



30 July 2012

Mr Tony Richards
Head, Payments Policy Department
Reserve Bank of Australia
GPO Box 3497
SYDNEY NSW 2001

Dear Mr Richards

SURCHARGING REFORM GUIDANCE NOTE

Please find attached Visa's response to the Reserve Bank of Australia (RBA) call for submissions on its draft non-binding Guidance Note on the 'reasonable cost of card acceptance'.

I would like to take this opportunity to thank the RBA, the Payments System Board (PSB) and the Payments Policy Department for the extensive work that has been undertaken on the issue of card surcharging in Australia over the last 18-months.

The decision of the PSB to note the proliferation of both excessive and blended surcharging and the harm being caused to economic efficiency and consumer welfare by such practices are strongly in the public interest. Visa commends the RBA for acting in relation to these important issues.

Should you wish to discuss any of the above issues, please feel free to contact either myself or Mr Adam Wand, Visa's Head of Public Affairs, Australia, New Zealand and South Pacific on awand@visa.com or 02 9253 8800.

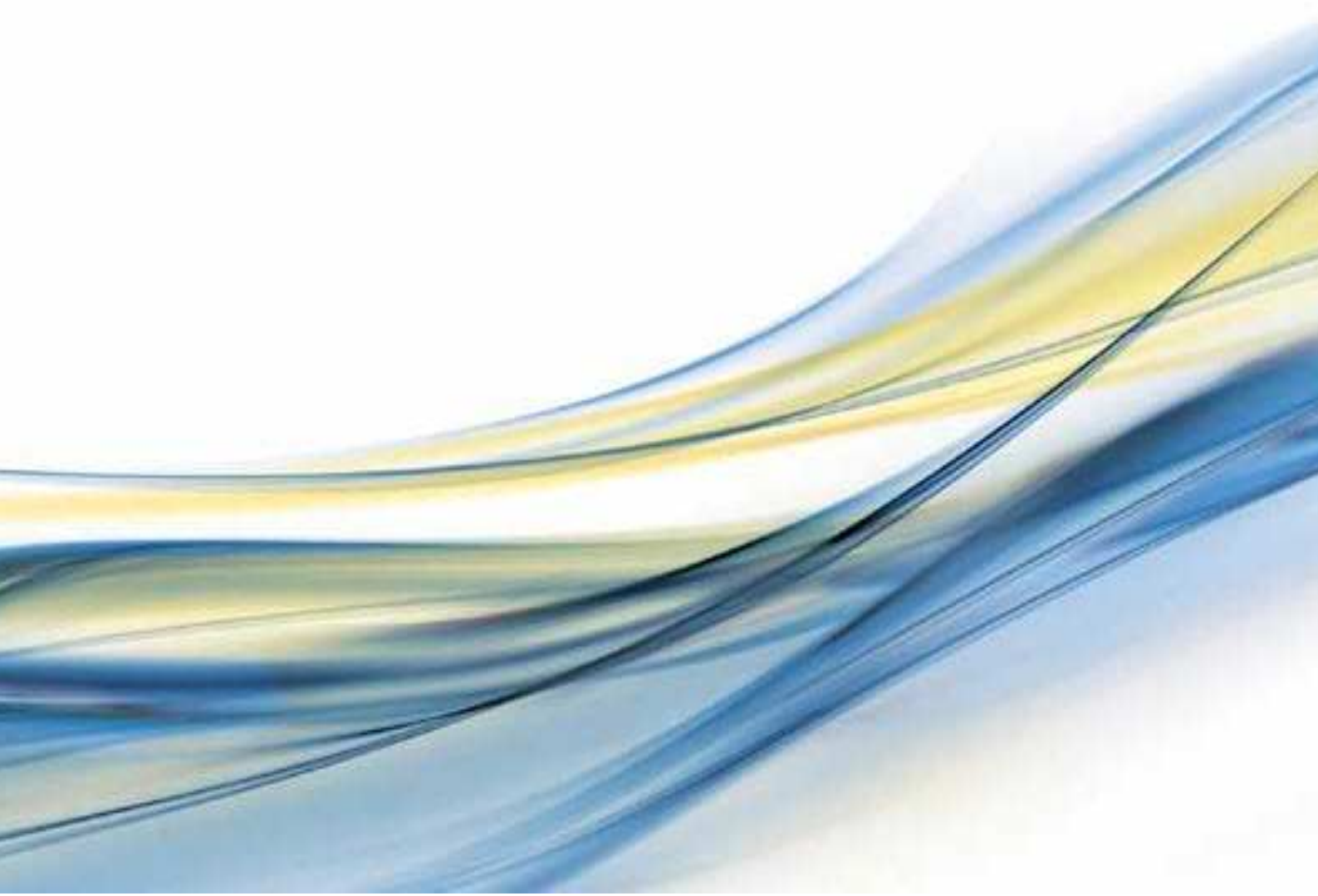
Yours sincerely

Vipin Kalra
Country Manager
Australia



Draft Non-Binding Guidance Note Submission

July 2012



Decision on surcharging reforms

Visa maintains that the simplest, most economically efficient and pro-consumer solution to the issue of card surcharging in Australia is the re-instatement of a full 'no surcharge' rule, whether that be through card scheme operating rules or via legislation.

We believe that surcharging is not an economically efficient tool to deliver the stated goals of allowing merchants to recoup the costs of card acceptance, nor as a means of allowing merchants to "direct" cardholders to other payment forms. Rather, surcharging has significant negative impacts on consumers by increasing consumer costs and negatively impacting on rising cost-of-living pressures while failing to provide any relevant "signal" to the cardholder.

We also feel that the cost of accepting a payment card is no different from other costs such as cash handling or electricity, and like these costs should be absorbed into the overall costs of the business. Allowing retailers to surcharge forces consumers to pay for the substantial benefits that merchants receive from accepting cards, which include greater pools of customers and increased sales, increased security of payment, lower physical security costs and faster payment acceptance and settlement times, while generally shifting more than 100 percent of the cost of electronic payments to consumers, with no regard to these merchant benefits.

Given the harm to consumers from surcharging and the absence of offsetting benefits, Visa believes permitting the relevant cards schemes to reinstitute the 'no surcharge' rule would still be the best policy outcome for Australian consumers and economic efficiency.

We note that many legislatures around the world support this view and have passed laws that prohibit surcharging outright. These include bans in France, Italy, Austria, Taiwan, Korea, Argentina and Brazil, as well as bans in numerous United States state-level jurisdictions including the three largest US states, California, New York and Texas.

However, considering the RBA's long-standing view favouring the allowance of card surcharging and in light of the statutorily prescribed boundaries of the RBA's own powers to directly impact merchant practices, at a general level, the RBA's surcharge limitation proposal is one that we support at this time.

Visa will implement the proposed limitation on card surcharging to the 'reasonable cost of card acceptance' through amendments to the Visa International Operating Regulations (VIOR), as those VIORs relate to Australia. As we committed to do in each of our submissions, Visa will undertake a process of consultation with our stakeholders, including financial institution acquirers and merchants, among others, on how best to operationalise this limitation with most effect and least burden.

Draft non-binding Guidance note

The RBA has also asked for the views of the sector in relation to the draft non-binding Guidance Note.

Need for guidance

At a high-level we agree that the provision of “practical assistance” to the relevant schemes is of considerable use, particularly in light of the deployment of a concept as open to differing interpretation as ‘reasonableness’. It was essentially for the same reason that in its several submissions to the RBA, Visa called for the deployment of a more specific definitional approach.

Language is too broad

Overall we feel that the language used in the Guidance Note is unnecessarily broad. The multiple inclusions of language such as “may include, *but are not necessarily limited to*” and then the inclusion of a very wide, potentially catch-all term such as section (c) “*any other costs that are incurred only for the acceptance of cards of the relevant schemes and not other payment methods*” and disclaimer language such as “not intended to be exhaustive”, means collectively, in our view, that the efficacy of the Guidance Note as a tool to provide some degree of robust and/or testable direction to schemes, scheme participants and merchants is significantly reduced.

At a minimum such uncertainty would reduce the ability for relevant parties to easily and quickly calculate the cost of acceptance and agree upon an outcome. Ultimately, it may even be the case that this level of uncertainty makes the scheme rules-based approach unable to be effectively implemented.

Permissible costs

We agree that the core of the reasonable cost of card acceptance is the Merchant Service Fee (MSF). As we have outlined previously, for a considerably large number of merchants, this may in fact represent the only cost of card acceptance, so a limit calculation would be simple.

Beyond the MSF, Visa is only supportive of the possible inclusion of additional costs in the ‘reasonable cost of card acceptance’ base where they are variable costs faced by the merchant for the acceptance of Visa cards. We believe that this is the simplest way to successfully achieve a workable and fair regime. The inclusion of fixed costs, possibly apportioned across multiple (and multiplying) schemes is a recipe for even further complexity and confusion.

It is with this principle in mind that below Visa addresses the individual sections of the draft non-binding Guidance Note that seek to describe costs ‘above MSF’.

<i>Draft non-binding Guidance Note section</i>	<i>Visa position</i>
<p>(a) Other costs payable to acquirers. These may include fees for the rental and maintenance of payment card terminals, scheme fees incurred in processing card payments and levied by the acquirer (e.g. international service assessments or cross-border transaction fees), and other fixed fees for providing payment acquiring equipment and services (e.g. access fees, minimum transaction fees and other monthly or annual fees).</p>	<p>Visa feels that only variable costs associated with the acceptance of a Visa card should be able to be included in the calculation of the reasonable cost of accepting a Visa card. As such, if a merchant wishes to include any costs payable to their acquirer above their MSF charge, they should be limited to such variable costs. Those costs included in the current wording of section (a) that we consider variable are scheme fees, (e.g. international service assessments and cross-border transaction fees), although we again note that it is highly unlikely that any of these would actually be charged separately from the MSF.</p> <p>As such we feel section (a) should be re-written as per the below:</p> <p><i>(a) Other variable costs payable to acquirers. These may include scheme fees incurred in processing card payments and levied by the acquirer (e.g. international service assessments or cross-border transaction fees).</i></p> <p>We also submit that for the sake of fairness and workability, there should be an assumption that (i) these costs, be presumed to be already included in the MSF, and (ii) where a merchant claims to be charged these in addition to or outside their MSF charge, the obligation should be on that merchant to positively establish these costs as being payable above their base MSF charge.</p> <p>As such, the introductory language to this section should also be amended to read: "Other costs payable to acquirers <i>where not already included in</i></p>

	<p><i>the Merchant Service Fee and where positively established by the merchant."</i></p>
<p>(b) Costs payable to other payment service providers. These may include gateway fees, switching fees and fees for the provision of equipment and/or services required to accept card payments.</p>	<p>Visa is generally supportive of this section as if a merchant faces any justifiable reasonable costs (such as gateway fees) in addition to their MSF charge, or any other variable fee not included in the MSF base but paid separately to accept a Visa card (as covered by section (a)) it would be a fee payable to a 'payment service provider' (PSP).</p> <p>We note that such a gateway fee could actually be paid to an acquirer directly (rather than a separate third party PSP) and as such could be included in either the section (a) or (b) calculation, although not both.</p> <p>That said, we do believe that where a merchant claims to face additional PSP costs, the obligation should be on that merchant to establish the presence of such costs beyond their base MSF charge and, where relevant, any additional costs covered by section (a) above. We feel this is a fair measure to include in the non-binding Guidance Note as PSP costs are not faced by the majority of merchants and are largely concentrated to a particular cohort of merchants (such as ecommerce merchants) and as such, additional PSP costs should not be present in most cases.</p> <p>As such, the introductory language to this section should be amended to read: "Costs payable to other payment service providers <i>where positively established by the merchant.</i>"</p>
<p>(c) Merchants' own costs related to card acceptance. These may include the cost of purchasing and maintaining their own card</p>	<p>Visa only sees a case for the consideration of any costs under section (c) in the reasonable cost of card acceptance that are of the type</p>

<p>acceptance infrastructure, scheme fees levied on the merchant by the scheme, and line rental and communications charges related to the use of payment card terminals.</p>	<p>covered in section (a) and (b) where a merchant has procured these card acceptance services other than through an acquirer or a PSP, and can establish this factually. That is, only those variable costs incurred to accept a Visa card should be able to be reasonably included. As such, the language in section (c) should be amended to read: <i>“Merchants’ own costs related to card acceptance of the type covered by sections (a) and (b), respectively, where procured other than via an Acquirer or Payment Service Provider.</i></p> <p>As outlined, where a merchant can establish they are in the situation envisaged by section (c), then Visa would consider such costs.</p>
<p>(d) Any other costs that are incurred only for the acceptance of cards of the relevant schemes and not other payment methods.</p>	<p>As outlined above, Visa does not support the inclusion of this section as all reasonable costs of card acceptance are captured by operation of sections (a)-(c) and the inclusion of this section builds significant uncertainty into the guidance making implementation complex, extremely difficult and ultimately more costly and inefficient for all parties.</p>

Finally, Visa submits that the RBA is entirely accurate in not including in the permissible reasonable cost of card acceptance cost base, the costs associated with fraud and security. To allow merchants to effectively pass on such costs to cardholders would externalise all incentives currently placed on merchants to reduce levels of fraud. This would run counter to the RBA’s desire, and that of the industry, to see fraud rates fall in Australia. Furthermore, fluctuating fraud costs would make their inclusion extremely difficult and add to the complexity and overall compliance costs.

Netting and Apportionment

We strongly agree with the need for a netting arrangement to be included in the non-binding Guidance Note. We would, however, propose the inclusion of a reference to rebates from PSPs or other relevant third party providers, in addition to those from acquirers and issuers. As such, the netting section could read:

“calculated net of any rebates from either the acquirer or the issuer, the payment service provider or providers or any other relevant third party provider of payment services.”

In relation to apportionment, if only the variable costs of accepting a Visa card are included then a more exact and much simpler regime can be implemented. We note that should our approach not be accepted then we reserve our position in relation to possible costs apportionment.

Disclaimer

Whilst we understand the RBA’s motivations in relation to the inclusion of the Disclaimer section of the draft non-binding Guidance Note, as outlined above we do not support the inclusion of the text “it is not intended to be exhaustive”, primarily for the reasons already set out that it adds uncertainty around the impact of the guidance and the overall workability of the reforms.

Finally, we find the inclusion of a recommendation from the RBA that “independent professional advice be sought” may have the, likely unintended, effect of encouraging the implementation of these surcharging reforms in an overly legalistic and contentious mode from the outset, which is certainly something Visa wishes to avoid.

