

RESPONSE TO THE CONSULTATION
DOCUMENT ON THE REVIEW OF CARD
SYSTEM ACCESS REGIMES BY THE
RESERVE BANK OF AUSTRALIA (MAY
2013).

Towards a more competitive and open payments landscape in Australia

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2. PURPOSE

The purpose of this document is to provide the Reserve Bank of Australia with Payvision B.V.'s feedback on the consultation document published in May 2013¹.

During the past decade, Payvision has developed a specialist Payment Service Provider suite of products in the Card Not Present Payment Services Industry and it is now expanding fast in the Card Present environment through innovative mobile payments and innovative mPOS² solutions. As a result, Acquiring Banks and other Financial and non-Financial Institutions have increasingly relied on outsourcing card-payment related services to Payvision. As a payment provider certified by the leading Card Schemes such as Visa, MasterCard, American Express, JCB, and China UnionPay, Payvision can offer secure payment processing solutions globally.

In 2011 Payvision was granted by the Dutch Central Bank (DNB) a Payment Institution ('PI') license under the European Union (EU) Payment Services Directive ('PSD').³ The PSD provides a system of licenses under EU law for payment institutions, such as those organizations providing payment services which are not licensed banks. The PSD determines the European standard under which payment institutions have to operate as well as a framework for central banks to supervise such institutions. In Q1 2012, as a result of receiving the PI license, Payvision also became a principal acquiring member of Visa Europe and Mastercard Worldwide; and was then invited to sit and participate on a number of industry panels and working groups managed by the Card Schemes.

Payvision operates globally with offices located in The Netherlands (HQ), Spain, France, Germany, the UK, the USA, Singapore, Hong Kong, Macau, Japan, and New Zealand.

¹*Review of Card System Access Regimes*, May 2013. (<http://www.rba.gov.au/publications/consultations/201305-review-card-sys-access-regimes/pdf/201305-review-card-sys-access-regimes.pdf>)

² Mobile Point of Sales which enables a merchant to accept face-to-face payment through EMV (chip&PIN or chip&signature), magstripe&signature, and contactless technology.

³http://www.dnb.nl/en/binaries/The%20Register%20of%20Payment%20Institutions_tcm47-228691.pdf



3. ISSUES FOR CONSULTATION

3.1. **What is the nature of the risks faced by the card schemes and their members if a participant were to fail?**

- ✓ Settlement risk
- ✓ Fraud
- ✓ Money laundering
- ✓ Reputational/brand
- ✓ Legal/regulatory

3.2. **What is the most appropriate way to address those risks? What rules and procedures do the card schemes currently have in place?**

- ✓ Settlement risks
 - The most appropriate way to address it should be establishing a risk-based approach, depending on the risk that the prospective participant is likely to pose to the system, on account of its activities and other considerations that make it more or less risky. The more risk one poses, the stricter the requirements should be. For instance, acquirers and acquiring Payment Services Providers (PSPs) pose considerably less settlement risks than issuers and issuing PSPs. Moreover, some of the prospective participants, like Payvision, would neither be banks nor would they touch the funds –the settlement of the merchant funds will be held at a domestic Australian settlement bank appropriately regulated under the banking regulations-; hence traditional risks associated with settlement would be mitigated . If, on top of that, the prospective participant ring-fences the merchant settlement funds through a Third Party Trusted Account (as Payvision does in The Netherlands) to ensure that in case of any issues –such as the acquirer’s bankruptcy- the merchant funds are protected. This approach further mitigates settlement risk and protects the merchants accepting card payments. Therefore, the access hurdles should be adequately lowered for participants that settle to merchants through a locally regulated settlement bank and that can adequately protect merchant’s funds before they reach the merchant’s own bank account. Therefore, when assessing a prospective participants’ application for a SCCI license, the above is to be taken into consideration to adequately fit the framework to the actual level of risk at stake.
 - Currently, those Card Schemes of which Payvision is a principal member have risk policies in place that purportedly protect them and their members from financial loss and reputational damage as a result



of a member's failure to fulfill its settlement obligations. Although in the end the entire burden of the so-called Card Scheme 'settlement guarantee' is commonly shifted to the membership and participants to the Card Scheme network who are required to protect and ensure that the settlement guarantee is effective and safeguarded to protect all participants in the payment chain from financial loss.

✓ Fraud

- The most appropriate way is that the prospective participant has in place fraud management policies and systems catered to its size/volume and to the level of risk it brings to the system. Again, a risk based approach is the best option. Currently, there is a wide variety of payment companies and not all of them have the same hands-on involvement with regards to fraud prevention and management. Therefore, when assessing the prospective participants' policies (as per their adequacy, subject to reasonable risk management requirements), the above is to play a role in the final set of requirements to be complied with.
- Having said this, the Card Schemes also have strict requirements and monitoring programs in place to manage and mitigate fraud (according to different parameters -% of chargebacks, % transactions reported as fraud, etc.-). In addition to this the Card Schemes also have so-called 'liability systems' whose purpose is to incentivize members' migration/adoption of more secure technologies (such as EMV/Chip -for card-present transactions- or 3D-Secure -for card-not-present transactions-). Therefore, those entities applying to participate in the Australian payment system as, for instance, SCCIs and which are already members of Card Schemes in other regions are already required to comply with reasonable fraud criteria and risk management requirements. Typically, these organizations already licensed by Card Schemes in regions other than Australia will also already be entities, be these banks or other types of financial or payment institutions, which are regulated and supervised by a local regulatory regime. For instance Payvision is licensed and monitored by the Dutch Central Bank.



- ✓ Money laundering
 - The best way to address those risks is to require prospective and incumbent participants to have in place appropriate Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) policies and procedures not just for preventing it but also for reacting to any event raising suspicions of AML/ATF, including, but not limited to, having in place reporting procedures that allow a smooth and straightforward interaction with the Financial Intelligence Unit (FIU) of the relevant country. In line with AML legislation applicable globally, most of which follow FATF⁴ Standards, a risk-based approach is to be applied when assessing the AML/ATF risk that a participant might bring to a system. Therefore, depending on the services the prospective participant will render or the way it will operate, the requirements should vary accordingly. For instance, in case of a participant that intends to perform the settlement of the merchant funds at an Australian settlement bank, a risk-based approach would imply lighter requirements for them since the very bank holding the bank accounts will also be required to implement AML/ATF requirements; as is the bank of the merchant that will receive the funds on behalf of the merchant. The reason why Payvision wishes to highlight this is that the Australian settlement bank will operate its accounts to receive the settlement from the Card Schemes and will be locally regulated and compliant with AML/ATF (performing all KYC⁵ and other AML-related controls on Payvision Australia and its accounts).
 - Those Card Schemes of which Payvision is a principal member have in place their own procedures requiring that all entities applying for a license and members already owning it have a fully implemented and AML program in compliance with the respective Scheme's Standards. Customers failing to comply with any requirement defined as part of the Scheme's AML Compliance Program or failing to respond to any request for information about their compliance with such program may be subject to severe fines or even, in the worst case scenarios, loss of membership and right of participation in the Card Scheme.

⁴ *Financial Action Task Force*

⁵ *Know Your Customer*



- ✓ Reputational/brand risk
 - This is defined as the risk that the Card Schemes and their members suffer as a result of their respective brands being brought into disrepute due to failures or non-compliance with certain standards. The best way to address this risk should be to analyze the whole set of prospective participants' policies and best practices, including the outsourcing policy, to adequately assess the brand risk that it will bring to the system.
 - Those Card Schemes of which Payvision is a principal member have brand compliance programs in place and one of them also requires participants to apply for an additional specific license in order to be able to acquire transactions in so-called high-risk merchant segments which may pose higher financial or reputational risks than other business areas. The consequences of non-compliance with them vary depending on the Card Scheme, from impossibility to perform certain types of transactions to severe fines, and ultimately to loss of membership.

- ✓ Legal/regulatory risk
 - This is the risk of illegal transactions being processed through card payments.
 - Card Schemes have programs in place to address this, and non-compliance with them may lead from severe fines to loss of membership.

3.3. To what extent should the means of addressing risk be left in the hands of the Card Schemes: that is, is there any role for regulatory oversight of these practices?

Regulators involvement is in Payvision's opinion required for the sake of a fair and transparent access, as well as for ensuring competition. Regulators involvement (and public funding, where appropriate) helps to balance the market. Normally the biggest and well-funded stakeholders are the only ones with the ability to fulfill the requirements established by the Card Schemes. So in the end, the Card Schemes have quite a say in shaping and defining who the market participants are. This is obviously dangerous from a competition angle. So either the risk requirements should be set up and overseen by the Regulator or the Card Scheme's policies for addressing those risks should at least be unveiled to the Regulator, for them to analyze, approve and monitor those policies/requirements on an ongoing basis.

It must also be pointed out that, typically, all Card Schemes have been under intense regulatory scrutiny in nearly all the markets in which they operate. A number of the policies and requirements that the Card Schemes have in place duplicate best-



practice regulatory requirements. The Card Schemes themselves have no interest in falling on the wrong side of a regulator merely because of a participant's inability or unwillingness to meet certain standards. It is, therefore, also necessary to separate what a regulator should be required to monitor to what a Card Scheme should be required. After all, by granting a license to participate in a payment scheme the Card Schemes assumes the responsibility, if not liability, for the monitoring and oversight of certain standards in relation to settlement, fraud, AML etc.

Although the regulator will always have a duty to implement the law and ensure compliance, it can be argued that certain duties can be 'outsourced' to the Card Scheme. For instance, although there are aspects of regulations which will remain always a priority to a regulator is it necessary, or even appropriate, for a regulator to review and basically 'approve', for instance, Business Continuity Plans or other day-to-day operation standards which may cause a Regulator to overstretch its mandate and also, as a result, assume liability for aspects of running a business which in itself are not within the regulator's remit? Can part of these requirements be hence the responsibility of the Card Schemes?



3.4. Is it appropriate to retain the access regimes in their current form?

In relation to the Reserve Bank of Australia's Consultation, Payvision supports Option 1 (*Vary the Access Regimes to Widen Eligibility for Participation*). In Payvision's opinion, APRA's prudential oversight as a screening device is indeed more objective than Card Scheme-set criteria and thus reduces the risk that the Card Schemes would apply unclear standards or that existing Card Scheme members might use their positions to inappropriately put in place hurdles for new entries.

In its dealing with APRA Payvision has found an open and constructive Regulator not dissimilar to the Dutch Central Bank. A Regulator that is interested in welcoming new participants but, at the same time, ensures that the existing regulations are applied fairly and consistently across all applicants. Unfortunately, APRA has to work within the strict and prescriptive guidelines of the existing SCCI framework which means that even Payvision pains at meeting every single existing standard set by the SCCI framework. Even though Payvision is already regulated in a not dissimilar fashion in Europe and provides payment processing services on multiple continents.

Payvision does not believe that maintaining the current *statu quo* would be the best option. It is telling that since the introduction of the SCCI license and framework just two licenses have been granted to date, one for acquiring and the other for issuing. The SCCI regulation's purpose to open the market to non-bank participants is laudable and indeed echoes similar steps taken by other Regulatory Regimes through different legal instruments, such as the PSD in Europe.

The PSD provides a system of licenses under EU law for payment institutions, such as those organizations providing payment services which are not licensed banks. The PSD determines the European standard under which payment institutions have to operate as well as a framework for central banks to supervise such institutions

The fact that the SCCI framework has only enabled two new participants demonstrates that the current regime does, in fact, not foster competition and innovation to the extent necessary. This in turn is not positive for market development and growth, therefore not paving the way for a competitive Australian payments ecosystem. The European PSD framework has enabled many more entities to be licensed and more actively participate in the payment systems as well as becoming members of the Card Schemes. Indeed, most of these 'new' companies have, in fact, already been active for many years in the payment landscape but without the ability of being officially recognized and being able to demonstrate that their companies already met a specific regulatory standard, the PSD.



3.5. How should the access regimes be varied if change is appropriate?

Payvision believes that a risk-based approach should be the main driver for defining the requirements for access. The type of eligible entities should be expanded by specifying the nature of their activities rather than by their institutional status. New eligibility thresholds and conditions should be created to cater for different classes of prospective participants, so that they are assessed as per the risks they may objectively bring to the system. If a prospective participant, for instance, will mainly be rendering acquiring payment services and performing the settlement of the merchant funds through a domestic regulated settlement bank then they should be subject to less stringent requirements than an Account Deposit Institution, or a banking company, which pose considerably higher systemic risks.

An acquiring payment institution which does neither hold deposits nor directly touches merchants' funds have a negligible if, indeed, no systemic risk. After all, the Card Schemes hold collateral on any participating member in relation to their processing volume specifically to be able to cover any potential financial loss or systemic risk.

A balance between ensuring safety, on the one hand, and promoting innovation and competition, on the other, should be the goal to pursue when shaping a consistent access framework.

Also, if the prospective participant is already a regulated institution in a country with similar and internationally-recognized and sound standards to the ones of the Australian regulator, it should be accepted that it already complies with an acceptable degree of the domestically applicable rules. In Payvision's case and that of its supervisor, the Dutch Central Bank, it must also be noted that this regulator has also a supervisory role and duty to oversee and audit Payvision's global operations wherever these may be. Payvision is, indeed, required to regularly report on its global activities and demonstrate that it meets all required standards.

Therefore, the set of requirements a company already meeting the afore-mentioned standards, requirements, and framework should be considerably lighter than in the case of a prospective SCCI applicant that is not already regulated, cannot demonstrate that it has already in place appropriate, sound and approved risk monitoring and mitigation policies, or that is regulated but by a Regulatory Regime that does not meet internally recognized or sound standards.



3.6. What criteria should be used to determine eligibility in the absence of the regulatory requirements on access?

If that would be the final solution (which Payvision does not support, as it believes in the role of regulators towards preserving competition and innovation), these are Payvision's considerations; assuming that in the absence of regulatory requirements the eligibility criteria would be set by the Card Schemes:

- ✓ Regarding the format, any set of requirements should be completely transparent and subject to the regulator's scrutiny, to prevent the Card Schemes from creating an uneven playing field.
- ✓ Regarding the content, as previously indicated, Payvision believes in a risk-based approach and an open access, so it reckons that the requirements should neither be discriminatory (against specific types of institutions) nor excessive, in regards to the risk that the prospective participant would potentially bring to the system.
- ✓ Another aspect to be borne in mind is the status of the prospective participants. If the applicant is already a member of those Card Schemes in other regions (as is the case of Payvision, which is a Visa Europe and MasterCard principal member) this should as a minimum alleviate the administrative burden when applying for accessing those Card Schemes' network in Australia. If there is any particular specificity due to Australian regulation and/or legislation, it would be reasonable to expect a prospective participant to demonstrate that it can meet those specific requirements. Other than that, it would be inappropriate for a Card Scheme to impose different requirements to a prospective participant from the ones the existing members have to meet.



3.7. What would be the potential effect on incumbent participants of extending eligibility for participation?

Most likely, they will have to find a way to render better and more innovative services in a more cost-effective and transparent manner. This would lead to more innovation and increased consumer protection and satisfaction. Ultimately, this would bring growth and sustainability to the Australian payments space. Technological innovation has proved to increase growth in the payment space as is the case with e-payments, contactless payments or mobile payments, which enable even small companies or people to accept card payments. Card payments provide more protection:

- ✓ to the consumer, over cash and direct debit payments;
- ✓ to the merchant, who can accept immediate and secure payments rather than having to send invoices to be chased or carry large sums of cash –which imply an obvious security risk;
- ✓ finally, to the regulator and local tax authorities, since card payments erode the shadow economy and increase traceability of transactions;

3.8. Do scheme participants need to be authorized and subject to prudential oversight by APRA and what is the purpose of APRA oversight should it continue?

As previously indicated Payvision believes in APRA's role since its oversight is assumed to be less business oriented and more objective than Card Scheme-set criteria. In Payvision's view, APRA reduces the risk that the Card Schemes apply unclear standards (depending on the type of institution that applies for the license) or that existing members in a specific market might use or abuse their positions to protect their market position from potential competition of new market entries.

3.9. Are there alternative approaches that would allow a wider range of prospective entrants into the card schemes?

At this stage, provided the incumbent position of the Card Schemes, Payvision's position is that the regulator should create a reasonable regime for accessing the market. In case the Card Schemes are allowed to finally grant a license to prospective participants, this must be subject to specific and clear conditions set up by APRA and the Card Schemes should follow the "*comply or explain*" principle (i.e. any deviation from those criteria established by APRA must be thoroughly justified by the Card Schemes and APRA should always have the right to accept or revoke that Card Scheme's decision on the grounds of enhancing competition, innovation and customer protection).