

Review of the Regulatory Framework for the EFTPOS System: Consultation of Options for Reform

APCA Submission

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About This Document

This paper sets out APCA's response to the RBA's consultation paper '*Review of the Regulatory Framework for the EFTPOS System: Consultation on Options for Reform*'. June 2012

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I. Introduction

In its April 2012 response to the RBA's initial consultation paper: '*Review of the Regulatory Framework for the eftpos System: Consultation on Designation*', APCA made the following submissions:

- That the scope of designation should be restricted to EFTPOS Payments Australia Ltd (EPAL) and its rules and should not be extended to bilateral arrangements;
- That in the longer term the designation of individual payment systems may not be the best way of regulating the marketplace for a particular payments segment.

The RBA has determined to revoke the original designation and to re-designate the eftpos system with a definition based upon EPAL's Scheme Rules. Eftpos transactions would still be possible outside of the EPAL framework, but would be unregulated. Bilateral agreements between EPAL members would still form part of the designated system.

II. Interchange Fees Standard

Under the original designation, the Payments System Board (the Board) sought to achieve pricing efficiency by restraining the level of interchange fees.

The Board has analysed a range of options in relation to interchange fee regulation under the new designation:

1. No change to current regulation;
2. Bilateral interchange fee benchmark closer to multilateral interchange fee;
3. Common benchmark for bilateral and multilateral interchange fees;
4. Preventing payment of interchange fee other than EPAL multilateral fee;
5. No interchange fee standard.

The Board has expressed a preliminary view that the most effective approach would be to place the multilateral and bilateral interchange fee regulation on an equal footing. ie option 3 above and is seeking feedback.

APCA considers that interchange fee regulation under the new designation should address the pricing distortion (that is, price difference imposed through regulation rather than through market forces) currently in evidence between bilateral and multilateral fee arrangements, allowing the debit market to achieve consistent pro-competitive outcomes. APCA believes that this could be achieved either:

- by removing all pricing standards and leaving the competitive market dynamic to establish pricing; or
- through a common pricing fee schedule for bilateral and multilateral arrangements.

With the introduction of the EPAL scheme, the debit card market now has three competing debit schemes, each of which has established its own interchange pricing arrangements to compete with each other. Participants have the opportunity to opt into market-based multi-lateral fee arrangements set by the schemes.

The Conclusions to the Strategic Review of Innovation in the Payments System discuss the two-sided nature of payment systems such as the cards system, in which schemes may adjust prices

on either side. There is evidence that market forces are now operating efficiently on both the acquiring and issuing side of the market. On the acquiring side, merchants can surcharge the use of certain products and larger merchants can directly negotiate interchange fees with three competing schemes. On the issuing side, those same competing schemes provide choice and negotiating position.

Given the effectiveness of that market, with the schemes setting the fees, public interest in pricing efficiency is met and it is not obvious that regulatory support is required to achieve this in relation to any of the debit schemes.

The RBA's consultation paper indicates that the Board does not consider revocation of interchange fee regulation to be in the public interest. The consultation paper expresses concerns that although EFTPOS interchange fees are currently well below the existing cap, the EFTPOS business model and offering may evolve such that (presumably) there is a risk that this situation may not continue to prevail. The Board also considered that consistent regulatory treatment of all three schemes was important.

APCA supports this goal of consistent regulation *if* interchange fees are to continue to be regulated (although our primary position is that such regulation is no longer necessary). On this basis, APCA agrees that the Board's preferred position (Option 3 above) would represent an improvement on the current position, albeit second best to the abolition of regulation. If interchange fee regulation is to be imposed, then APCA supports the use of wide bands within which market forces can apply between competing schemes.

III. Access Framework

1. No Discrimination provisions

The Board also sought to achieve pricing efficiency by introducing non-discrimination provisions to ensure that new entrants had an opportunity to participate on no less favourable terms than available to other participants. The availability of multilateral interchange fees through EPAL calls into question the continuing need for such no-discrimination provisions and the Board is seeking feedback on whether such provisions are in the public interest.

These provisions would apply only to bilateral interchange fees. APCA is concerned that maintaining these provisions would distort the market and make it difficult for EPAL to promote the interests of all stakeholders and the '*usage, issuance and acceptance of EFTPOS*' in line with its interchange fee principles.

Specifically the retention of these provisions will enable new participants to establish bilateral interchange fee arrangements more favourable than those available to participants adopting the multilateral fee arrangements (adopted by most EPAL participants). NB. Under the EPAL designation adopted by the Board, non-EPAL members would not have the benefit of any such provisions in any event.

With the availability of the multilateral fee arrangements, APCA does not consider that such provisions remain necessary – a non-discriminatory price can be achieved by opting in to these arrangements. Regulation only serves to support pricing distortion. Further, since other debit schemes are not regulated in this way, such regulation of EPAL would not support a consistent approach across the debit market.

2. Connection Charges

The EFTPOS system is now accessible to new entrants through the commercial and operating conditions established by EPAL. Further the availability of the COIN facilitates and simplifies physical access to the network.

Whereas these changes have gone a good way in meeting the Board's public interest concerns in relation to improved access, they do not fully deal with all access issues. Logical connectivity continues to be provided by virtue of the EFTPOS Access Code and continues to be negotiated on a bilateral basis.

The RBA Access Regime provides a regulatory cap for the charge that may be levied for such access and the Board is now seeking views on whether and in what form this should be maintained.

APCA believes that this part of the access regime (the RBA Access Regime *and* EFTPOS Access Code) is no longer required. This is based upon the assumption that EPAL has the commercial incentive to establish scheme rules in relation to logical connectivity that facilitate access and is best placed to do so:

- Retaining the separate access arrangements established under the Access Code in order to promote logical connectivity is unnecessarily cumbersome and its effectiveness could be improved upon under EPAL scheme requirements; and
- access charge regulation is unnecessary if (as the Board discusses in its paper) '*suitable arrangements to limit the cost of access were imposed by EPAL*'.

APCA favours winding up the Code and removing access charge regulation, leaving this role to EPAL on the expectation that a reasonable charge will be made. Under the new designation, the PSB maintains the option of introducing regulation should EPAL fail to deliver appropriate limitations on the cost of access within its scheme rules. It is not necessary to regulate for this now.

IV. Transitional Arrangements

The Bank is canvassing views on the need for transitional arrangements given likely disruptions to different business models in the move to the new designation.

APCA queries the scope of that likely disruption. Given the broad participation in EPAL and the level of take-up of multi-lateral pricing arrangements, those most affected are likely to be those operating outside of the new designation.

Those participants whose activities will fall within the new designation, but who will continue to operate under bilateral arrangements, are more likely to be those with significant market power, who perhaps do not need a great deal of transitional support, other than reasonable timeframes in which to manage their transitions.

To the extent that the Access Code is removed or amended, then it will be important to ensure that any applications or processes underway be transitioned appropriately.