

Review of Retail Payments Regulation

Submission to the Reserve Bank of Australia

August 9, 2021

Introduction

The Australian Chamber of Commerce and Industry (ACCI) is Australia's largest most representative organisation of small businesses in Australia. ACCI represents over 80 national industry associations and all state and territory chambers of commerce. Our members are mostly SMEs spread across industries throughout all parts of Australia. ACCI is also the only peak body with influence and engagement on the international stage. ACCI is the unique Australian industry association member of the ICC, IOE, BIAC to the OECD, CACCI, CAPE and represents Australian employers at the UN and WTO.

ACCI welcomes the opportunity to comment on the RBA consultation paper regarding the retail payments regulation landscape. ACCI believes in a fairer, more transparent and innovative payments system that allows user choice and places merchants and their customers at the centre of the payment system. Our views on the retail payments regulation have been previously raised in our submission to the [Treasury's review of the Australian Payments system](#) and in [response to the ACCC in relation to the proposed amalgamation of BPAY, eftpos and NPPA](#). Some of those views have been reiterated in this submission for emphasis.

In general, we share the concerns raised by the RBA Board in relation to dual-network debit cards (DNDC) and least cost routing (LCR). However, we disagree with the preliminary conclusions and recommendation for regulatory inaction on LCR and DNDC. While the RBA has done well to manage an escalation of card payment costs within the constraints of the *Principles and the Payment Systems (Regulation) Act 1998* (PSRA), the reliance on suasion over regulation is leading to sub-optimal outcomes in the uptake of LCR. These concerns are being compounded by the potential for broader uptake of single-network debit cards (SNDC), that will reduce payment competition and drive up costs. There is also significant concern with the lack of LCR and competitive tension in the growing mobile wallets and online payments market.

The unattainability of LCR is resulting in small businesses absorbing higher than necessary merchant fees. Regulatory inaction as indicated at this stage is likely to lead to greater costs and further uncertainty. Urgent regulatory action is required in three key areas:

- **Multi-Network Debit Cards (MNDCs) should be made mandatory as part of every Australian Deposit taking institution's (ADI) obligation to promote competition in digital payments in Australia. This has been implemented with success in the United States through the Durbin Act,**
- **Least Cost Routing (LCR) should be the default option for all merchants in all payment channels, including tap-and-go, mobile wallets and online transactions and,**

- **Merchant fees data should be regulated with the expansion of consumer data rights (CDR) and open banking, explicitly incorporating small merchant fee data, to ensure full transparency, explainability, useability and interoperability.**

We commend the US administration for the implementation of the Durbin Act that requires DNDC be applied to even the smallest financial institutions through issuers. ACCI considers the forgone revenue of financial intermediaries to be a matter of corporate social responsibility and good faith in driving competition.

Small merchants and LCR uptake

It is critical that we make it easier for small merchants (as end-users) to seamlessly navigate low cost options in the debit and online card payments space. To achieve this will require a regulatory framework that drives competition, transparency and delivers end-user choice.

Small merchant costs have increased or remain stubbornly high for the vast bulk of transactions made. This is having a direct impact on the cost of doing business in Australia. In some instances, these costs are passed on directly to consumers and for some industries, particularly food and retail, these on-costs exacerbate existing competition issues amongst market participants.

Recent efforts made by financial intermediaries to advertise and educate small merchants of the benefits of LCR have not led to the outcomes we have expected. The speed and scale of LCR uptake amongst small merchants is simply too slow and inadequate to justify non-intervention. The anaemic uptake of LCR is largely a result of the lack of regulation and standards guiding data governance arrangements in merchant fees. Small businesses continue to experience opacity and implementation issues and are falling through the cracks of lower cost payment solutions. The lack of regulatory responsibility and enforceability of data governance arrangements in relation to merchant fees will continue to see an inadequate uptake of LCR amongst small merchants.

Feedback from the small business community suggests that while some financial intermediaries are doing better than others, there are significant laggards in providing and assisting small businesses in their journey to lower cost payment options. In general, inquiries that were made by small businesses regarding LCR have led to information saturation, additional administrative responsibility, inadequate time, support and advice and persistent opacity. Small merchants are simply throwing LCR into the “too hard” basket and forgoing further inquiries and uptake. This is unconscionable and should not be a feature of a modern digital economy.

To circumvent the anaemic uptake of LCR, merchants require full transparency, explainability, useability and interoperability of merchant fees data. These principles underpin the CDR and open-banking framework currently rolling out. Current arrangements and timelines outlined however do not explicitly incorporate merchant fees. And whilst business finance data is being made available through open banking, the rollout of this scheme will not be fully realised until 2022.¹ Merchant fee data must be held to the same standard as other banking products and services to ensure business customers can be informed and make quick and easy decisions to best suit their needs.

Merchant fee data must be provided in a way that is useable and explainable to drive genuine competition and LCR uptake across the digital payments market. We strongly recommend regulatory actions be taken to prevent further escalation and uncertainty in costs of digital payments and/or the CDR be expanded to explicitly incorporate merchant fees data.

¹ <https://www.ausbanking.org.au/priorities/open-banking/>

The use of suasion has netted sub-optimal results that are costing small merchants higher than necessary fees. Estimates indicate that only 7-10 per cent of the market currently use LCR. These fees are on average several thousands of dollars per year depending on the size and number of payments made. For example, eftpos estimates that an independent supermarket may be approximately \$25,000 worse-off per year without LCR while a small-scale retailer is approximately \$3,000 worse off. Further economic analysis by CMSPI indicates that if LCR were made available on all card transaction types including credit, online, debit and digital wallet, Australian merchants could save over \$2 billion in merchants fees annually and approximately \$1.3 billion if only debit transactions are considered alone.² On balance, ACCI considers this a disproportionate and significant cost impact that is largely and unnecessarily absorbed by the small business community.

General awareness and understanding of the impacts of LCR on business is currently an insufficient condition for uptake (emphasis added). The lack of regulatory parameters and standards underpinning data governance arrangements in relation to merchant fees and digital payments more generally is a central cause for concern driving the issues experienced on the ground by small merchants. Despite recent efforts, we have not observed any substantive or impartial evidence that suggests “significant progress” has been made in LCR uptake. As the regulator in this space, the RBA has the responsibility to act on this issue as a priority.

Emerging threats on the viability of LCR

The RBA has done mostly well within the constraints of the *Principles and the Payment Systems (Regulation) Act 1998* (PSRA). The PSRA encourages a co-operative approach to achieving core outcomes and the RBA’s use of suasion to achieve outcomes has been mostly useful in avoiding protracted litigation.

There are indications that SNDCs are being encouraged to drive innovation in the digital payments market. This is of concern as the RBA consultation paper makes clear that “*a widespread shift towards SNDCs could threaten the viability of LCR*” and that if eftpos cannot compete and potentially has to exit the market, this “*would result in a significant lessening of competitive pressure in the debit market and would likely result in an increase in both interchange rates and scheme fees, impacting all merchants*”.³ The payment system must continue to support dual network debit cards and we expect the RBA to further consider their preliminary conclusions on this matter.

Global markets that have moved to SNDC have experienced a significant spike in merchant fees and we should pay heed of these precedents.⁴ Equally it is important that we learn from the experience in the card-present environment and ensure that there is competition and choice when consumers choose to use their mobile devices to make transactions or pay for products and services online. Without principles-based regulation underpinned with clear guidelines of responsibility and enforceability, there is a real risk that merchants will pay higher fees for the rapidly growing number of transactions that utilise these devices or occur in these online marketplaces.

Provide clear guidance on regulatory decisions

The regulatory decisions made by the RBA need to be made with full transparency and clarity. The regulatory architecture must provide clarity regarding regulatory responsibilities and ensure that regulators are working together with a thorough understanding of payment technologies. The

² CMSPI, Submission to RBA regarding digital payments regulation 2021

³ <https://www.rba.gov.au/payments-and-infrastructure/review-of-retail-payments-regulation/consultation-paper-202105/pdf/review-of-retail-payments-regulation-consultation-paper-202105.pdf>

⁴ https://treasury.gov.au/sites/default/files/2021-02/147719_acci_0.pdf page 2

regulatory system requires further transparency and clarity. Regulatory decisions should be publicly announced and made in plain English so that merchants can understand how it affects their business. The regulatory architecture should provide clarity regarding regulatory responsibilities and ensure that regulators are working together with a thorough understanding of payment technologies. Greater clarity in terms of regulatory responsibility and the scope of their regulatory decisions and activities is required.

Place merchants at the centre of the regulatory system

The regulatory architecture should place the interests of merchants and customers front and centre. This should be driven through payment systems policy including legislative instruments and regulations including industry self-regulation and regulatory behaviour and decision making. It is worth making the importance of low payment costs and innovative products for merchants explicit in the PSRA. The central intent of legislative and regulatory frameworks and the regulators that are charged with administering should be based on principles that deliver the best payment services, methods and outcomes for merchant and consumers in terms of price and functionality.

Regulations should ensure an even-playing field between large and small business in terms of payment choices, terms and functionality. Least cost routing has been made available to a number of larger businesses, while their small business counterparts are left to contend with complex and opaque advice. This legacy issue should not be a feature of a modern digital economy.

Enable entrants that deliver for merchants

The regulatory environment should be designed in a way that drives competition and innovation from new entrants. Fintechs need the opportunity to introduce smart payment apps, that are focused on driving value for merchants and their customers, in a way that integrates with existing payment platforms. This will enable them access to platforms on fair commercial terms and in a way that does not deter fintechs from entering the market due to unreasonable rules or technical constraints.

Financial innovations must balance the interests of merchants and their customers. For instance, while innovative buy-now pay-later (BNPL) solutions have attracted increased popularity by Australian consumers, they have a relatively mixed impact on merchants, that is contingent on firm size, product margins and industry profile. BNPL solutions deliver forward revenue for business and it encourages purchases to be made by customers. However, the high service fees of between 3-7 per cent of the sales value drives a substantial increase in merchant fees, that overall negate the benefits for retailers competing on small product margins.

Further competition between BNPL products may increase if merchants at least have the option to surcharge. Retailers increasingly regard BNPL as a must have offering, with BNPL use very high among online transactions, which continue to increase as a percentage of all retail transactions. A potential option for surcharging may further increase the uptake and viability of this innovative product offering to businesses competing on small margins.

As end-users who pay the transaction costs at the point of sale, merchants should have the highest priority in terms of choosing their preferred payments scheme to reduce their transaction costs and access the functionality that best suited to their business. A regulatory system that places merchants (as end-users) at the heart of the regulatory system can be achieved by incorporating the centrality of merchants in the PSRA.

Competition across infrastructure

Competition should be actively encouraged at all levels of the payments systems supply chain. Including competition via the maintenance of multiple payment platforms that include a balance between domestic and international card schemes, competition between payment rails including between cards and accounts and competition in products, services and applications that exist on top of payment rails such as through the offerings of fintechs and the incumbent banks.

Based on our observation of payment systems globally, the best outcomes are achieved by infrastructure that competes with other infrastructure, and a healthy diverse set of schemes that compete on top of that infrastructure. As end-users who pay the transaction costs at the point of sale, merchants should have the highest priority in terms of choosing their preferred payments scheme to reduce their transaction costs and access the functionality that best suited to their business.

Our small business members are concerned about the consolidation of a single payments platform as scheduled to take effect by July 2022. There is risk that the new governance structure may provide a strong incentive to shift more payment costs onto merchants. We commend the RBA to constrain this over the years, however this is largely only been possible because eftpos has supported low merchant costs in the payments system. Eftpos is a low-cost, high take-up payment solution. If an amalgamation of payment platforms were to proceed, merchants risk a governance structure that may result in similar circumstances that have arisen in other global markets.

Conclusion

Take-up of LCR amongst small merchants remains at unacceptable levels. As the onus of responsibility remains on merchants to attain, understand and comprehend the benefits of LCR by requesting it from their acquirer, this approach is resulting in sub-optimal take up. To circumvent this issue, regulation on data governance of merchant fees is required and/or we recommend the RBA support the expansion of consumer data rights (CDR) and open banking to be expedited as a matter of priority to explicitly incorporate small merchant fee data. Further, LCR should be made the default option in the first instance, both in the card-present and the emerging mobile wallet and online payments markets.

In terms of the threats to LCR, we suggest mandating DNDC as in the United States to allow for the competitive tensions that drive and suppress merchant fees. The payment system should enable innovation and new entrants and be designed with end-users in mind. As end-users who pay the transaction costs at the point of sale, merchants should have the highest priority in terms of choosing their preferred payments scheme to reduce their transaction costs and access the functionality that best suited to their business. Clear regulatory guidance that allow for the continuation of competitive tension between payment schemes and systems, is critical in the dynamic and innovative payments market.

About the Australian Chamber

The Australian Chamber of Commerce and Industry speaks on behalf of Australian Businesses at home and abroad. The Australian Chamber represents hundreds and thousands of businesses in every state and territory and across all industries. Ranging from small and medium enterprises to the largest companies, our network employs millions of people. The Australian Chamber membership list can be viewed at www.australianchamber.com.au/membership/current-members/

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