower underlying costs:** Contactless debit, for example, is offered by bank acquirers with merchant service fees in the order of 0.7%.[14]

Non-cost reflective surcharging is intransparent

21. Surcharges were intended to provide a clear, broadly accurate signal to consumers about the relative costs of different payment methods. However, in practice, they have often made pricing less transparent, not more. Because prices are typically quoted excluding any surcharge, consumers frequently do not know the total cost of what they are buying until they reach the point of payment. This takes several forms:

    a) When consumers are browsing online or comparing prices across retailers – whether on a website, in an app or walking through a shopping mall – they are likely seeing only part of the price. In a competitive retail environment, even a small hidden cost can affect those comparisons – making one retailer appear cheaper than another when, in fact, it is not. Over time, this kind of pricing ambiguity may begin to erode consumer trust and confidence at checkout, which is a significant problem.

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[12] Mastercard (2024) *Mastercard response to Commerce Commission consultation: Retail Payment System*, https://comcom.govt.nz/__data/assets/pdf_file/0029/363782/Mastercard-Submission-on-Retail-Payment-System-Consultation-on-Costs-to-businesses-and-consumers-of-card-payments-2-September-2024.pdf, p.6.

[13] Kantar Public (2022) *Retail Payment System Research*, https://comcom.govt.nz/__data/assets/pdf_file/0016/315034/Kantar-Public-KantarE28099s-Merchant-Research-Report-November-2022.pdf, p.78.

[14] Commerce Commission (2023) *Observations on the impact of interchange fee regulation*, https://comcom.govt.nz/__data/assets/pdf_file/0019/324541/Retail-Payment-System-Observations-on-the-impact-of-interchange-fee-regulation-8-August-2023.pdf, Figure 2.3, p.16.

b) Merchants often utilise drip pricing by delaying disclosure of the surcharge until the final stage of a transaction. This is particularly common in online settings where consumers have already invested time and effort and are less likely to abandon the purchase. By introducing the surcharge only after the purchase process is well underway, this form of drip pricing can raise the effective price paid by the consumer and make it easier for merchants to recover more than the underlying cost of acceptance.

There are several drivers for non-cost reflective surcharging

22. Surcharges can be efficient where they signal to consumers the costs of the payment methods they use. This encourages consumers to use lower cost methods, such as contacted debit, A2A, or bank transfers, instead of high-cost methods. This can help merchants manage costs and reduce the extent to which people using cheaper options subsidise those who use more expensive options.

23. However, for this to work, surcharges need to at least approximate the net cost of acceptance – and that depends on merchants understanding their costs and passing them on accurately. In practice, these conditions have not often been met, for several reasons:

    a) **Poor visibility of costs:** The vast majority of merchants do not have a clear understanding of what different payment methods cost to accept. Fee statements are often opaque, fragmented, or bundled with unrelated charges such as terminal rental.

    b) **Set-and-forget pricing:** In some cases, surcharge rates may have been programmed by the terminal installer or payment provider – often conservatively, to cover a wide range of card types – and left unchanged for years.

    c) **Single surcharge rates:** Historically, merchants could only load a single surcharge into their terminals. Most modern terminals are now technically capable of applying different surcharges to different card types; however we understand that the technology is not widespread in New Zealand today. This means that merchants continue to select a single rate that is often higher than their average costs (for example, basing surcharges on the fees for credit cards).

    d) **Intentionally setting surcharges that exceed cost:** This is estimated to be a very small number of merchants.

What objectives are sought in relation to the policy problem?

24. The main objective is to deliver long-term benefits for consumers by promoting trust and confidence in the retail payment system and transparent retail price settings.

25. The secondary objectives that will assist in meeting the main objective are:

    a) limiting over-recovery of the cost to merchants for accepting retail payments through payment surcharges, and

b) future-proofing the legislation by introducing a flexible, targeted toolkit to address issues with payment surcharges.

What consultation has been undertaken?

26. In the time available, we have not been able to consult with stakeholders. Our analysis is informed by submissions to recent Commission consultations on related issues including interchange fee regulation and external consultant advice.

27. Submissions to the Commission that discuss surcharging regulation show mixed views. Some submitters, such as Retail NZ, the Restaurant Association and the Independent Payments Forum Australia, raised concerns that regulating surcharge fees could cause difficulties for small merchants, while others noted the Commission should be wary of regulating in the absence of reliable surcharging data. Most submitters supported some form of surcharging regulation. The majority, including Visa, Mastercard and Consumer NZ, considered a complete ban, as seen in the United Kingdom and the European Union, should be introduced. Others preferred surcharging limits.

28. Agency consultation has been undertaken with the Parliamentary Counsel Office, the Commerce Commission, the Reserve Bank of New Zealand, the Ministry of Regulation, the Department of the Prime Minister and Cabinet, the Treasury, the Ministry of Business, Innovation and Employment (Small Business), and the Ministry of Justice.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

29. The following criteria will be used in our assessment of options:

a) **Certainty about what the law is and how to comply:** This criterion seeks to ensure that implementation, monitoring and enforcement is feasible, and that it will be clear to participants what their obligations are.

b) **Supports innovation and competition and does not pose a barrier to entry in banking and payments:** This criterion seeks to ensure that the surcharging framework does not reduce competitive pressure within the retail payment system, at both the participant and payment instrument levels.

c) **Supports efficient outcomes for merchants and consumers:** This criterion seeks to ensure merchants and consumers benefit from choice and equity.

d) **Supports the consumer experience:** This criterion seeks to ensure consumers benefit from increased trust and confidence in the retail payment system, greater transparency at the checkout, and greater utility from a more positive retail experience.

e) **Provides flexibility to adapt system settings in the future:** This criterion seeks to ensure that the surcharging framework is sustainable in the future and that regulatory oversight can adapt effectively to changes in the retail payment system, including future innovation and changes in the costs merchants face.

30. Criteria D, *Supports the consumer experience*, is subject to double weighting. This reflects that it is of critical relevance to the main policy objective ie, delivering long-term benefits for consumers by promoting trust and confidence in the retail payment system and transparent retail price settings.

31. Due to time constraints, we have not had an opportunity to test the criteria with stakeholders. Some stakeholders, such as fintechs, have noted the importance of competition and innovation in banking and payments markets in recent Commission consultations. Others consider that the consumer experience should be the key consideration with respect to surcharging regulation.

What scope will options be considered within?

The scope of options has been informed by experience overseas, particularly the United Kingdom and Australia

32. Following interchange caps, and in response to concerns about the consumer experience, some jurisdictions have reconsidered their approach to surcharging. Both the United Kingdom and Australia initially sought to rein in excessive surcharges through regulated caps – linking allowable surcharge levels to the estimated cost of card acceptance, typically based on the merchant service fee. These policies aimed to preserve the benefits of surcharging – such as cost transparency, price signalling and merchant steering – while limiting over-recovery and reducing perceptions of unfairness.

33. However, these caps proved difficult to implement. Accurately calculating a cost-reflective surcharge required merchants to have clear, up-to-date information about their acceptance costs. Many merchants lacked visibility of the fees associated with different card types and often received complex or opaque billing information from their acquirer. In addition, compliance and enforcement proved difficult at scale.

34. The European Union took a different approach when it banned surcharging under its 2018 Revised Payment Services Directive. This step was taken on the basis that it had already narrowed the cost differences between payment systems to such an extent that continuing to allow surcharging risked doing more harm than good. The United Kingdom went further still – extending the ban to additional products, including three-party card transactions (eg, American Express) – citing concerns about checkout transparency.

35. Australia has taken a more gradual approach but is also reassessing its position. In 2024, the Reserve Bank of Australia (**RBA**) launched a review of its surcharging framework to determine whether the current rules remain fit for purpose. Among the options being considered are tighter limits, stronger enforcement, and in some cases a broader ban. In addition to regulatory options, the RBA is exploring allowing payment service providers to implement the ban through their scheme rules and contractual arrangements.

36. An important distinction exists in the New Zealand context, however, which is that cost recovery for the EFTPOS network does not rely on merchant fees. In that context, surcharges play a different role in New Zealand in steering consumers to the EFTPOS network, which likely results in a payment system with lower overall costs. For this

reason, we have placed limited weight on international comparison to inform the analysis.

The scope of options is within the existing legislative framework for the retail payment system

37. The scope of options considered has been limited to regulatory amendments to the RPS Act. For example, an alternative is to amend to the Commerce Act 1986 to statutorily authorise Visa and Mastercard to amend their scheme rules to prevent merchants from surcharging. We consider that this would be ineffective at achieving the objectives, and provide insufficient confidence and control.

38. Various alternative amendments to the RPS Act have also not been considered. For example:

    a) A partial surcharge ban on all EFTPOS and domestic debit (ie, in-person <u>and online</u>) payments. This option has been ruled out as fintechs typically enter the market through online payment apps. Banning surcharges for online debit payments would remove signals for consumers to switch to these newer low-cost A2A products.

    b) A complete surcharge ban applying to all payments in New Zealand. This approach would be inconsistent with established overseas precedent and is not supported by submissions to the Commission. For example, Mastercard supported allowing merchants to surcharge payment products that are not subject to the IPS eg, American Express.

    c) Expanding the Commission's mandate beyond a focus on cost-reflective surcharging by explicitly empowering it to impose standards than ban surcharges on specific cards/methods/networks.

What options are being considered?

39. Due to the complexity of the policy area, many distinct options could be created and assessed. We have packaged the components into three distinct options along a spectrum of least-to-most interventionist. The three options assessed in this RIS are:

    a) **Option One (counterfactual):** No change. The Commission retains its existing powers to set "merchant surcharging standards" that limit surcharges to no more than the cost to the merchant of the payment services used for accepting retail payments.

    b) **Option Two:** Ban surcharges on EFTPOS cards and domestic-issued Visa and Mastercard debit cards when used in-store. Introduce regulation-making powers that would allow for the initial ban to be extended to additional payment cards, methods, and/or networks in future.

    c) **Option Three:** Ban surcharges on EFTPOS cards and domestic-issued Visa and Mastercard debit <u>and credit cards</u> when used in-store. Introduce regulation-making powers that would allow for the initial ban to be extended to additional payment cards, methods, and/or networks in future.

40. The options are mutually exclusive. They reflect interventions that have been implemented in other jurisdictions with varying scope. Under both Options Two and Three:

    a) The Commission would retain its merchant surcharging standard powers in relation to any card payments that are not subject to the ban.

    b) The existing RPS Act powers and sanctions for breach of a merchant surcharging standard would be available to enforce the ban.

    c) Regulation-making powers would be added to the RPS Act that would allow for the initial ban to be reviewed and updated in future. These powers would enable Orders in Council, on the recommendation of the Minister of Commerce and Consumer Affairs, to amend the initial targeted ban. The regulations could extend the scope of the ban to other payment methods (eg, online), other payment cards (eg, foreign-issued cards) and other retail payment networks (eg, PayPal).

Option One (counterfactual): No change

41. Under the counterfactual, the Government would not legislate to ban surcharges. Nor would it introduce regulation-making powers to allow for surcharges on certain payment cards/methods/networks to be banned in future. Instead, the Commission would continue to regulate payment surcharges using its existing legislative mandate.

<u>Current regulatory oversight of surcharges is focussed on cost-reflectivity</u>

42. There are no laws in New Zealand preventing merchants from setting surcharges to recover their payment acceptance costs. The main requirements are set out in the generic provisions of the Fair Trading Act 1986, which prohibit false or misleading presentations as to the price of goods or services.

43. The RPS Act also empowers the Commission to directly regulate consumer surcharges, however the Commission is yet to utilise these powers. The Commission may issue merchant surcharging standards imposing requirements on merchants with respect to the disclosure of information, representation of surcharges, limits on surcharges, and record keeping.[15]

44. The Commission's mandate in relation to surcharges is focussed on ensuring that surcharges do not exceed the costs to merchants of accepting card payments.[16] It would therefore be difficult for the Commission to ban surcharging under the RPS Act.

<u>The Commission has been working to address issues with payment surcharges</u>

45. The Commission has engaged in a widespread campaign over recent years to educate payment service providers, merchants and consumers about their rights and obligations. This has led to some taxi companies, airlines, local authorities and utilities companies

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[15] Section 32 of the RPS Act.

[16] Section 29 of the RPS Act.

reducing their surcharges. However, engagement with individual merchants is time and resource intensive and not sustainable in the long-term.

46. The Commission has also proactively engaged with payment service providers to address barriers to appropriate surcharging, such as transparency of the information provided to merchants, with mixed success.

The Commission is proposing further interchange fee reductions

47. In December 2024, the Commission released a draft decision indicating that it remains concerned that interchange fees continue to exceed efficient cost levels and that the underlying fee structure remains distorted.[17] The Commission has proposed further substantial reductions to interchange fees across a wide range of Visa and Mastercard debit and credit card transactions, set out in table 1 below.[18]

Table 1: Draft interchange fee caps

Card type	Payment method	Current cap	Draft cap
Domestic debit	In person - contacted	0.00%	No change
	In-person - contactless	0.20%	No change
	Online	0.60%	0.40%
Domestic credit	In-person	0.80%	0.20%
	Online	0.80%	0.40%
Commercial credit	In-person	Not currently regulated	0.20%
	Online	Not currently regulated	0.40%
All domestic prepaid cards	In-person and online	Not currently regulated	Not proposing regulation at this stage
Foreign-issued cards	In-person	Not currently regulated	0.60%
	Online	Not currently regulated	1.15%

[17] In particular, banks continued to receive higher interchange payments for premium and rewards-based cards, creating strong incentives to promote higher-cost products, even when the additional functionality or value to users is limited.

[18] Commerce Commission (2024) *Interchange fee regulation for Mastercard and Visa networks - Draft Decision and Reasons Paper*, https://comcom.govt.nz/__data/assets/pdf_file/0032/363848/Retail-Payment-System-Interchange-fee-regulation-for-Mastercard-and-Visa-networks-Draft-Decision-and-Reasons-Paper-18-December-2024.pdf, Table 1.1, p.5.

48. The Commission expects to issue its final decision by 31 July 2025.[19] It has confirmed that any changes to the scope and levels of interchange fee regulation will be subject to a staggered implementation period of 1 December 2025 for any products which are currently regulated (such as domestic debit and credit cards) and 1 April 2026 for any products which are not currently regulated (such as foreign-issued cards).

49. It is unclear what the scope of any final Commission interchange fee determination would be. However, assuming there is no scope change from the proposals in the draft determination, the most immediate impacts would likely include the following:

    a) **Merchants would face lower costs to accept cards**: One of the most immediate effects of the draft decision would be a significant reduction in merchant services fees, driven by lower interchange outflows. These savings would vary depending on commercial arrangements but, over the longer-term, are likely to be most pronounced for smaller merchants, which typically face higher effective rates due to having less bargaining power than large merchants.

    b) **Surcharges would likely fall**: With lower costs, many merchants might reduce or remove their surcharges. Past experience suggests merchants tend to respond to major, system-wide changes – such as the initial introduction of interchange caps – and the draft decision would send a similarly strong signal. While surcharging practices would remain blunt and imperfect, such adjustments could bring surcharges closer to net costs and help reduce current levels of over-recovery.

    c) **Credit and scheme debit cards would become more attractive**: Although cardholders may see fewer rewards – given that issuing banks would have less interchange revenue to fund them – the effective costs of using a scheme credit or debit card would fall. With merchants applying surcharges at lower rates, scheme card use would likely increase.

    d) **Issuers would be materially worse off**: Interchange revenue would fall by an estimated $260 million per year. While larger banks may be able to offset this loss through other revenue streams, smaller issuers and fintechs may be more exposed. Some fintechs currently rely on card issuance as a commercial foothold and a pathway into broader financial services. If that model becomes less viable, their long-term prospects – and the competitive pressure they place on incumbents – could be diminished.

    e) **Price transparency might improve, but some problems would remain**: Lower and less frequent surcharges would narrow the gap between displayed and final prices, making costs more visible to consumers and potentially reducing confusion at checkout. However, some level of price ambiguity would remain – particularly in online environments where late-stage disclosure and drip pricing are often seen.

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[19] Commerce Commission (2025) *Interchange fee process update – timing of our final decision and early notification of the final implementation period*, Retail-Payment-System-Interchange-fee-regulation-process-update-Final-decision-timing-and-implementation-period-21-May-2025.pdf.

The Commission will likely introduce merchant surcharging standards in the coming years

50. Even with the introduction of reduced interchange fee caps, the Commission indicated in its draft decision that some form of surcharging regulation will be needed. Possible options identified by the Commission include:[20]

    a) a maximum surcharge based on average merchant service fees

    b) a maximum surcharge based on average merchant service fees unless merchants display a certificate from their acquirer setting out their own average merchant service fee

    c) any surcharge to require the display of a certificate from the business' acquirer documenting the business' average merchant service fee, and

    d) a requirement for terminal providers to sight evidence of a merchant's average merchant service fee prior to uploading a surcharging rate higher than the average and to not allow a surcharge greater than that to be charged.

51. Submitters on the draft decision were divided about whether surcharges should be regulated. Some submitters expressed concerns that regulating surcharge fees could cause difficulties for small merchants and reduce competition and innovation. Others considered a complete ban, as seen in the United Kingdom and the European Union, would be preferable to cost-reflective limits.

52. Therefore, it is likely that the Commission will impose some form of direct surcharging regulation in the coming years. This may be limited to setting price limits to encourage cost-reflectivity, or it could extend more broadly to cover other issues such as how payment surcharges are displayed.

53. Overseas experience suggests this would have medium to high compliance and enforcement costs. Acquirers would need to provide additional information to enable merchants to set surcharges based on 'reasonable costs' of acceptance. Enforcement by the Commission would also require an investigation of costs.

Assessment of strengths and weaknesses

54. In summary, the high likelihood of Commission merchant surcharging standards being introduced under Option One means that some transparency and consumer experience gains are expected. However, monitoring and enforcement difficulties would leave the main policy objective – delivering long-term benefits for consumers by promoting trust and confidence in the retail payment system and transparent retail price settings – only partially achieved.

[20] Commerce Commission (2024) *Interchange fee regulation for Mastercard and Visa networks - Draft Decision and Reasons Paper*, https://comcom.govt.nz/__data/assets/pdf_file/0032/363848/Retail-Payment-System-Interchange-fee-regulation-for-Mastercard-and-Visa-networks-Draft-Decision-and-Reasons-Paper-18-December-2024.pdf, p.47.

Option Two: Ban in-store surcharges for EFTPOS cards and domestic-issued Visa and Mastercard debit cards and introduce regulation-making powers to extend the ban to other cards/methods/networks

Scope

55. Given the likelihood of further reductions to the interchange caps under the status quo, this analysis considers the marginal benefits and costs of banning surcharges for in-store EFTPOS and domestic scheme debit transactions.

56. All in-person domestic scheme debit payment methods (inserted/swiped/contactless) would be subject to the initial ban, but not prepaid payment cards such as Wise travel cards. These cards are not currently subject to the interchange caps in the IPS. Further, the Commission's draft decision proposes not to regulate these products, noting they "often act as a gateway product for fintechs, new entrants and the underbanked".[21] The Commission expected its proposal to leave fees for prepaid products uncapped would support innovation and competition in the retail payment system. Given it is unlikely that the underlying costs for domestic prepaid payment products will be regulated in the near future, we do not consider it would be appropriate to include them in the initial scope of the surcharge ban.

Strengths

57. Removing surcharges on low-cost debit transactions would eliminate over-recovery created by flat-rate surcharges that do not reflect the lower cost of debit acceptance. A limited surcharge ban would also allow merchants continued discretion to recover the higher cost of credit cards, reducing pressure on retailers compared to Option Three by allowing them to retain some ability to steer consumers. This would likely be welcomed by smaller merchants, who are more likely to apply surcharges than larger merchants and often operate on tighter margins in highly competitive sectors.

58. Continued cost recovery through credit card surcharges would also reduce the need for merchants to increase prices. This would make a debit-only ban somewhat less regressive in effect than a ban that also covered scheme credit. This is because the extent of cross-subsidisation from low-cost cardholders to rewards card users would be reduced – though not eliminated.

59. For debit card users, the removal of surcharges would improve price transparency and make the checkout process more straightforward. These consumers would see the full cost of their purchases upfront and would no longer cross-subsidise credit card users by paying non-cost reflective surcharges.

Weaknesses

60. As outlined above under Option One (the status quo), the Commission's draft decision would likely reduce the cost of accepting scheme cards, prompting some merchants to

[21] Commerce Commission (2024) *Interchange fee regulation for Mastercard and Visa networks - Draft Decision and Reasons Paper*, https://comcom.govt.nz/__data/assets/pdf_file/0032/363848/Retail-Payment-System-Interchange-fee-regulation-for-Mastercard-and-Visa-networks-Draft-Decision-and-Reasons-Paper-18-December-2024.pdf, p.38.

lower their surcharges. It is likely that the addition of a ban on in-store surcharges for domestic scheme debit would:

a) Lead to some merchants turning off contactless functionality.[22]

b) Cause some consumers who use both scheme debit and credit to find it frustrating that one card attracts a surcharge while the other does not.

c) Further accelerate the decline of the legacy EFTPOS network. Consumers would be incentivised to process debit transactions contactlessly (via scheme rails), instead of swiping or inserting (via the EFTPOS network), as there would no longer be a clear price advantage at checkout. In addition to the existing use case challenges, the loss of EFTPOS's key competitive advantage would greatly accelerate its decline, leading consumers to become more reliant on the international scheme networks.

d) Harm emerging A2A providers:

    i. A2A providers also aim to compete on cost, offering many of the same features as scheme debit but at lower merchant fees.

    ii. Without surcharges to expose the price difference, A2A platforms would lose a crucial point of leverage just as open banking reforms are starting to gain traction following the enactment of the Customer and Product Data Act 2025. Their growth could be materially constrained, limiting their ability to challenge the card schemes.

61. Some financial institutions would also be negatively impacted by a ban on in-store surcharges for scheme debit:

a) Consumers would shift away from credit to avoid payment surcharges, meaning a larger share of card turnover would attract the lower contactless debit interchange fee. The reduction in the average margin earned by issuing banks would fall more heavily on smaller, credit-focused institutions than on major banks, which already issue most debit cards.

b) Fintechs using A2A platforms as a springboard into banking may also face difficulties as removing surcharges on scheme debit would remove a key mechanism to signal the cost advantage of A2A payments. This would limit these providers' ability to build a customer base and expand into broader financial services.

c) The incremental effect of lower interchange fees and a ban on surcharges for scheme debit could make it harder for smaller banks and fintechs to sustain card-based growth strategies. The debit-surcharging ban would potentially leave

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[22] Research suggests that cost is a key reason for merchants having stopped accepting Mastercard and Visa contactless payments. Kantar Public (2022) *Retail Payment System Research*, https://comcom.govt.nz/__data/assets/pdf_file/0016/315034/Kantar-Public-KantarE28099s-Merchant-Research-Report-November-2022.pdf, p.11.

smaller banks and new entrants in an even weaker position than under the status quo, as it would lead to a second reduction in interchange revenue[23].

Enforcement

62. Compliance and enforcement of Option Two would be much easier than Option One (the status quo), where pricing limits would need to be tied to underlying acceptance costs. Non-compliance will be much more easily detected under a ban, and consumers and payment service providers will be able to use their influence with merchants to promote compliance.

Assessment of strengths and weaknesses

63. Option Two would have greater negative impacts on competition and innovation than any potential at-cost surcharging regulation introduced by the Commission under Option One. However, this is balanced by greater transparency for debit card users, reduced credit cross-subsidisation, and an improved consumer experience when paying via contactless debit. Given the clear New Zealand consumer and general public sentiment that surcharges are inconvenient, intransparent and confusing, we consider that consumer utility from a surcharge ban on in-store EFTPOS and domestic Visa and Mastercard debit is high, and would likely outweigh the negative impacts on competition, small businesses, and low-cost payment users.

64. In addition, the main policy objective ie, delivering long-term benefits for consumers by promoting trust and confidence in the retail payment system and transparent retail price settings – and the double weighting of criteria D – means that greater weight needs to be given to the relative strengths of Option Two with respect to the consumer experience.

Option Three: Ban in-store surcharges for EFTPOS cards and domestic-issued Visa and Mastercard debit and credit cards and introduce regulation-making powers to extend the ban to other cards/methods/networks

Scope

65. Given the likelihood of further reductions to the interchange caps under the status quo, this analysis considers the marginal benefits and costs of banning surcharges for in-store EFTPOS and domestic scheme debit and credit (both personal credit and commercial credit) transactions. As with Option Two:

    a) the initial application of the ban to domestic scheme debit cards would exclude prepaid payment products, and

    b) the initial ban could be extended via regulations.

66. Submissions to the Commission in support of a ban on surcharges generally suggest a preference for a broad ban across all payments subjects to the IPS. These stakeholders are expected to significantly prefer Option Three. Other stakeholders, such as those concerned with the implications for small merchants, are expected to prefer Options One or Two.

[23] An initial reduction as a result of the Commission's further interchange regulation, followed by a partial consumer shift from credit to debit due to the debit surcharge ban

Strengths

67. Option Three would best address concerns about the rising cost of living, as it would be timed to correspond with the Commission's decision on further regulating interchange fee caps and apply to a greater number of New Zealand card payments.

68. A broader ban would best promote a streamlined consumer experience. In its submission to the Commission, Consumer NZ noted that "Less thought would be required about what card to use, whether to swipe/insert or tap, what the surcharge amount is and whether or not there's a way to avoid a surcharge. Consumers could also leave the house with just their phones in their pockets, knowing they aren't going to have to pay a hefty surcharge for the convenience of not carrying any cards with them."[24]

69. Under the status quo, reducing regulated interchange fees would marginally improve price transparency by narrowing the gap between displayed and final surcharge-inclusive prices. However, a difference would still often remain. An in-person surcharge ban would generate (almost) full price transparency and fewer unexpected fees in physical retail settings. Consumers would be able to accurately compare goods and services across retailers, as they would not have to wait till the point of payment to know the total cost of what they are buying. This would allow consumers to better shop around, promoting competition.

70. With a greater proportion of in-store payments being surcharge free, it is possible that some merchants may choose to only apply surcharges to online payments. This would avoid costs associated with differentiating between surchargeable and non-surchargeable cards at in-store point-of-sale terminals and any risk of accidental non-compliance. It would further benefit the in-store consumer experience for all consumers, not just users of Mastercard and Visa products.

Weaknesses

71. Under Option Three, the imposition of an in-person surcharging ban that applies to high-cost credit cards would cause many merchants to respond by raising prices across all consumers. Smaller businesses, who face higher costs, may struggle to absorb the additional cost through lower margins, leaving them particularly exposed. Alternatively, some merchants may respond by declining to accept high-cost payment methods. In both situations, it is likely that the competitive position of smaller merchants will weaken relative to bigger competitors, and weaken to a greater extent than under Option Two. One counter-balancing effect is that smaller merchants would face greater incentives to negotiate for better payment services from their acquirer/switch acquirers than under the status quo.

72. Regressive effects, where consumers who do not use scheme cards subsidise those who do, would also be more pronounced under a more complete ban. This is because low-income consumers (who typically use low-cost to consumer payment methods like cash

[24] Consumer NZ (2025) SUBMISSION on Retail Payment System - Interchange fee regulation for Mastercard and Visa networks – Draft decision and reasons paper, Consumer-NZ-Submission-on-Retail-Payment-System-Interchange-fee-regulation-for-Mastercard-and-Visa-networks-Draft-Decision-and-Reasons-Paper-3-March-2025.pdf, p.4.

and EFTPOS) would subsidise high-cost credit card users to a greater extent through paying higher prices for goods and services.[25]

73. Similarly, Option Three would have the greatest negative impact across the payment and banking sectors, with the marginal effects likely to be more muted if the status quo evolves as expected (ie, the Commission's final determination further reduces interchange caps):

   a) The marginal impact of banning in-store surcharges is that scheme debit and credit cards would be even further favoured by consumers over EFTPOS and A2A, as the higher cost of using Visa and Mastercard networks would be hidden. This would further strengthen the competitive position of the international schemes, as well as digital wallet providers, over New Zealand's domestic payments network and fintech A2A alternatives.

   b) Reduced interchange fee caps are expected to reduce the revenue recovered by card issuers, potentially exposing smaller banks and fintechs that may struggle to absorb the reductions. A ban on in-store surcharges would not change this, but it would reinforce the competitive advantage of the larger banks. This is because the shift toward scheme products would primarily benefit the larger banks who issue the majority of these cards.

   c) Fintechs that rely on A2A payment services as part of a broader entry strategy into banking would likely be in a worse position if in-store credit were included in the ban. The continued ability to surcharge online could help sustain their value proposition in e-commerce, preserving some opportunity to attract and retain customers. However, any expansion into physical retail would remain difficult, given the complete loss of price-based differentiation. Newer entrants seeking to build a customer base across both online and in-person channels could remain at a structural disadvantage.

<u>Enforcement</u>

74. Compliance and enforcement would be much more straightforward than under Option One (the status quo), and very slightly more straightforward than under Option Two. This is because the ban would be more all-encompassing, with no distinction between Visa and Mastercard debit and credit for in-store payments. It would generally be easier for merchants to understand, which is likely to reduce non-compliance.

<u>Assessment of strengths and weaknesses</u>

75. Compared to Options One and Two, Option Three has both the greatest weaknesses and the greatest strengths. We consider that consumer benefit increases as the scope of the ban is broadened, and that the benefits of Option Three outweigh the negative impacts on competition, small businesses, and low-cost payment users. This assessment is informed by the high value that we observe New Zealanders place on avoiding consumer surcharges.

[25] Merchants would not however be prevented from offering discounts to steer consumers away from higher cost payment methods.

76. In addition, the main policy objective ie, delivering long-term benefits for consumers by promoting trust and confidence in the retail payment system and transparent retail price settings – and the double weighting of criteria D – means that greater weight needs to be given to the relative strengths of Option Three with respect to the consumer experience.

Comparison against criteria

77. Table 2 summarises our comparison of Options Two and Three against the counterfactual (Option One) using the five criteria outlined earlier. The table uses the following notation and colour-coding for our assessment of each option against the criteria.

+ +	Much better than the counterfactual
+	Better than the counterfactual
0	About the same as the counterfactual
-	Worse than the counterfactual
- -	Much worse than the counterfactual

Table 2: Comparison of the three options against the counterfactual, using the five criteria

	Option One – Counterfactual	Option Two – Ban in-store EFTPOS and domestic scheme debit surcharges and introduce regulation-making powers	Option Three – Ban in-store EFTPOS and domestic scheme debit and credit surcharges and introduce regulation-making powers
Certainty – clarity about what the law is and how to comply	0: Same as the counterfactual	**+:** Merchants would face costs reconfiguring terminals to differentiate between scheme debit (non-surchargeable) and scheme credit (surchargeable). However, this is much simpler to give effect to, and enforce, than potential merchant surcharging standards under the status quo, which would need to be tied to underlying acceptance costs.	**+:** Merchants would face costs reconfiguring terminals to differentiate between surchargeable cards (eg, domestic prepaid and foreign-issued cards) and non-surchargeable cards. However, this is much simpler to give effect to, and enforce, than potential merchant surcharging standards under the status quo, which would need to be tied to underlying acceptance costs.
Supports innovation and competition and does not pose a barrier to entry in banking and payments	0: Same as the counterfactual	**-:** Spending likely to move even further towards scheme debit (away from EFTPOS, A2A, and credit). Further weakens competitive position of alternative providers, compared to Visa and Mastercard, by removing price signals. Smaller issuers are likely to be further disadvantaged as more usage shifts to low-margin debit. Likely to result in a lessening of competition in both banking and payments markets relative to status quo.	**--:** Spending likely to move even further towards scheme debit and credit. Competitive position of EFTPOS and A2A weakens further. Combined effects on competition in banking favour major banks, due to shift towards high-cost card use. Fintechs seeking to disrupt the banking sector through a staged-entry process will find it harder to scale. Likely to result in a significant lessening of competition in both banking and payments markets relative to status quo.
Supports efficient outcomes for merchants and consumers	0: Same as the counterfactual	**0:** Eliminates any remaining over-recovery of payment costs for contactless debit and cross-subsidisation of credit cards; while ensuring that merchants can still recover higher underlying costs for credit card payments.	**-:** Removes the only practical mechanism merchants have to steer consumers towards lower-cost payment methods when shopping in-store. Headline price rises lead to increased inefficient wealth transfers from low to high income consumers. Likely to weaken the competitive position of small merchants, relative to larger competitors. Some countervailing benefit due to increased incentives for merchants to switch acquirers to receive better payment services.

Supports the consumer experience (double weighted)	0: Same as the counterfactual	**+:** Moderate transparency gains as debit cards users would see the full cost of their purchases upfront, but frustration due to different settings for scheme debit and credit is likely. Some merchants may also turn off contactless functionality as a more blunt method of steering to EFTPOS. Some transparency losses due to hidden cost differences between the EFTPOS and scheme networks.	**++:** Major benefits for the consumer experience compared to the status quo, despite potential for for some merchants to turn off contactless or credit functionality. Addresses the strong public sentiment against surcharges, and provides for transparency gains on balance. Significant transparency gains as the listed price would be all-inclusive for almost all in-person transactions, leading to improved price comparison between merchants that do and don't surcharge. Some transparency losses due to hidden cost differences between the EFTPOS and scheme networks.
Provides flexibility to adapt system settings in the future	0: Same as the counterfactual	**++:** Introduces a more flexible regulatory tool kit that is not limited to price-regulation at cost.	**++:** Introduces a more flexible regulatory tool kit that is not limited to price regulation at-cost.
Overall assessment	**0: Same as the counterfactual**	**+: Marginally better than the counterfactual as it will address any remaining issues with over-recovery and cross-subsidisation of payment costs for contactless debit. However, it is also likely to result in a lessening of competition in banking and payments markets, and only goes some way towards improving the customer experience.**	**+: Marginally better than the counterfactual due to increased consumer utility from a more positive retail experience and net gains for retail price transparency, which is likely to outweigh the decline in economic welfare and reduction in competition in banking and payments markets.**

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

78. Our preferred option for the design of the surcharging regulatory framework is Option Three, which would apply an initial ban on surcharges for in-store payments that are currently subject to interchange fee regulation and future-proof the regulatory framework.

79. Expanding the regulatory toolkit beyond at-cost price regulation – which overseas experience has shown to be difficult to set, monitor and enforce – will promote efficient, targeted intervention in future.

80. We consider that Option Three best meets the policy objective of promoting trust and confidence in the retail payment system and transparent retail price settings, as well as the double weighted criteria D: *Supports the consumer experience*. It is an improvement on the counterfactual, as it would directly address price ambiguity, ensuring that consumers can accurately assess and compare goods and services across different retailers. It also introduces price transparency across a greater share of New Zealand payments than Option Two.

81. We acknowledge that Option Three is expected to lessen competition in the banking and payments markets, with New Zealand's balance of payments likely to deteriorate as consumers switch to the international scheme networks. However, we consider that this would likely be outweighed, on net, by the positive impact on the consumer experience. It is difficult to prove this quantitatively, however it is anecdotally clear that New Zealand consumers place a high value on avoiding surcharges.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

82. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Regulated parties (merchants)	• Ongoing reduction in cost recovery from payment surcharges, with effects concentrated on smaller business merchants • One-off and ongoing compliance costs	• Medium • Low	Medium

Regulators	Initial and ongoing implementation and enforcement costs	N/A (to be accommodated within existing funding)	Medium
Wider government	N/A (the role of government as merchants is covered above)	N/A	N/A
Schemes	Schemes face one-off costs setting requirements to promote compliance with the ban in their scheme rules	Low	Low
Issuers	• Competitive position of major banks, as majority issuers of scheme products, reinforced • Harder for small banks and fintechs to sustain card-based growth strategies	• Low • Low	Low
Consumers	Regressive wealth transfer from consumers who use low-cost payment options	Low	Low
Total monetised costs	Due to a lack of data we have been unable to estimate the monetised costs.	N/A	N/A
Non-monetised costs	Compliance costs for merchants, implementation costs for schemes, and transaction costs for issuers and consumers. Non-monetised costs have been estimated by MBIE, without the benefit of stakeholder consultation. As such, we do not have a high level of confidence in the non-monetary costs.	Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated parties (merchants)	• Reduces uncertainty about how to appropriately surcharge • Incentivises merchants to switch acquirers to receive better payment services	Low	Low
Regulators	Provides a flexible regulatory toolkit that more closely reflect overseas precedent	N/A	N/A
Wider government	N/A (the role of government as merchants is covered above)	N/A	N/A
Schemes	N/A	N/A	N/A
Issuers	N/A	N/A	N/A
Consumers	Increased consumer utility from a more positive retail experience and net gains for retail price transparency	Medium	Low

Total monetised benefits	Due to a lack of data we have been unable to estimate the monetised benefits.	N/A	N/A
Non-monetised benefits	As above, due to a lack of data/stakeholder consultation, we do not have a high level of confidence in the non-monetary benefits.	Medium	Low

Section 3: Delivering an option

How will the new arrangements be implemented?

Who will be responsible for implementation?

83. We are proposing that the Commission will be responsible for monitoring and enforcing the ban. The Commission is New Zealand's retail payments regulator and has developed significant subject matter expertise since the regime was enacted in 2022.

84. As a regulatory backstop, the Commission would also retain its existing merchant surcharging standard powers for classes of payments not subject to a ban on surcharging. These powers extend beyond setting pricing limits on surcharges, and can also cover disclosure of information, representation, and record keeping.

85. In addition, payment service providers could choose to amend their contractual arrangements to supplement the regulatory ban. Given the strong support from Visa and Mastercard for a ban on payment surcharges, we consider this a likely outcome – at least at the scheme level.

How will the proposal be implemented?

86. Primary legislation will need to be introduced to amend the Retail Payment System Act 2022. Secondary legislation would also be required if further payment cards/methods/networks were designated as being subject to the ban in future.

87. The Commission would be expected to utilise its existing resources to support its new functions. The Commission has baseline Crown funding of $4.576 million for the 2025/26 financial year to implement and enforce the Retail Payment System Act 2022.

88. While some reprioritisation of resources would likely be necessary, it is expected that the introduction of a regulatory regime that bans surcharges, rather than simply limiting them to cost, would be easier for the Commission to monitor and enforce.

89. We propose to extend the Commission's existing merchant surcharging standard monitoring and enforcement tools in the Retail Payment System Act 2022 to cover the new regime. These include pecuniary penalties for failure to comply and corrective action notices. A new infringement offence regime for minor breaches could further strengthen the enforcement regime, but given timeframes, this would need to be explored in the future.

90. In addition, we propose that any surcharges imposed by merchants on cards subject to the ban will be unenforceable and, if paid, the consumer is entitled to a refund from the merchant.

When will the proposal come into effect?

91. The proposal will require primary legislation to be passed by Parliament. We propose that the initial targeted ban take effect on and from 1 April 2026, approximately one month after enactment. This will align with the Commission's interchange fee determination, reducing the ban's detrimental impact on merchants.

92. The 1 April 2026 start date is designed to provide time for regulated parties and others to comply with the changes before they come into effect, reduce the likelihood of widespread non-compliance, and minimise resulting enforcement costs for the Commission. This will be further tested at select committee to ensure that the one-month delay provides sufficient time for merchants to reset point-of-sale terminals.

Communications

93. The Minister of Commerce and Consumer Affairs intends to announce the Government's decision to ban certain payment surcharges shortly after the Commission releases its final determination on its draft decision to further regulate interchange fees (expected to be released by 31 July 2025).

94. Given the lack of public consultation during the policy development process, it will be important to provide a clear summary of the intended scope of the ban, as well as associated compliance timeframes.

Implementation considerations

95. The proposal is to initially ban payment surcharges for in-store EFTPOS and Visa and Mastercard debit and credit transactions, while providing flexibility for the ban to be re-targeted over time.

96. An implementation risk is potential practical difficulties with implementing a selective ban through payment terminals. Without undertaking public consultation, it is unclear how simple it is to differentiate between cards (for example, to apply surcharges to foreign-issued cards) and the extent of any associated costs for merchants. There is some evidence that terminals can accommodate this complexity. For example, Mastercard noted in their submission to the Commission that terminals would be capable of applying surcharges to payment cards not subject to interchange regulation.[26] We will look to clarify this with terminal providers during select committee.

97. A broader risk is the Commission not being adequately resourced for its new functions. There is a risk that the Commission will not be able to effectively enforce the regime if it

[26] Mastercard (2025) *Mastercard Submission –Commerce Commission (the Commission) Draft Decision on interchange fee regulation for Mastercard and Visa networks*, Mastercard-Submission-on-Retail-Payment-System-Interchange-fee-regulation-for-Mastercard-and-Visa-networks-Draft-Decision-and-Reasons-Paper-18-March-2025.pdf, p.39.

does not have the resources. We consider this to be a low risk. The Commission already has an established payment surcharging workstream, and the proposed ban will provide for more targeted, efficient use of its resources. However, it is expected there will be a number of complaints during the early stages of the ban, and the risk of the Commission's resources not being adequate is more acute during this period.

98. Further, the proposed one-month implementation period only gives a short window for the Commission to proactively educate merchants on the ban, especially if details are not fully known until shortly before enactment.

How will the proposal be monitored, evaluated, and reviewed?

99. As the lead policy agency for the retail payment system, MBIE intends to monitor, evaluate and review the regulatory framework in line with the Government's expectations for regulatory stewardship.

100. The design of the regulation-making process supports good regulatory stewardship because it provides the ability to monitor, review and adapt the regulatory framework in response to emerging issues and trends to ensure it continues to be fit-for-purpose. As part of our regulatory stewardship role, we will take a proactive approach to identifying any issues by periodically consulting with key stakeholders on the impacts of the proposals and looking to overseas jurisdictions.

101. The Commission has a constructive relationship with MBIE, as the policy advising agency, meaning that there are regular opportunities for any implementation issues and unintended consequences of the regulation to be raised. We expect the Commission to also provide enforcement data and information about the costs of implementing and enforcing the changes to MBIE. Both agencies will be responsible for alerting relevant Ministers to any issues requiring a review of the legislation.

102. We also expect the Commission to raise any issues with the Council of Financial Regulators on an ongoing basis as part of the monitoring and governance arrangements for the financial markets regulatory system as a whole.

103. MBIE will continue to monitor the retail payment system over time to ensure the regulation is having the intended effects. While there are no current plans for a formal review of these changes, MBIE regularly reviews amendments to the laws we administer. We intend to periodically review the regulatory changes, with a view to assessing their effectiveness one year after they come into effect to provide sufficient time for the changes to bed in and produce expected outcomes. An earlier review may take place if we are alerted to serious unintended consequences. We would evaluate whether the regulation has been effective using criteria which could include, for example:

    a) reductions in rates/levels of excessive payment surcharging,

    b) continued innovation in the retail payment system, and

    c) ease of compliance, monitoring and enforcement.