



1 February 2016

Dr Tony Richards
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By email: pysubmissions@rba.gov.au

Dear Dr Richards, *Tony*

RE REVIEW OF CARD PAYMENTS REGULATION

The Qantas Group is responding to the Reserve Bank of Australia's (RBA) Consultation Paper dated December 2015 including the annexed draft standard No 3, "Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions".

Thank you for the opportunity to comment.

Through card surcharges Qantas currently recovers approximately 81 per cent of its total "reasonable cost of card acceptance" as defined in the RBA's current Guidance Note. These surcharges are currently set at \$7 per passenger, per booking for Australian Domestic and Trans-Tasman services and \$30 per passenger, per booking for International services purchased in Australia. Qantas offers a range of payment options to avoid these surcharges.

As noted in previous submissions, the cost of credit card acceptance to merchants is material. It goes beyond merchant service fees (which vary between card types) and includes people costs, processing costs, infrastructure and equipment, fraud and fraud prevention measures. In addition there are substantial investments in ever-developing technology which benefit consumers and the overall payment system and are legitimately offset by merchants through surcharging.

Qantas is nonetheless aware of the concerns raised by consumer groups and has continued to participate in consultations on this subject, including with the RBA00. Our aim is to ensure that any change to the regulatory environment achieves competitive neutrality and is not unfairly burdensome.

Qantas notes that:

- The Government has introduced the Competition and Consumer Amendment (Payment Surcharges) Bill 2015 for the purpose of banning excessive card surcharging by merchants;



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- The Bill does not define excessive surcharging but instead refers to the proposed new Reserve Bank standard and a possible new regulation; and
- The legislation has no effect until the new RBA standard is determined or a new regulation takes effect and no such regulation has been proposed.

Response to consultation questions

SCHEME RULES RELATING TO MERCHANT PRICING FOR CREDIT, DEBIT AND PREPAID CARD TRANSACTIONS (DRAFT STANDARD NO. 3)

I. Is the proposed approach appropriate? Does it meet the public interest?

As stated in previous submissions, the Qantas Group does not support price control. However, if pricing control is pursued, in the interests of efficiency and competitive neutrality:

- a) It should allow merchants to recover the reasonable cost of card acceptance through surcharging. The proposed new standard excludes legitimate merchant expenses that relate to the cost of accepting and administering card transactions in addition to merchant service fees, such as the other expenses that are currently included in paragraph 2 of the RBA's Guidance Note on Interpretation of the Surcharging Standards (November 2012). These include infrastructure, fraud and third party service and equipment providers;
- b) The approach needs to provide a level playing field for merchants, meaning the ban on excessive surcharge must apply to all merchants where the point of sale is Australia, for goods and services to be consumed in Australia; and
- c) All the elements, including interchange standards, surcharging standards and the legislated ban on excessive surcharging and associated enforcement provisions, need to be co-ordinated including as to timing.

II. Is the proposed approach enforceable?

The proposed approach does not capture transactions in Australia if the merchant uses an acquirer or payment facilitator outside Australia. The RBA standards do not capture any Schemes that operate outside Australia. Without a regulation specifically capturing them, merchants can avoid the legislative ban against excessive surcharging by having their transactions acquired or processed under schemes which are not regulated by the RBA.

III. Do the draft standards achieve what is intended?

The proposed regime does not achieve a level playing field among merchants operating in Australia. In order to maximise coverage and minimise avoidance, additional provisions are required to apply the new laws to all transactions for goods and services purchased in Australia for consumption in Australia, regardless of where or how the transactions are acquired or processed.

Conversely, the restriction should not apply to transactions (even within Australia) for goods and services intended for consumption wholly outside Australia, where similar restrictions may not apply to a merchant's competitors.

For example, in the travel industry where the point of sale is within Australia, for travel wholly within Australia or departing from Australia, the merchant should be covered by the Australian surcharging regime. However, for the sale of travel that is wholly outside Australia or departing from another country, the merchant should not be subject to the Australian surcharging regime because:

- a) The merchant's competitors in the relevant market will not be subject to the same limitations, which would affect the merchant's ability to compete effectively on price; and
- b) Their distribution systems will be set up to comply with the regulatory regime of the relevant other country.

As noted above, the draft standard does not give merchants the freedom to recover all reasonable costs of accepting cards. Significant legitimate costs are excluded from the description of costs that are proposed to be permitted. These costs, including those currently covered in paragraph 2(b)-(d) of the RBA guidance note, would be excluded under the draft standard just because they are not paid to the acquiring bank or its contracted payment facilitator. For merchants like Qantas for whom the vast majority of transactions are card-not-present, these costs are significant.

The RBA has noted the benefits of the current regime including the flexibility it provides merchants to consider their individual circumstances when calculating the reasonable cost of acceptance. The RBA refers to a need to balance the attractiveness of the current framework against the ability to enforce limits on excessive surcharges. As the Government has already proposed legislation to introduce an enforcement mechanism to be administered by the Australian Competition and Consumer Commission (ACCC), this aspect has been addressed without the need to limit merchants' expenses to payments to the Schemes or their nominees, or to provide the Schemes with increased visibility of merchants' expenses.

An unintended consequence of the proposed standard will be to encourage merchants to use their acquirers instead of potentially more competitive third party suppliers for the necessary additional services in order that they may recover more of their legitimate merchant costs. For example, while physical terminals are a permitted expense the equivalent card-not-present transaction expenses that may be outsourced to third parties are not permitted. Banks might therefore see an opportunity to take on more of the role of other service providers in the processing of online transactions. This could undermine efficiency of the payments system.

Further, the draft standard does not prevent schemes from penalising merchants who surcharge in ways that are consistent with the standard, for example by applying higher merchant pricing or onerous auditing regimes to merchants who choose to surcharge (or surcharge in a particular manner) compared to those who don't. To capture this, in accordance with the objective of giving merchants freedom to surcharge, the standard should prevent the Schemes from both prohibiting and deterring merchant surcharging that is consistent with the standard.

IV. Are there factors that have not been properly addressed or considered, either in the general approach or the specific drafting?

While the draft surcharging standard seeks to improve identification of card type and transparency of merchant service fees, merchants still will not be readily able to match permitted costs with different card types within the same Scheme at the time of the transaction to ensure the correct surcharge is applied. For example, merchants would not readily distinguish between a card whose interchange rates are regulated by the RBA and another card from the same branded Scheme whose interchange rates are not regulated by the RBA and may attract significantly higher merchant service fees.

V. How long should be allowed between the time that any final decisions are made on the regulatory framework and the effective date of any new or revised standards? What factors are relevant to the length of this implementation period?

Once the requirements have been finalised merchants are likely to need at least six months to consider them in detail and to formulate and implement measures to ensure compliance.

As the proposed new interchange standards may have a significant impact on the cost of card acceptance, the new surcharging standard should not take effect until at least six months after the effective implementation of the new interchange regime.

In addition, to provide a level playing field, the application of the excessive surcharging ban to transactions for goods and services purchased in Australia for consumption in Australia that are not covered by the surcharging standard should be in place when the new surcharging standard takes effect. This will require coordination with regulations to be made under the Competition and Consumer Act, once amended.

It is not clear why the draft surcharging standard is drafted to come into force four months before it replaces the existing surcharging standards. This means two different regimes would apply concurrently. A merchant whose surcharge is within the RBA's current guidance could be pursued by the ACCC for breaching the proposed new s55B of the Competition and Consumer Act due to non-compliance with the overlapping new surcharging RBA standard.

VI. Would transitional arrangements be necessary for any of the changes embodied in the draft standards?

As noted above, a sufficient implementation period is needed to allow merchants to transition to the new regulatory regime. As the interchange, surcharging and surcharging enforcement elements are inter-dependent, they will need to take effect simultaneously.

VII. Possible approaches where merchants wish to surcharge to cover the potential cost of chargebacks arising from the insolvency of a third party (page 32)

As noted above, Qantas supports the inclusion of legitimate costs and risk factors in the permitted expenses but the surcharging standard should apply equally to all merchants and not single out specific industries. If legitimate costs and risk factors can be included

for one industry, other industries should also be able to recover their legitimate costs and risk factors, even though they may differ.

If you have any queries in relation to the contents of this submission or the Qantas Group's position more broadly, please do not hesitate to contact Trent Mumford - Head of Government and Public Affairs on (02) 9691-3635 or trent.mumford@qantas.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Parker', with a long horizontal flourish extending to the right.

Andrew Parker
Group Executive, Government and International Affairs