

Access Regime for the EFTPOS System

Objective

The objective of this Access Regime is to promote competition and efficiency in the Australian payments system, having regard to:

- (i) the interests of current participants in the EFTPOS system;*
- (ii) the interests of people who, in the future, may want access to the EFTPOS system;*
- (iii) the public interest; and*
- (iv) the financial stability of the EFTPOS system.*

Application

1. This Access Regime is imposed under Section 12 of the *Payment Systems (Regulation) Act 1998*.
2. This Access Regime applies to the payment system operated within Australia known as the EFTPOS system, which was designated as a payment system on 9 September 2004 and referred to below as the EFTPOS system.
3. In this Access Regime:

‘Access Agreement’ has the same meaning as in the EFTPOS Access Code;

‘Access Charge’ means the charge payable by an Access Seeker to an Access Provider under an Access Agreement as described in clause 3 of Schedule 3 to the EFTPOS Access Code;

‘Access Provider’ has the same meaning as in the EFTPOS Access Code;

‘Access Seeker’ has the same meaning as in the EFTPOS Access Code;

an ‘acquirer’ is a participant in the EFTPOS system that provides services to a merchant to allow that merchant to accept a debit card;

‘APCA’ means the Australian Payments Clearing Association Limited (ABN 12 055 136 519);

‘APCA’s 2004 costs survey’ is the survey of Direct Connectors in the EFTPOS system, conducted by APCA, on the estimated incremental direct costs of connecting new Direct Connectors, the results of which were supplied to the Reserve Bank of Australia on 15 April 2005;

‘cash out’ means the provision of cash to a cardholder by a merchant, as a result of a debit card transaction at the merchant;

‘debit card’ means a card issued by a participant in the EFTPOS system that allows the cardholder to make payments to merchants for goods or services and/or obtain cash out using the EFTPOS system by accessing a deposit account held at an authorised deposit-taking institution;

‘debit card transaction’ or ‘transaction’ means a transaction in Australia using the EFTPOS system;

‘Direct Connector’ has the same meaning as in the EFTPOS Access Code;

‘EFTPOS Access Code’ means the EFTPOS Access Code adopted by EFTPOS Access Australia Limited [ABN] on [] and as varied from time to time;

an ‘interchange fee’ is a wholesale fee which is payable between an issuer and an acquirer or self-acquirer, directly or indirectly, in relation to a debit card transaction in the EFTPOS system;

an ‘issuer’ is a participant in the EFTPOS system that issues debit cards to its customers;

‘merchant’ means a merchant in Australia that accepts a debit card for payment for goods or services and/or that provides cash out;

a ‘self-acquirer’ is a participant in the EFTPOS system that is a merchant that sends transactions directly to issuers rather than through an acquirer and takes on the responsibilities usually undertaken by an acquirer;

‘Standard Service’ has the same meaning as in the EFTPOS Access Code;

terms defined in the *Payment Systems (Regulation) Act 1998* have the same meaning in this Access Regime.

4. Each participant in the EFTPOS system must do all things necessary on its part to ensure compliance with this Access Regime.
5. If any part of this Access Regime is invalid, it is ineffective only to the extent of such part without invalidating the remaining parts of this Access Regime.
6. This Access Regime is to be interpreted:
 - in accordance with its objective; and
 - by looking beyond form to substance.
7. This Access Regime comes into force on [31 May 2006].

Price of access

8. The Access Charge levied by an Access Provider for providing the Standard Service to an Access Seeker must not exceed the benchmark, calculated in accordance with paragraphs 9 to 16 below, applying on the date the Access Agreement is entered into.

Methodology for calculation of the Access Charge benchmark

9. For the period from [31 May 2006] to 31 December 2009 the benchmark for the Access Charge in the EFTPOS system is the lowest estimated cost for providing a direct connection as measured in APCA’s 2004 costs survey. This cost is \$78 000 (excluding GST).

10. A new benchmark will apply from 1 January 2010, and every four years thereafter, determined in accordance with paragraphs 11 to 16 below.
11. In the final year of application of a given benchmark, to be known as the 're-calculation year', all Access Providers in the EFTPOS system who have provided the Standard Service to an Access Seeker during the four years to 30 June of that year must complete a survey of the eligible costs they incurred in providing the service to each such Access Seeker.
12. The form of the survey, including the set of assumptions, is to be substantively the same as APCA's 2004 costs survey, with any variations to be approved by the Reserve Bank of Australia prior to the survey being undertaken. Eligible costs are to be specified in the survey, and must be only incremental direct costs incurred in providing the Standard Service. Access Providers may appoint an agent to co-ordinate this survey.
13. Access Providers must use data on eligible costs drawn from accounting records prepared in accordance with generally accepted accounting principles and Australian equivalents to International Financial Reporting Standards. Where an Access Provider has provided the Standard Service to more than one Access Seeker during the four years to 30 June of the re-calculation year, it must provide separate data on the costs incurred in providing each Standard Service. Each such provision of data counts as a separate survey response for the purposes of paragraph 16.
14. Results of the survey are to be provided by each Access Provider to the Reserve Bank of Australia on a confidential basis by 15 August of the re-calculation year, unless an extension of this deadline is agreed to in writing by the Reserve Bank of Australia.
15. Each Access Provider may be required by the Reserve Bank of Australia to explain information in its survey responses. The Reserve Bank of Australia will review the data from each Access Provider to determine if the costs included are eligible costs and the Reserve Bank of Australia will use only eligible costs to calculate the benchmark in accordance with paragraph 16 below.
16. The Reserve Bank of Australia will calculate the new benchmark to apply for the four-year period commencing 1 January of the year following the re-calculation year. If the Reserve Bank of Australia receives survey responses from three or more different Access Providers, the new benchmark is to be the lowest actual cost for provision of the Standard Service from among all survey responses. If the Reserve Bank of Australia receives survey responses from fewer than three different Access Providers, the new benchmark is to be the lower of:
 - (i) the lowest actual cost for provision of the Standard Service from among all survey responses; and
 - (ii) the benchmark applying during the re-calculation year adjusted for the change in the Australian Consumer Price Index between the June quarter of that year and the June quarter of four years earlier.

Transparency

17. The Reserve Bank of Australia will publish the new benchmark by 30 September of the re-calculation year.

No discrimination

18. An acquirer or self-acquirer who becomes a participant in the EFTPOS system for the first time, on or after [31 May 2006], is for three years entitled to receive an interchange fee from an issuer with whom it has an Access Agreement no less than the lowest interchange fee payable by that issuer to an existing acquirer or self-acquirer.
19. An issuer who becomes a participant in the EFTPOS system for the first time, on or after [31 May 2006], is for three years not required to pay an acquirer or self-acquirer with whom it has an Access Agreement an interchange fee greater than the highest interchange fee payable by an existing issuer to that acquirer or self-acquirer.