

3 February 2016

Dr Tony Richards
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Dear Dr Richards,

APCA Submission to Review of Card Payments Regulation: Consultation Paper

The Australian Payments Clearing Association (APCA) is making this submission to the Reserve Bank of Australia's *Review of Card Payments Regulation: Consultation Paper* ("Consultation Paper"). This submission has been developed in consultation with our members. The views expressed within this submission represent the policy position of APCA and do not necessarily represent the individual views of members.

Since the consultation is at an advanced stage, we do not repeat earlier submissions where the Payments System Board ("the Board") has expressed a clear preference. Our comments are therefore confined to new issues. This submission should be read in the context of the views expressed in our previous submissions, including the April 2015 submission to the previous Issues Paper.

Weighted Average

APCA believes that the weighted average of the interchange fee benchmark both manages costs to merchants, while providing flexibility in interchange rates and ensuring a level of price competition between schemes.

APCA welcomes the Board's preferred option of maintaining the 50 basis point weighted average, as this provides certainty and minimises costs associated with changing the weighted average.

Quarterly Compliance

APCA understands the requirement for more frequent compliance than the current three-yearly period. However, many of our members experience significant volatility in the mix of card payments due to seasonal factors. Examples are heavier use of commercial cards in the lead-up to the end of financial year and heavier use of personal (and potentially premium) cards in the lead-up to Christmas. The interaction between the 80 basis point cap, quarterly compliance and the inclusion of commercial and foreign cards also reduces the effective average interchange fee. Overall, quarterly compliance has the potential to create unpredictable consequences and more frequent resetting of interchange fee schedules for little regulatory benefit.

Moving from a three-year to a one-year compliance process would appear to address the Board's concerns around perceived "gaming", and is an evolutionary approach which is likely to cause less disruption than a move to quarterly compliance.

APCA recommends moving from three-yearly to annual compliance with the benchmarks. If annual compliance is found to have not addressed the Board's policy

concerns, the option remains for the Board to introduce quarterly compliance at some point in the future.

Enhanced Disclosure to Merchants by Acquirers

APCA agrees with the Board on the principle of cost transparency for merchants. Providing merchants with enhanced cost information enables merchants to better determine what costs may be passed on to cardholders through surcharging. Providing clear price signals can drive adoption of more efficient forms of payment, leading to the development of a more efficient payments mix.

We agree with the Board that the provision of cost information in statements is preferable to a mandated technological solution. However, we are concerned that the current Standards take a "one size fits all" approach, regardless of the circumstances of the acquirer and merchant. Members have also indicated concerns over costs associated with implementation of a highly prescribed approach.

APCA recommends that the Board explores greater flexibility within the implementation of the enhanced disclosure measures and that acquirers be provided with adequate time to make the necessary system and statement changes to ensure proper implementation.

Timing

The changes to the structure of interchange fee regulation, in particular, the inclusion of new card types and the introduction of enhanced disclosure by acquirers to merchants will have implementation challenges. These may require refinement of the standards and/or require further guidance. Members have indicated to APCA that timing of the changes remains an important dimension that requires further attention.

APCA recommends that the Board considers publishing a draft implementation timetable for industry comment.

Specific Issues Concerning the Draft Standards

A number of other issues have been raised by members. These include issues within the Standards where there is a need for further guidance or where there is an apparent inconsistency between what is in the Consultation Paper and the Standards.

Anti-avoidance

The anti-avoidance provisions in both the credit and debit card standards (pages 50 and 58) appear very broad. Members have indicated concern that it is unclear what types of commercial activities would be captured. As well, there is a lack of clarity on enforcement and penalties for breaching this provision.

APCA recommends that the Board consider publishing draft guidance on the interpretation of the anti-avoidance provisions for industry comment.

Net Payments to Issuers

Some of our members have expressed concern over the proposed definitions within "Net Payments to Issuers" (pages 48-49 and pages 55-57). It has been raised by members that the definition of Issuer Receipts could capture "in kind" benefits for issuers, such as attendance at scheme-sponsored conferences and events etc. These would need to be accounted for and included in calculations. Though these amounts would be relatively small, the administration could be tedious and costly without some form of *de minimis* provision.

APCA recommends that the Board considers amending the Standards or publishing draft guidance to include a de minimis rule within the “net payments to issuers” calculations.

Payment facilitators / acquirers

It has been noted that the Merchant Pricing Standard refers to “Payment Facilitator” and “Acquirer”, while the relevant description in the Consultation Paper at footnote 16 of page 29 appears broader.

APCA recommends that the Board reviews the above definitions in the Standards in light of the intent in the Consultation Paper.

Competitive Neutrality / Issues Concerning Other Payment Systems

The Board’s decision to extend regulation to American Express companion cards and the discussion within the Consultation Paper on issues concerning other payment systems have been premised on the need for competitive neutrality.

Competitive neutrality as a rationale for extending regulation creates a long-term conundrum within the current regulatory approach. In its March 2015 Issues Paper, the RBA made clear that interchange fee regulation exists because competitive forces amongst well-established card payment networks were not operating effectively: merchants felt obliged to accept those payment methods, leading to the perverse competitive outcome of driving up benefits to consumers and costs to merchants – the “must take” problem (see page 8 of the Consultation Paper).

More recently, new business models and payment methods have entered the market (see pages 35-36 of the Consultation Paper). These provide new choices for merchants and for consumers, as well as enhancing competition. In APCA’s view, this trend is likely to continue in the future, driven by evolving payments technology.

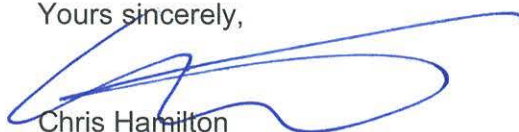
To the extent that consumers hold more than one payment method (e.g. a Visa card with eftpos capability, a companion Amex and a PayPal account), this will tend to reduce the “must take” effect of the larger card schemes on merchants. As consumer choice increases, merchants will, in practice, be able to exert more market power relative to schemes because competing alternative payment methods are increasingly available and attractive to them. This in turn reduces the underlying rationale for regulation, even as the principle of competitive neutrality suggests the need to regulate the newcomers.

APCA notes the Board’s decision not to establish specific criteria for regulatory application to new systems, and its willingness to review regulatory applicability to other systems in the future (page 35). APCA recommends future reviews of changing competitive dynamics in retail payments also consider the impact on existing payment methods, not just whether newcomers need to be regulated. The key issue is at what evolutionary point the “must take” rationale for regulation needs re-examination for a regulated system, in light of changed competitive dynamics.

APCA is undertaking analysis on changing competitive dynamics and intends to publish a contribution to industry thinking on this topic in the near future.

If you wish to discuss these matters further, please feel free contact me on 02 9216 4888.

Yours sincerely,



Chris Hamilton
CHIEF EXECUTIVE OFFICER