JacksonStone House
3-11 Hunter Street
PO Box 1925
Wellington 6140
New Zealand

Tel: 04 496-6555
Fax: 04 496-6550
www.businessnz.org.nz

BusinessNZ
GROWING PROSPERITY AND POTENTIAL

25 November 2021

Economic Development, Science and Innovation Committee
Parliament Buildings
Wellington

Dear Select Committee Members

Re: Retail Payment System Bill

Background

I am writing to you regarding the *Retail Payment System Bill* (referred to as "the Bill"). BusinessNZ has previously submitted on this topic over a number of years, so we would like to outline our views on the Bill given it represents a sizeable shift for those potentially caught under its legislation.

Previous submissions on retail payments
BusinessNZ took the opportunity to submit on the 2016 MBIE Issues Paper entitled *Retail Payment Systems in New Zealand*, as well as the *Regulating to Reduce Merchant Service Fees* issues paper that was released in 2020.

In our previous submissions we took the view that any future options paper outlining solutions to rectify significant market failure should follow the regulatory pyramid model which propounds light-handed regulation where appropriate, extending to more heavy-handed options where required. We emphasised that there should be no rush to heavy-handed regulation and supported industry-led rather than government-led action as a first step.

To that end we outlined a possible way forward, involving various steps including greater transparency around unbundled Merchant Service Fees (MSFs) and around plans for changes to swiped and inserted debit payments.

Overall, we believed that a more measured and consistent process for regulatory change was required. While we considered there was scope for movement in merchant service fees, we considered moving to more heavy-handed regulation was unjustified, especially as the Issues Paper noted positive steps already taken, together with the goodwill shown during lockdown.

However, as outlined in the Bill, the Government has decided on a more prescriptive approach that has considerable regulatory reach. In light of this, we believe it is important to ensure that the new regime as outlined in the Bill produces a balanced outcome for both participants and consumers. Therefore, we would like to take the opportunity to outline some concerns and considerations about how the Bill can best work for New Zealand.

Consultation disconnect

In our 2020/21 submission we noted that the prior Issues Paper did a good job of identifying the problem, the objectives, a range of feasible options, and how these could be analysed.

The Issues Paper included a proposal to carry out a further round of consultation which was expected to deal with one or more options in greater detail. As stated, this would also include the "*advantages/benefits and disadvantages/costs of the options relative to the counterfactual"*. We fully supported the process outlined, so was disappointed to see that this further round of consultation never eventuated.

Instead, MBIE undertook a targeted consultation on the detail of proposals with 18 key industry participants in May 2021. Consultation primarily took place through meetings. In the Government's own words, *"this limited the breadth and depth of issues that stakeholders were usefully able to provide comment on."* We understand how the effects of COVID-19 have hastened the need for certain regulatory changes, however, we believe there was still adequate time to have achieved additional consultation and a more transparent process.

Breadth of change

The proposals in the Bill represent significant and wide-ranging changes to New Zealand's retail payment system, involving not only major card issuers and banks but also alternative payment system operators. From our perspective, such changes would fall somewhere near the 'heavy-handed' portion of the regulatory pyramid.

As we have outlined in previous submissions, the payments industry is dynamic and fast evolving, boasting an increasing number of new products and services. Given the strong potential for innovation within this sector, we believe it is important that the changes outlined in the Bill do not overly inhibit innovative solutions.

There is a great deal of policy work being undertaken in both the public and private sector that is germane to merchant service fees and it would be unfortunate to lose the innovations that could potentially stem from this work by relying on a heavy-handed industry regulation approach. As we mentioned in a previous submission on this topic, regulatory intervention can at best slow the pace of innovation, while at worst, it can block technological innovation altogether, through too-high regulatory hurdles or an inappropriate fit.

Wider context
As in our previous submissions, we note that changes outlined in the Bill will potentially have wider impacts for the sector, given other upcoming changes that will also affect participants.

For instance, a Bill involving the introduction of a Consumer Data Right (CDR) is expected at some stage in 2022. Also, Payments NZ continue to facilitate the development of a shared Application Programme Interfaces (API) framework. Furthermore, the Reserve Bank of New Zealand and the Financial Markets Authority will soon be consulting on identifying which financial markets structures (including payments systems) are 'systemically important', along with the design of standards under the new regime for designated financial markets infrastructures. Potential developments in peer-to-peer lending and blockchain technology options may also bring major changes around payment systems.

These developments present both opportunities and risks – opportunities for coordination, innovation, and minimal disruption, or alternatively the risk of harsh overlapping obligations monitored by different regulators.

Given that a policy announcement in one space could easily contradict one in another, BusinessNZ seeks a clear understanding of how the Retail Payment System Bill would fit with the broader retail payments regulatory environment once all policy work is taken into account.

Recommendation: That the Government ensures a clear understanding of how the Retail Payment System Bill would fit with the broader retail payments regulatory environment once all policy work is taken into account.

Consistency of competition across providers
Overall, it is important that the payment ecosystem operates as cohesively as possible. We would expect and support competitive pressures in a free market and recommend acceptance of positive competitive activity within the retail payments environment, instead of trading off one payment structure against another. This should facilitate access and limit burdens on business, enabling businesses to make the best decisions for their situation.

As the Bill stands, it allows the Commerce Commission to recommend particular retail payment networks to be 'designated' for regulation, with the Mastercard and Visa credit and debit networks being first in line for designation. We note this is similar to the approach taken in Australia.

In our prior submission we were concerned that shifting responsibility to a regulatory body such as the Commerce Commission would likely produce a more rigid regulatory system that would do little to promote industry-led solutions. However, we also accept that the designation model could allow the Commerce Commission to be nimbler in its market changes over time. Also, the fact that a high threshold is proposed for making a designation should help alleviate concerns about regulatory creep spreading across other payments systems. However, as exemplified by the decision to initially designate both Mastercard and Visa, it does show how wide the regulatory net can be.

The Bill also introduces anti-avoidance provisions to ensure that issuers do not increase other non-regulated components of merchant service fees. As the explanatory notes of the Bill outlines, "*this initial pricing standard would also prohibit operators from providing net monetary or non-monetary compensation to issuers (such as reduced scheme fees, discounts and rewards*." We can understand that the introduction of such measures would help reduce the risk of participants circumventing the intent of the legislation. However, it can be a fine balancing act to ensure that the total weight of restrictions on participants does not perversely skew the day-to-day competitive environment that they would normally experience. As the Bill stands, there is a risk that it may embed current settings with little incentive for change, thus curbing the ability to compete. Overall, this would not be a good long-term solution for anyone and raises the question whether the Bill is able to promote competition to the betterment of consumers.

Timing and future review

As noted above, ongoing changes in technology will undoubtedly cause disruption to retail payment systems. The Government will be faced with meeting the demands of a changing digital landscape in a context where the public policy process for change may lag far behind that initiated by the private sector.

Therefore, BusinessNZ would want to see a full review of the Act in 5 years' time to ensure the legislation remains fit for purpose.

Recommendation: That a full review of the Act takes place in 5 years' time to ensure the legislation remains fit for purpose.

Thank you for the opportunity to submit on the Bill[1].

Kind regards,

Kirk Hope
Chief Executive
BusinessNZ

[1] Retail NZ and Hospitality NZ supports the Bill and does not agree with BusinessNZ's submission.