

AUSTRALIAN PAYMENTS CLEARING ASSOCIATION

SUBMISSION TO RESERVE BANK OF AUSTRALIA

ON

**“CONSULTATION ON PROPOSED CHANGES TO THE
EFTPOS INTERCHANGE FEE STANDARD”**

23 OCTOBER 2009

Introduction

1. The Australian Payments Clearing Association Limited (APCA) welcomes the opportunity to make this submission in response to the Reserve Bank of Australia's continued review of its reforms to Australia's card payment systems.
2. The RBA is seeking comment on its 22 September 2009 proposal to apply the current regulatory framework for scheme debit, consisting of a cap on weighted-average interchange fees of 12 cents per transaction to the issuer, to EFTPOS interchange fees.

Multilateral EFTPOS Interchange Fees

3. In the RBA's Conclusions to the 2007/08 Review, the Payments System Board foreshadowed that in the event interchange fee regulation remained in place at August 2009, it would bring EFTPOS and scheme debit under the same regulatory regime, so as to ensure regulatory neutrality and to promote competition between the schemes. With the deferral of a final decision on interchange fee regulation, the existing differential regulatory treatment between the international schemes and EFTPOS becomes a source of concern for the Board. It therefore seeks, on a transitional basis, to remove that differential treatment.
4. As explained in its previous submissions to the RBA's Review of the Australian Payments System, APCA maintains its general view that interchange fee regulation will inhibit rather than promote competitive efficiency within the Australian payments system, and should therefore be removed.¹ That said, this response to RBA's consultation takes into account the deferral of a final decision, and considers RBA's proposals as transitional measures only.
5. The transitional nature of the proposal is highly relevant: each regulatory change involves some business and operational realignment for participants, and therefore involves costs. A temporary regulatory change runs the risk of doubling realignment costs – once to comply with the transitional change, and then again when the final decision is made.

¹ See: [Australian Payments Clearing Association Submission to Reserve Bank of Australia on "Reform of Australia's Payment System: Issues For The 2007/08 Review" August 2007](#), and [Reform of Australia's Payments System: Reserve Bank of Australia's Preliminary Conclusions of the 2007/08 Review: APCA Submission in Response](#).

6. APCA supports the principle of regulatory parity between similar schemes that compete, so as to minimise regulatory arbitrage and promote robust competition. Accordingly, the rationale for applying the same regulation to any *multilateral* EFTPOS interchange fee as applies to other *multilateral* interchange frameworks is persuasive. Moreover, the minimum cost and most flexible way to do this on a transitional basis is to apply the existing framework for the international schemes to EFTPOS.
7. With the formation of EFTPOS Payments Australia Limited (EPAL), there is for the first time a prospect of a multilateral interchange regime of some kind being agreed for the EFTPOS system. APCA believes that multilateral interchange fees for EFTPOS would improve access and likely drive more robust competition between EFTPOS and the international schemes. Accordingly, APCA supports the proposed changes in regulation of EFTPOS interchange as being likely to encourage better competition in card instruments.

Bilateral Interchange Arrangements

8. As the Board has noted, there are practical problems in applying the same regulatory framework to bilateral interchange. APCA believes there are three issues that warrant consideration as the RBA finalises its position.
9. First, as noted in the consultation paper, by placing a cap on fees, bilateral arrangements may be entered into which inhibit access for new entrants. However experience to date has shown that the number of potential new entrants is likely to be few and therefore manageable, possibly dealt with on a case-by-case basis. If demand from new entrants is greater than expected, an access code that mirrors existing provisions in the EFTPOS Access Code which preclude discriminatory pricing for new entrants may address this issue.
10. Second, if EFTPOS remains a series of bilateral arrangements, a fixed cap potentially puts EFTPOS at a disadvantage, rather than achieving parity: EFTPOS would not have the flexibility in setting interchange fees enjoyed by the international schemes through the weighted-average cap.
11. The third issue relates to the transitional nature of the proposed reform. There may be a risk that changing the regulatory framework for bilateral interchange at this juncture could impact in a manner not intended on the evolution of effective scheme competition. In the absence of any multilateral interchange fee arrangements, the only way in which the flexibility of the new regime will have any material effect is if EFTPOS participants renegotiate existing bilateral arrangements. We believe

- industry efforts are, and should remain, on EPAL's development into a viable competitor to the schemes rather than bilateral renegotiations.
12. APCA's understanding is that there is a high level of commitment amongst EPAL members to pursuing effective business development of EFTPOS through EPAL.
 13. There are also some potential regulatory ways to address these concerns. For example, RBA could limit interim reforms to multilateral arrangements (including a future EFTPOS scheme arrangement) but leave bilateral regulation in place on a temporary and transitional basis so as to minimise realignment/renegotiation costs for participants in this transitional period. The RBA might also consider "non-discrimination" measures, such as a framework to prevent any one participant from discriminating between counterparties in bilateral negotiations, so as to minimise the potential for disruptive bilateral renegotiations during the transitional period.
 14. Creating a regulatory environment that does not place EFTPOS at a competitive disadvantage is a key goal. Interim measures must enable it to move towards multilateral interchange arrangements if it chooses to do so.

Conclusion

15. As explained in its previous submissions to the RBA's Review of the Australian Payments System, APCA maintains its general view that interchange fee regulation will inhibit rather than promote competitive efficiency within the Australian payments system, and should therefore be removed.
16. APCA supports the principle of regulatory parity across all multilateral interchange arrangements, including any future multilateral arrangement developed by EPAL. Accordingly, APCA broadly supports the RBA's proposal.
17. However, the current bilateral nature of EFTPOS interchange fee arrangements combined with the current stage of EFTPOS governance development means care is required to ensure that any transitional reform does not inadvertently complicate the evolution of EPAL as an effective competitor.