

20 July 2011

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### **Review of Card Surcharging: A Consultation Document - June 2011**

Dear Chris

Thank you for the opportunity to contribute to the Payments System Board review of card surcharging.

We share RBA's concerns about inappropriate pricing behaviour, although it is not clear from the data provided how significant and systemic the issue of excessive surcharging is.

For example, RBA notes that "... consumers appear to have become more sensitive to surcharges, or better at avoiding them; the proportion of credit card transactions where a surcharge was actually paid by the consumer was virtually unchanged between 2007 and 2010, at around 5 per cent."

The volume of surcharges paid where the surcharge is deemed "excessive" or "blended" would be a subset of this 5% and the actual occurrence of surcharging is steady despite more merchants adopting the practice.

On this basis, while we share the concern, any response should take into account the risk of unintended consequences such as additional compliance costs for acquirers and merchants or disclosure of commercial-in-confidence pricing information.

#### **Caps are likely to be ineffective in dealing with the problem**

As noted in the Consultation document, the intent of the No Surcharge Rule (NSR) is to allow market forces to work. Market forces will drive different approaches among merchants. It is not clear from the Consultation document what would constitute excessive surcharging, however, one possibility is that excessive surcharging would be consistent with market power.

In its Review of Payments System Reforms (2008, p18), RBA noted that "... there are some cases where surcharges appear considerably higher than these (Merchant Service) fees. This ... is likely to reflect the market power of the merchants concerned which, if surcharging were capped, would likely find its way into higher prices in some other way."

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On this basis, while capping surcharging might address the symptom of the issue, it would simply transfer it to another, potentially less identifiable, aspect of pricing practices. Additionally, depending on how such a cap is implemented and enforced, it could lead to higher compliance costs for acquirers and merchants.

### **The solutions contravene some important commercial principles**

One of the solutions proposed is the “... *disclosure of merchant service fees by merchants would provide consumers with information about the cost of card acceptance, against which the reasonableness of any surcharge could be assessed*”.

As is common practice in commercial agreements, prices agreed between Westpac and its merchant customers are commercial-in-confidence. Our view is that the size of any surcharging problems do not justify disturbing this important commercial practice.

### **Possible Way Ahead**

Official clarification of merchants’ rights and obligations around surcharging across all payment mechanisms, including cash, has merit. To date, there may be a view that official authorisation of card surcharging has meant that only card transactions are actually surcharged.

### **Conclusion**

While excessive surcharging by merchants is a concern, the problems associated with capping need to be considered, as well as the efficiency of capping as a mechanism.

A better understanding of merchants’ rights and obligations around surcharging appears more likely to develop behaviours that are more consistent with overall efficiency.

More generally, the question of surcharging rules is difficult to disentangle from the broader set of issues covered under the Review of Payments System Reforms (final conclusion published via August 2009 media release). We would welcome clarification from RBA on linkages, if any, between the conclusions of the Review of Payments System Reforms and this question.

Should the RBA wish to discuss this submission, please contact Chris Campbell, Head of Risk, Payments Policy and Analytics, on (02) 8254 1985.

Yours Sincerely



Jim Tate  
Chief Product Officer