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Dear Dr Richards,

**Response to the Review of Retail Payments Regulation: Issues Paper**

Thank you for the opportunity to respond to the Review of Retail Payments Regulation: Issues Paper. The Reserve Bank of Australia (RBA) 2020 Payments Regulation Review is timely as Australians continue to change the way they pay, and some new payments innovations and trends are not fully addressed under current regulation.

**eftpos response**

This response is in parts:

1. Part A – eftpos position statement
2. Part B - regulatory themes and policy rationale
3. Part C - eftpos’ response to the questions summarised in Appendix A of the issues paper

**Part A - eftpos position statement**

With new business models, technologies and players entering the market, there is an urgent need for our regulations to be updated to ensure the nation’s electronic retail and consumer payments system is fit for purpose, efficient, secure, innovative and resilient into the future, in order for it to retain choice, competition and the trust of Australia’s merchants and consumers.

The RBA has a great opportunity to ensure competition, public amenity and utility from national infrastructure, provide greater transparency and simplicity of pricing for better consumer and merchant outcomes and correct a trend for international interests to take unregulated positions that are ultimately detrimental to the industry and broader economy. For example, the RBA had the best interests of the broader community and economy at heart when emphasising the right of merchants to control their cost by using the least cost routing (LCR) rails in 2013 and, although LCR has not yet been as successful as intended, there are various actions outlined in this response that the RBA could still take to make it work better to achieve the regulatory intent.

Experience of other markets including France, USA and Malaysia show that, with an appropriate combination of actions, least cost routing can thrive, driving material cost benefits to all tiers of merchants. In Malaysia for example around 90% of all transactions are routed. The eftpos view is that a package of changes is required to optimise the benefits of the regulatory intent in relation to LCR. If key elements are missing, the risk of gamification and dilution of benefits rises. The package that works in other jurisdictions includes:

* while cardholders choose the account for the payment, the choice of rails is given to the merchant that bears the cost of the transaction. As a result all benefits and settings need to be account and not card based.
* LCR is offered on an opt out basis with transparency in pricing to provide the right price signals to merchants of all tiers
* pricing to merchants is on an interchange plus scheme fees plus acquirer margin basis so that all merchants can make an informed choice
* DNDC and therefore LCR is quickly made available by issuers, acquirers and merchants on all form factors and channels including mobile and ecommerce and any constructs which by effect stymie this choice are not allowed

This package of regulations could work equally well in Australia for rapid implementation of more effective consumer and merchant outcomes. Extending the net compensation rule from issuers to acquirers, merchant and gateways to allow for a level playing field and minimise cross subsidisation would enhance the economic effects even better.

It is recognised that this package of regulation is significant but, eftpos considers, essential. It should also be recognised that achievement of this package of changes will take time given the considerable effort required and limited capacity across industry participants. It is therefore recommended that implementation timeframes are published, set out clearly and that they reflect the need for both short term benefits with the capacity to change and that these timeframes are supported by a clear and compelling enforcement regime. Considering the fast pace of change in the payments landscape that formal regulatory oversight and if required, formal regulatory intervention will be required on an ongoing basis to avoid entrenchment of activities that are outside of the RBA intent. This ongoing and more regular action, while essential, will not lend itself to lengthy consultation processes.

These concepts and core recommendations are explored and explained in more detail through the remainder of the eftpos response. The detail is, by necessity, more technical in approach, reflecting the economic, technical and legal requirements for effective implementation and enforcement.

Looking towards the future, eftpos has a view that Digital ID has an important part to play in the security and efficiency of the payment experience with wider efficiency benefits across many industries and daily experiences. As a result, the establishment of a scaled Digital ID solution should be a national priority as a core part of the national infrastructure that is owned and operated within Australia on a not for profit basis.

eftpos background

eftpos is a mutual style corporation that is not motivated by profit and promotes choice and competition in the Australian market.

As the only Australian-owned separately designated payments system, eftpos is an essential part of the national payments infrastructure and is committed to providing efficient, cost-effective and market-specific payments solutions for the benefit of all Australians.

The Company’s Purpose is simple - to change the way Australians pay for the better.

Having made significant, self-funded, investments to the Company’s, and its members, core centralised infrastructure and digital capabilities in recent years, our Vision is to be Australia’s payment choice, making life easier and being centre of the digital ecosystem.

Launched in the 1980s, eftpos introduced a fast, simple and secure payment system which was rapidly embraced by both shoppers and merchants. eftpos revolutionised the way we pay for goods and services, and as a result changed the retail landscape forever.

Today, eftpos competes in a dynamic environment against a number of payment systems.

There are now more than 50 million eftpos-enabled cards in the market, including all account-based debit cards, with the exception of some international and small neo-banks. As such, eftpos is currently well placed to deliver real-time and secure payments to almost all Australians with a bank account.

eftpos is owned and operated by Australians. All eftpos transactions are processed in Australia, using Australian-located infrastructure.

Alignment of eftpos and RBA objectives

The focus of the RBA powers in relation to payments, as set out in the Issues Paper is: controlling risk in the financial system; promoting the efficiency of the payments system; and promoting competition in the market for payment services, consistent with the overall stability of the financial system.

eftpos’ response is based on four key objectives that closely align with the RBA, the national interest and assist to achieve the Bank’s objectives. eftpos’ key objectives are set out below.

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In line with these objectives and the regulatory themes in Part B, eftpos is pleased the RBA is considering all forms of electronic retail and consumer payments in this review, rather than just card payments.

As Australian payments continue to evolve with new technologies and new players, eftpos believes the RBA should designate the electronic retail and consumer payment system and regulate all participants consistently to ensure a level playing field, support innovation that facilitates competition and guarantee the best outcomes and protections for merchants and consumers.

eftpos’ views on any one of the key regulatory themes articulated in Part B will change, and compensating controls will be sought, if only a sub-set of themes is adopted. A summary of the key themes has been set out in the “eftpos Position Statement”.

eftpos will seek to discuss with the RBA groupings of key themes if not all of the themes referenced in Part B are considered for regulation.

**Part B – Regulatory Themes and Policy Rationale**

For the purposes of eftpos’ response to this Issues Paper, eftpos’ principles are covered in four over-arching regulatory themes and areas in need of urgent regulatory action (more detail in Part C):

1. **Economic efficiency** – choice and transparency provide better cost of payments outcomes for merchants and consumers, holistic enforceable electronic retail or consumer payments regulation is needed:
   1. to mandate a hierarchy of payments choice (see Appendix A), with merchants at the top so they can control their costs by choosing the rails used;
   2. to mandate dual network functionality, including eftpos, on all form factorsissued by all issuers and available to merchants in all channels for the lifecycle of a debit product;
   3. to mandate LCR for all debit transactions in all channels, unless the merchant specifically requests otherwise (as Malaysia has done), and consider LCR functionality for credit – again to enable merchants to control their costs which will benefit both merchants and consumers; and
   4. for transparency in pricing – across all merchant categories, for all fees (not just interchange) on an interchange plus plus basis (as Europe has done and the UK is contemplating) so that merchants can make simple comparisons instead of being presented with complex pricing structures that are very difficult to interpret.
2. **Australian regulatory control of strategic national assets** – to protect it from external influences and for better outcomes around resilience, efficiency, security and innovation
3. RBA should designate all electronic retail or consumer payments and regulate all participants;
4. Processing of all debit transactions initiated in Australia should be done through Australian-based infrastructure, such as eftpos, similar to what countries such as Canada, Singapore, South Africa, Nigeria, Morocco, Turkey and Mexico have done, and Vietnam is implementing; and
5. Digital identity infrastructure should be required to be onshore, similar to what countries such as Norway, Nigeria, South Africa and the Scandinavian countries have done.
6. **Level playing field** – maintaining a long-term, sustainable, competitive market
7. Regulation should ensure no technical lockout and no commercial lockout;
8. All payments types, including real time payments, should be open to competition; and
9. The need for all schemes to adhere to AusPayNet requirements for acceptance devices and fraud management and that all new acceptance devices support DNDC functionality at and at all times subsequent to launch.
10. **Enforceable, published regulation**
    1. All regulation should be published, with clear intent, and be transparent;
    2. Regulation should prohibit conduct that disincentivises the desired regulatory outcome;
    3. Regulation should be enforceable and enforced; and
    4. Regulation should be technology/product or service neutral so that it remains fit for purpose as payments evolve.

Regulation is essential for the proper functioning of society and the economy. When effective, it provides clarity for participants in any industry and avoids misinterpretation of regulatory intent.

While government regulatory policy[[1]](#footnote-2) states that regulation should not be the default option and that limiting the flow of new regulation is a priority, it also states that the regulatory option offering the greatest net benefit should be adopted. We submit that if formal regulation meets the requirements below then it both supports the government’s regulatory agenda and helps business know and understand its obligations when developing its business plan and products, for proper functioning of society and the economy.

The rationale underpinning eftpos’ response is based in regulatory policy, specifically that regulation should be:

1. published and public – while most positive in intent, quasi or voluntary regulation, undertakings or verbal and written encouragement communicated once to limited groups of participants can and has led to misunderstandings, participants claiming ignorance (especially with staff changes where communications were via email), lack of transparency for new participants and the need to obtain costly legal advice (which can be narrow and without an understanding of the actual regulatory intent or taking the public interest or benefit into account);
2. technology neutral and fit for purpose – in a fast-paced evolving payments landscape, regulation should not be product or platform specific but rather focussed on what is the regulatory intent and flexible enough to cover any new product, service, platform, manner of interaction or use by any participant, remaining fit for purpose as products and services evolve;
3. applicable to all participants – when exercising regulatory power, the regulator should exercise it consistently for all participants that undertake the activities to be controlled or which give rise to areas of focus for the regulator. For example, all entities that provide access to debit funds to initiate payments should be subject to the same regulatory approach and considerations of security, fraud management, stability and resilience. This provides certainty for the participants and a level playing field for all;
4. clear and prescriptive/defined – it should be clear from the regulation what the regulatory objective is and what the perimeters within which compliant practice can operate. Eliminating regulatory burden should not be at the expense of understanding the broader economic or social impacts of new proposals[[2]](#footnote-3). If regulation is clear, then both confusion and the longer-term regulatory burden is minimised; and
5. meaningfully enforceable – it should be enforceable against the entity(ies) acting in breach the regulation and/or receiving the benefit of the breach,including fines, based on a percentage of revenues, where a breach of regulation has an adverse effect on competition*,* and seek to both prevent and appropriately deal with circumvention attempts.

The RBA has stated its powers and regulatory focus in the Issues Paper. Those powers enable the RBA to regulate activities occurring in Australia, entities conducting business in Australia, activities that involve Australian citizens and any activities initiated in Australia. Requiring activities to occur in Australia provides regulatory oversight capability for the regulator for the public benefit in areas such as resilience and economic stability. Clear, effective, published regulation of these aspects enable proper functioning of society and the economy.

**Part C – eftpos’ response to the specific questions summarised in Appendix A of the issues paper**

The eftpos response to each of these questions is cumulative i.e. this part should be read in light of the comments in previous parts; responses to questions should be read in light of responses to previous questions. eftpos has used the same headings and numbers as the Issues Paper for its responses. This part includes eftpos’ response to some of the additional topics about which the RBA has sought stakeholder views. eftpos has not responded to all additional topics.

**3.1 Strategic Issues in Retail Payment Systems**

1. **What major recent or prospective developments in the broader payments industry are particularly relevant to this review? More specifically, are there any gaps in functionality available to end users or any shortcomings in industry governance or operating arrangements that require regulation or coordinated industry action?**

The payments industry is going through a period of rapid change and there is a need for the regulatory framework to keep up with and be flexible enough to cope with the nature and pace of change. AusPayNet has recently conducted a consultation to ascertain upcoming innovations in payments, which will provide insights into gaps in functionality and future innovations, as well as highlight the possible areas for regulatory scrutiny.

1. Major recent or prospective developments relevant to this review:

With a regulatory objective of driving high levels of competition and an open ecosystem, other recent and prospective developments relevant to this review from a payments policy perspective are listed below together with suggested treatments. eftpos’ concern is that the leadership position that Australia has displayed in the payments space for many years will be threatened if regulation does not ensure a continued level playing field.

1. Effective conversion of DNDCs to single payment system form factors – some recent trends are:
   1. implementation of only one function from a DNDC to new form factors, e.g. mobile and any wearable or other access device, and for various channels, like in-app or online;
   2. disincentives for use, such as higher cardholder fees for the use of some functionality that accesses the same account; and
   3. some international and neobanks are either not including eftpos on form factors or have activation flows that are one-off or contain consumer friction for enabling a second network (eftpos).

Each of these activities has the effect of removing choice from merchants and is contrary to the RBA’s stated preference for DNDCs and support for the availability of LCR. The practical implementation, e.g. activation methods that defeat the availability of choice, are contrary to regulatory intent and, while a one-off event, have far and long reaching impact to the efficiency and competition in payments for many years to come. Some participants have commented that supporting two networks is cost prohibitive. Suppliers are widely used who provide collective services for small institutions that allow core infrastructure and compliance cost sharing, which counters claims that the support of DNDC is cost prohibitive for small institutions.

1. Use of closed “standards” - use of closed specifications or “standards”, as opposed to standards developed by the International Standards Organisation or Standards Australia (both open standards bodies) can lead to technology lockout (e.g. contactless chip and terminal changes before LCR was required), or at the least significantly delay implementation of a second network into new channels or for new form factors (tokenisation for mobile/wearables etc).[[3]](#footnote-4) As both a network effect and commonly used platforms are needed to achieve the scale required for efficient payment system function, support from both issuers and acquirers is essential. For example, Issuers and acquirers are required by international schemes to meet EMVCo specifications when implementing new products and services which use common “platforms”. Such specifications are written for use of common “platforms” such as cards, mobile, tokenisation, online acceptance methods etc. In turn, issuers and acquirers prefer other schemes to adopt common standards to minimise development cost for issuers and acquirers, despite those other schemes having limited opportunity to provide input into the development of those standards at their formative stages. As is evident from its website, EMVCo has a limited ownership, which does not include domestic payment schemes, although there is open access as an associate to developed drafts of and final standards.

Other examples of prospective (for Australia) developments are payment account reference (PAR) and secure remote commerce (SRC) developments.

Any innovation in the use of the common access and acceptance “platforms” through which payments efficiency is maintained, should leave open the possibility of competition and avoid implementation methods that can lead to technical or commercial lockout issues.

1. Trend to long term commercial incentive arrangements – these agreements are becoming common. Such agreements could have a negative competition effect if they require form factor, geographic, brand and advertising exclusivity, first mover advantage for enhancements, volume and form factor thresholds. These arrangements can also have the effect of preventing or delaying implementation of innovations by competitors having a significant detrimental effect of the ability of that competitor to compete. With the pace of change to digital payments, this can lead to significant competitive issues in a short period of time.
2. Electronic retail and consumer payments competition – Competition is essential to drive desired economic outcomes, such as the benefits of LCR. Examples of areas where healthy competition can provide the best outcomes, at lower build and operate costs, for consumers and merchants are DE alternatives and real time payments.
3. Tiered regulation - Consumer confidence in payments is critical for all participants. Healthy competition, security and stability (in term of both finality of payment and resilience) in the payment system is critical to a stable and functioning economy. There has been a lot of media commentary about closed loop systems and gift card regulation, Buy Now Pay Later services and, more recently, cryptocurrency. Common risks and regulatory considerations apply to all such payment services, related to security and stability (solvency, certainty of payment and resilience) and fraud management. eftpos considers that all providers of services which impact payment system risks, e.g. rule setting, processing and/or value exchange services, should be regulated in the same way.

To manage the issue of a regulatory burden presenting a barrier to entry, regulatory sandboxes and tiered regulations have been successfully used by other regulators (e.g. ASIC) to lower the barriers to entry as businesses ramp up while enabling new entrants certainty of regulations and enabling regulators to maintain security and stability in an industry.

1. Regulation of strategic national infrastructure – other countries (such as Malaysia, Canada, South Africa, Mexico, Turkey, Nigeria, Morocco, Thailand, Singapore, Saudi Arabia and Russia) have required on-shore processing to enable regulatory supervision for the resiliency of payment systems and, for some of those countries, other systemically important developments, such as digital ID, to be performed by the domestic network. This provides both viability for the domestic network but also protects data sovereignty and supports a “resilient by design” approach.
2. Shortcomings in industry governance or operating arrangements - hindsight provides clarity and this review provides the opportunity to close some gaps that have become evidence through the implementation of past regulatory actions where the intent and the outcome has not always been aligned:
   1. lack of effective published enforcement – regulation that is not published and has no ready enforcement mechanism has been proven to be ineffective to achieve a regulatory outcome. Effective enforcement is needed to encourage delivery of initiatives designed to mitigate competitive imbalances, such as least cost routing (LCR);
   2. narrow, specifically focussed regulation – regulation that is too narrowly focussed can be inefficient, require constant update to keep up with innovation, open to circumvention and ineffective. For example, regulation that:
      1. is not technology neutral, requires additional consultation for each new form factor and channel, e.g. DNDC in mobile, LCR for channels beyond POS;
      2. addresses one type of incentive only, enables circumvention or arbitrage, e.g. interchange only regulation;
      3. addresses one aspect of transparency only and actually encourages other behaviour that is inconsistent with the intent e.g. notification of cost of acceptance of each payment method encourages bundled or blended pricing which negates the price signal benefit of requiring the publishing of wholesale interchange rates;
   3. no pro-competition payments regulation – there is currently no payments regulation that requires implementation of innovations in a way that does not prevent or delay implementation for other competitors, even for innovations supporting security and fraud management such as tokenised card on file and strong customer authentication methods. There is currently no payments regulation broadly preventing anti-competitive behaviour, such as technology lockout or long-term commercial lockout arrangements, which gives time for behaviour that is inconsistent with regulatory intent to become entrenched before it can be addressed;
   4. voluntary regulation – payments is an industry that touches every Australian and where consumer confidence is absolutely essential. Voluntary participation in “industry bodies”, such as AusPayNet, and voluntary regulation does not support common security and fraud management requirements for the stability and security of the national payment system as a whole. Mandatory participation and effective regulation are needed to ensure the continued security and stability across the payment system;
   5. no oversight of closed standards - reliance on closed standards for common platform innovations does not allow regulator oversight or industry bodies e.g. AusPayNet to enforce compliance by its members of its code set for form factors and acceptance devices using those standards, and also does not enable country specific needs to be addressed in a timely way;
   6. appropriate oversight - only bodies with appropriate standing and power (e.g. RBA) can properly address implementation prioritisation issues that facilitate both competition and efficiency and avoid innovation inertia and viability issues for the domestic networks; and
   7. LCR - only currently applies to debit with the stated regulatory intent being to drive down acceptance costs, whereas one of the highest acceptance cost payment methods is credit.

Refer to the eftpos position statement and Part B for the matters requiring urgent regulatory action.

**Recommendations**

*eftpos submits that, if the RBA wishes to have regulatory control over the infrastructure used for the payments industry and/or protect data sovereignty it should regulate to require all debit transactions to be processed and for Digital ID and other strategically important data to be hosted only by Australian infrastructure, such as eftpos.*

*eftpos also submits that, to address the shortcomings that have become evident from past regulatory attempts, the RBA should:*

1. *regulate to require dual network functionality, including eftpos, on all form factors issued by all issuers, in all channels for the lifecycle of a debit product. There should be a prohibition on scheme rules requiring priority. There should be not less than a 3-year migration of eftpos only cards to DNDCs during which time eftpos should be priority 1.;*
2. *regulate to embed either:*
   1. *opt-out LCR i.e. LCR for all debit transactions unless the merchant specifically requests otherwise, and consider LCR for credit; or*
   2. *a hierarchy of choice for payments processing, with merchants at the top* *so they can control their costs by choosing the rails used. See appendix A for the full hierarchy of choice. Where the RBA is not minded to embed the hierarchy of choice, the regulations should make it clear when active consumer choice is not achieved, such as by:*
3. *only provisioning one functionality from a DNDC;*
4. *not having an ability to add or change another function after provisioning;*
5. *not having an ability to change after a selection;*
6. *the act of inputting a card number into an acceptance method; and*
7. *a default setting of priority in a device;*
8. *regulate for interchange plus plus pricing transparency to ensure merchants have all relevant information, in order to make an informed choice. The RBA should require complete transparency and publication of pricing across all merchant categories, and for all fees (showing scheme and other fees, including, without limitation, penalty fees and payments for chargebacks, reversals etc) to avoid issues such as cross-subsidisation and market distortion associated with price bundling.;*
9. *regulate to ensure competition in new innovations that use common “platforms” such as common access and acceptance methods or security mechanisms. Specifically, the regulation should prohibit scheme rules and contractual arrangements that act to prevent or delay competition, or give rise to technology or commercial lockout; and*
10. *extend LCR to credit where the costs of acceptance are higher for merchants.*

*In addition, in eftpos’ view, the RBA should regulate:*

1. *all payments types be open to competition;*
2. *to prohibit conduct that disincentivises the desired regulatory outcome, specifically, without limitation, through contract, fee and incentive structures;*
3. *all participants providing payment services;*
4. *that all participants be bound by the requirements of AusPayNet for e.g. acceptance devices and fraud management, if that body is to continue to oversee security and fraud management for the industry.*

*Any regulation should be enforceable and published with clear intent and be technology neutral.*

*eftpos also submits that the success of the regulation should also be capable of being measured. For example, a measure for the effectiveness of the package of regulation that would support competition and efficiency in payments could be that there is at all times not less than, say, 35% of form factors in the market activated with eftpos as priority 1, according to aggregated reporting by the RBA following issuer disclosure*.

1. **Are there aspects of retail payments regulation that lead to market distortions or that create opportunities for regulatory arbitrage? If so, what options should be considered as a means of addressing these? Are there gaps in the regulatory regime that need to be addressed or any elements where regulation is no longer required?**

Yes. In addition to the matters outlined in Part A and the response to Part C Question 1, there are aspects of the current regulation that need to be urgently addressed to address gaps and distortions that have arisen, including:

1. Opaque regulation via published encouragement and undertakings - such regulation is not transparent and enables regulated entities to apply different interpretations only discovered when conduct in reliance on those interpretations becomes evident in the market. This often leads to the need for additional consultation and ad hoc quasi regulation and undertakings. Examples of this are LCR and priority 1 chip application rules or agreements. The rollout of LCR has highlighted the difficulties that merchants (particularly small merchants) face in achieving the benefits of choice because they have little transparency of fees and little to no negotiation power. These small merchants are currently bearing the lion’s share of costs. LCR opportunities for merchants are also being lost by activities which effectively convert DNDCs to single payment system instruments often for specific high growth channels, such as digital. a right to surcharging alone does not work because lower cost payment systems (like eftpos) are often bundled with higher cost payment systems (like AMEX) and price signals are lost or not clear. This can lead to merchants surcharging eftpos at the same rates as higher cost payment systems. Clear, prescriptive, published and enforceable regulation is needed, where the regulatory intent is clear.
2. Specific or narrowly-focussed regulation – regulation dealing with particular form factors or channels leads to the regulations being outdated as soon as new technologies or business models enter the market and for gaming to occur. It also does not address the trend to electronic credentials and addresses only a portion of the drivers of conduct that impacts competition. Technology neutral, principles-based, prescriptive and enforceable regulation is needed to ensure the regulation remains fit for purpose as products and services evolve and to prevent and appropriately deal with circumvention attempts.
3. Interchange only regulation of DNDC- The experience in other jurisdictions[[4]](#footnote-5) has shown that when only interchange is regulated and downward pressure applied, scheme fees and conduct resulting in technology lockout and/or commercial lockout arise or disincentives are used by participants to maintain volume. Scheme fees have a similar effect to interchange these days i.e. they are higher for acquirers, lower for issuers and are rebated back to issuers and acquirers with net compensation limitations only applying on the issuer side. This can impact competition in the same way as interchange. As such, the likely actions in response to any regulation should be considered and addressed for a regulatory policy outcome to be achieved;
4. Current regulation of DNDC only addresses POS payments and card-based form factors - given the rapid movement to digital retail and consumer payments in Australia, including for small purchases, merchants should have the choice to select the least cost rails to process their transactions, across all form factors and channels, in order to mitigate their costs. Each aspect of the current DNDC regulation should be modified in published regulation to apply to other form factors and channels and support competition despite payments innovation. Additionally, the RBA should consider how to make anti-avoidance regulation effective;
5. Current surcharge regulation - this encourages opaque bundling or blending of pricing, enables cross subsidisation and arbitrage between products and channels with more (POS) or less (online) competition and undermines the positive regulatory effect of requiring publication of wholesale interchange. Regulation should be technology neutral and require transparency;
6. Net compensation regulation – this currently only applies to the issuer side and requires issuers to comply, whereas it is the schemes that obtain the benefit of incentives paid to issuers (including overpayment) and there is no constraint on payments to acquirers (or the acquirer side of combined issuer and acquirer institutions) which can lead to an uneven playing field.

**Recommendation**

*eftpos submits that the RBA should issue clear, prescriptive, publicly available, enforceable regulation that is form factor and channel agnostic, and which applies across all electronic retail and consumer payments, not per payment product. Any regulation should be enforceable against the entity acting to breach the regulation and receiving the benefit of the breach.*

*eftpos repeats the recommendations in respect of Q1, which will also address the matters raised in our response to Q2.*

1. **Are there barriers to innovation and/or competition that may affect the cost of or provision of electronic payments and should be addressed in this review?**

Yes. Matters that adversely impact innovation and/or competition include unpublished regulation and regulatory enforcement delay, use of closed group “standards” for common technology and platforms, staggered adoption of solutions to common industry issues related to security, fraud management and resilience, innovations being designed without regard for local regulatory needs and enable technology lockout and long-term incentive agreements effecting a commercial lockout. Each of these areas presents an opportunity to open innovation and competition.

Some participants argue that use of electronic credentials lowers the cost of issuance (after the initial build) and therefore justifies offering only one payment method from a DNDC. Offering only one payment method from a DNDC, while it may present a fast path to entry, creates a barrier to competition as it removes choice for merchants and consumers and requires a re-acquisition campaign to re-establish the same access coverage as applies to DNDCs today.

Some participants argue that common security requirements required by voluntary self-regulatory bodies, such as AusPayNet acceptance device requirements, constitute a barrier to innovation and/or competition. That argument needs to be balanced against the effect on the security and stability of and consumer confidence in the payment system as a whole if appropriate security and fraud management positions are not adopted or enforceable against all participants. Not requiring compliance creates an uneven playing field and entities giving unilateral exemptions from those regulatory requirements without transparency has the effect of shifting the non-compliance implication to other participants without their knowledge or ability to mitigate.

**Recommendation**

*eftpos submits that in addition to the principles and recommendations raised in Part B and the responses to Q1 and Q2:*

1. *The concept of dual payments regulators may lead to additional cost and confusion amongst participants, and potentially delay innovation and/or regulatory responses. This review is an opportunity to revisit the cooperation agreement between the RBA and the ACCC and clearly define roles and responsibilities.*
2. *The RBA should regulate to ensure that either only open payment standards are used by requiring sharing of innovation agendas, all drafts of specifications and participation of local networks in development of feedback for iterations of specifications that will be sought to be rolled out for innovations in Australia.*
3. *The RBA should regulate to require participation in any cross-industry bodies that consider common problem such as security, fraud management and disputes and chargebacks and that all changes implement all competitor networks at the same time so that vulnerabilities are not created.*
4. *The RBA should prohibit exclusive contracts of more than three years and first mover advantage provisions which are inconsistent with recommendation (c) above.*
5. *In the Acquiring space, the RBA should mandate that all schemes adhere to AusPayNet requirements for acceptance devices and fraud management and that all new acceptance devices support DNDC functionality at and at all times subsequent to launch*.

Additional topics for stakeholder views:

Access to cash - The Issues Paper notes that there continues to be a strong demand for cash in Australia and that cash is likely to play a significant role in the economy for some time to come.

As a standard product on its national infrastructure, eftpos offers eftpos Cashout, which Acquirers are required to enable for all merchants who accept eftpos at POS across Australia (subject to limited exceptions). Cashout provides consumers with a low-cost alternative to accessing cash at ATMs or bank branches. eftpos wholesale interchange pricing for Cashout is set to encourage Acquirers to make Cashout available to merchants to offer the service.

eftpos, via the eftpos Hub, also provides processing services for the majority of “off us” ATM transactions in Australia (i.e. transaction where the issuer and the acquirer of the transaction are different entities) and is following with interest public commentary regarding potential consolidation of the ATM network to ensure services remain available.

**Recommendation**

*In eftpos’ view, the RBA should consider eftpos Cashout as a viable alternative service to access cash*.

The RBA also sought stakeholder views on:

1. online subscription - whether regulation was required to cover the growth in online subscription services and in-app payments provided by non-designated systems.  
     
   *eftpos believes that the RBA should designate all electronic retail or consumer payments and regulate all participants to ensure a level playing field and guarantee the best outcomes and protections for merchants and consumers*.
2. closed loop and other types of stored value systems - regulatory and policy issues from closed loop and other types of stored value systems including whether there are potential approaches to licensing and regulation of non-financial institution payments service providers that would be in the public interest.

*eftpos believes that the RBA should designate all electronic retail or consumer payments and regulate all participants to ensure a level playing field and guarantee the best outcomes and protections for merchants and consumers*.

1. central bank digital currency for household use - views on issues that the possible issuance by the RBA of a central bank digital currency for household use raises, including demand, extent it could contribute to resiliency and competitive payment system, effects on stability and financial intermediation and implications for current review.  
     
   *eftpos considers that the same policy issues of certainty of payment, security, stability, resilience, pricing regulation and transparency of cost of acceptance arise for this form of consumer payment. A digital currency would not address financial inclusion for those already being disintermediated by electronic payments because it is itself electronic. It would require access and availability to remain a useful form of value exchange. Being electronic, the same resilience and access issues arise for this type of payment, e.g. for emergency payments when electronic systems are not available. Equivalence in value would have to be considered and whether an exchange market would be required or could potentially negate any public interest benefit.*

*While it would have a use for international payments, that would require central banks to continue to recognise Australian currency amongst other potential digital currencies, that it may tie to, for example, Swiss, USA or Chinese currency. The same policy issues arise for those other global stablecoins as arise for other payment methods, although any stablecoins not issued by central banks could also challenge the stability of the payment system.*

1. regtech -

*eftpos is supportive of any regtech method that could streamline the regulatory compliance effort and reduce the regulatory cost burden, provided the tools selected for use were openly accessible and low cost*.

1. Resilience of the retail payment system

eftpos supports the RBA working with the Australian Prudential Regulation Authority on a standard set of operational performance statistics to be disclosed by individual institutions to ensure transparency and allow institutions to better benchmark their operational performance. Since its launch on 1 October 2014, there have been no outages or data breaches on the eftpos Hub, although eftpos payments have been impacted by Member outages and issues with the Telstra COIN network.

Given the fundamental importance of electronic payments to the national economy, the RBA should consider resilience in the context of strategic national assets and maintaining Australian regulatory control over key infrastructure, particularly in relation to debit transactions as a low-cost and efficient replacement for cash into the future, and digital identity as an essential data repository in future.

**Recommendation**

*There is a strong case for the RBA regulating that the processing of all debit transactions initiated in Australia must be done through a designated Australian-based payments system, and that there must be redundancy processing arrangements in place for outages, using alternative, approved national infrastructure. The RBA should set or adopt standards set by APRA for resilience of the COIN.*

1. Impact of new technologies and new entrants

Regulation should aim to be technology neutral and not prevent competition emerging from new participants, but also needs to ensure there is a level playing field with no technical or commercial lockout. Regulation that addresses only some participants leaves scope for the consumer confidence to be undermined by the activities of the unregulated.

Current regulation is product and form factor specific and has not kept pace with innovations in payment methods or channels requiring constant review and narrow specific changes.

Unregulated non-cash payment providers, not bound by the same responsible lending requirements and potentially without a fraud management focus to product development, have the potential to increase instances of consumer debt stress which impacts on spending and the broader economy, with or without a voluntary code of conduct.

The growth of mobile payments, Buy Now Pay Later schemes and eCommerce demonstrate that technology neutral regulation is urgently required to ensure continued stability within the payments industry and a level playing field.

The same regulatory policy considerations apply irrespective of the nature of the participant – certainty of payment, security, fraud management, stability and resilience as well as enablement of competition and ensuring efficiency.

**Recommendation**

*eftpos believes the RBA should designate all electronic retail and consumer payments and regulate across all participants to ensure economic efficiency and a level playing field and guarantee the best outcomes and protections for merchants and consumers in areas such as assurance of payment, security and fraud protections,* *as well as resilience.*

1. Domestic payment systems consolidation

eftpos welcomes a discussion with the RBA and other interested regulators and bodies around consolidation of elements of domestic payment systems over time. Any outcomes must be in the public interest and should not have the effect of substantially lessening competition.

**3.2 Competition in the cards market**

3.2.1 Dual-network debit cards and least-cost routing

1. **How do stakeholders assess the functioning to date of least-cost routing (LCR) of contactless debit card payments? Do additional steps need to be taken regarding LCR to enhance competition and efficiency in the debit card market?**

There can be no argument that the introduction of LCR in Australia has enhanced competition in the debit market, putting downward pressure on the costs of payments for the benefit of consumers and merchants.

Significant additional steps should be taken to remove obstacles to merchant adoption of LCR and achieve the regulatory intent of providing merchants with the information necessary to make an informed choice to control their costs. Had it been supported by clear regulation, LCR could have been more successful in gaining higher priority to overcome the market conditions, such as competing business priorities for acquirers, that have impacted delivery of LCR. Instead, the impact of LCR has been limited because only a small percentage of merchants (and DNDC debit transactions) currently enjoy the benefits of LCR. Pricing complexity and cross subsidisation, the lack of availability of LCR functionality on some terminals and opaque pricing plans have limited growth to date. These issues appear to be more pronounced for small merchants who have no market power. These small merchants are currently bearing the lion’s share of the costs.

Pricing distortions also exist with scheme strategic interchange rates which appear to be adjusted according to LCR decisions at large merchants.

There is a need to ensure that LCR is available across all channels (such as digital) and payment methods (such as credit), to enable merchants to mitigate their costs of offering acceptance of a variety of payment methods.

Current encouragement for LCR is not actually published regulation that applies to any other participant than schemes that have entered voluntary undertakings with the RBA and:

1. enables interchange arbitrage by payment systems between transaction types and products and channels where there is more (POS) or less (transit, online) competition, which can have the effect of disincentivising issuer or acquirer support for new participants in less competitive products and channels;
2. has not removed merchant confusion about the impacts and benefits of LCR, due to complex, confusing or unattractive plans or terms and conditions operating to disincentivise take up of LCR;
3. does not position merchant routing as a right to be opted out of rather than a benefit to be opted into; and
4. only applies to debit and not also credit, which has higher acceptance costs.

Markets where LCR has been successful (e.g. Malaysia and France) have both opt-out structuring and transparency of the components of pricing (interchange plus plus) to enable simple comparison by merchants. The requirement for disclosure of acceptance costs per payment method to merchants was a good attempt at transparency for merchants but has had a negative effect on the benefits that could have been derived from the publication of interchange due to bundled pricing plans. Therefore, efforts to simplify pricing plans and provide transparency for merchants in Australia have unfortunately had a negative impact on the take up of LCR.

**Recommendation**

*eftpos submits that the RBA should maintain regulation of interchange and require all schemes to publish explicit criteria for any preferred or strategic interchange fees. The regulation should prohibit conduct which, through contract and fee structures and positioning, disincentivises the desired regulatory outcome.*

*eftpos submits that the RBA should consider extending LCR to credit cards given the competition benefits already seen in the debit market and the higher cost of acceptance of credit form factors.*

*To deal with LCR implementation shortcomings experienced in POS, eftpos suggests that the RBA:*

1. *mandate dual network functionality, including eftpos, on all form factors, issued by all issuers, in all channels for the lifecycle of a debit product as outline in our response to Q1; and*
2. *either:*
   1. *mandate LCR for all debit transactions in all channels, unless the merchant specifically requests otherwise (i.e. change the current opt-in structure to be an opt-out structure; or*
   2. *mandate a hierarchy of payments choice, with merchants at the top; and*
3. *require transparency of pricing to all merchants on an interchange plus plus basis; and*
4. *expand the above regulations to all channels.*
5. **Have recent and prospective developments in technology changed the case for promoting the continued issuance of dual-network debit cards? What policy actions might be needed to promote competition and efficiency in an environment where single-network cards were more prominent? Alternatively, would it be desirable to mandate (or incentivise through interchange caps) that all debit cards issued enable at least two unaffiliated/competing networks?**

In the interests of competition and efficiency in the payments system, eftpos considers that the RBA should regulate to require that all form factors issued or used in Australia to access an account should enable at least two unaffiliated and competing networks.

Technology innovation has not removed the benefits to be gained by ensuring competition is maintained in any form factor derived from the base DNDC or which reflects (through provisioning or data input or capture) the functionality in a DNDC. Changes to form factors do not change the policy issues and actions that were and remain relevant to DNDCs.

As stated in our response to Question 4, the introduction of merchant choice routing or LCR in Australia has enhanced competition in the Australian debit market, putting downward pressure on the costs of payments for the benefit of consumers and merchants. This innovation was made possible by the proliferation of DNDCs in the Australian market.

The rise of single network debit cards or digital form factors that can be pushed out electronically threatens to circumvent both the availability of consumer choice and merchant LCR and reduce competition and efficiency in debit payments.

While one policy response would be to set separate interchange fee benchmarks for single-network cards and DNDCs, it would be simpler and cleaner for the RBA to regulate to require dual network functionality, including eftpos, on all debit payment methods issued in Australia across all form factors and channels for the lifecycle of a debit product.

This change could also enable the industry to phase out eftpos Proprietary/single network cards (over a 3-year migration schedule) and their associated legacy card management systems.

**Recommendation**

*In addition to the principles and recommendations raised in Part B and the responses to Q1, Q2 and Q4, eftpos submits that the RBA should regulate to implement the concepts in the current undertakings, being:*

* *prohibition of rules around Priority 1 applications on cards and for contactless acceptance and BIN owner control of form factors, to ensure a level playing field for all schemes;*
* *DNDC in any new channel should have both scheme functionality to be available in that channel at the same time or within a short time of becoming available, including to the back book;*
* *Dual scheme brand visibility on all DNDCs;*
* *No fees by schemes for services from other schemes;*
* *No confidential information (including transaction volume) disclosure related to other schemes and;*
* *Nothing to prevent LCR in rules or commercial agreements and technology rollouts by any payments system participants.*

*Any phase out of eftpos Proprietary cards should be mandated to be done over a period of no less than three years to ensure that the change does not have a negative impact on competition and so that alternative products can be considered by customers who prefer or require the benefits offered by eftpos Proprietary cards. For at least the first cycle of migration, eftpos should have priority 1 on the migrated form factors and thereafter the same priority rules that apply to any other BIN form factors should apply to migrated eftpos Proprietary cards.*

Additional issues raised for stakeholder views - eftpos Governance

The RBA has sought stakeholder views on whether eftpos governance should be strengthened citing the slow implementation of LCR as the rationale.

There is a fundamental difference between directors appropriately dealing with possible conflicts and making decisions in the best interests of eftpos and the ability and willingness of the industry (comprising a wide range of separate and competing organisations) to implement an initiative, in the absence of regulation requiring it.

**Recommendation**

*eftpos suggests that the appropriate way to address the time taken to implement LCR and the manner in which it has been implemented by industry, together with any other regulatory policy initiatives, is through express public regulation giving direction and timelines for industry to implement such initiatives that achieve a desired regulatory outcome.*

**3.2.2 Competition in card acquiring**

1. **Is there a case for further policy action to enhance competition in the provision of acquiring services to merchants? If so, what form could this action take?**

Yes. In eftpos’ view, competition in acquiring services to merchants could be enhanced by:

1. re-positioning LCR as opt-out rather than opt-in service (as occurs in Malaysia);
2. transparency of acceptance costs which is key to enhancing competition in the provision of acquiring services to merchants. We have already recommended that the RBA mandate complete transparency in merchant pricing across all merchant categories and for all fees to avoid issues such as cross-subsidisation and market distortion associated with price bundling on an interchange plus plus basis. Refer to responses to questions 1, 2 and 4;
3. net compensation being extended to acquirers, merchants and gateways, to level the playing field for all participants;
4. Innovations being required to be launched at the same time for all available payment methods from instruments for which acceptance is being enabled or upgraded, if the acceptance functionality exists at that time and to a standard that supports the security and fraud management needed to maintain consumer confidence.

Future opportunities may exist for further competition in Acquiring through small business access to Open Banking for SMEs.

**Recommendation**

*In addition to the principles and recommendations raised in Part B and the responses to Q1 and Q2, eftpos submits that the RBA should regulate to require that all payment participants adhere to AusPayNet requirements set by the Issuers and Acquirers Forum (IAF) for acceptance devices and fraud management and that all new acceptance devices support DNDC functionality at launch.*

Additional matters for stakeholder views

The RBA noted that in the EU, changes have been introduced (SEPA) requiring structural and legal separation of payment card schemes and processing entities to enhance competition by reducing the disadvantage faced by independent payment processing entities.

eftpos is supportive of structural changes if the effect is to support the ability of domestic payment processors to compete. Other matters to consider would be:

1. No cross-subsidisation between the payment scheme and payment processor
2. What transactions should be required to occur on-shore, so requiring data to be retained on-shore.

**3.2.3 Scheme Fees**

1. **Is there a case for greater transparency in scheme fee arrangements, including their effect on payment costs? If so, what form should this take?**

As previously discussed, eftpos considers that there should be complete transparency in merchant pricing across all merchant categories and for all fees, including scheme imposed fees, to avoid issues such as price bundling and opaque inclusions that do not enable merchants to do a proper comparison in order to be fully informed.

Greater transparency on scheme-imposed fees allows for more informed negotiations between merchants and acquirers, and more informed decisions by merchants on how to manage their costs, including through transaction routing.

Publication and transparency of scheme fees would also provide the RBA with better information about the degree of competition in electronic payments.

As previously stated, net compensation should also be extended to acquirers, merchants and gateways to level the playing field for all participants.

**Recommendation**

*eftpos submits that the RBA should regulate to require publication and complete transparency of all scheme-imposed fees on a fee by fee basis, i.e. no bundling, so that disclosure is truly interchange plus plus. Care will have to be given to bundling of “core” services and any exclusive rules or requirements that apply to them.*

***3.2.4* Access regimes**

1. **Are the existing access regimes working effectively?**

eftpos makes no comments about the existing access regimes.

Additional matters for stakeholder views - QR based technology

eftpos considers that regulation should ensure that any innovation, such as QR codes, caters for competition and a level playing field for all participants.

**3.2.5 Digital wallets and mobile payments applications**

1. **What are the implications of the growing importance of mobile devices and digital platforms for the retail payments system in Australia? Are there issues that arise for the Bank’s regulatory regime for card payments or that are relevant to competition, efficiency and risk?**

The rise of single network digital form factors such as mobile threatens to circumvent LCR, remove customer choice and reduce competition and efficiency in the payment system. The same regulatory policy issues arise for mobile ecosystems as arise in other payment systems, such as competition, efficiency, access barriers, resilience, certainty of payment, security and appropriately transparent and regulated pricing.

Issues to also be considered include that most mobile platforms and devices are owned and operated by companies not regulated by Australian payments regulation and that development consultation occurs primarily or only with other large international companies. This means that the design does not factor in the needs of local market innovation and competition by local participants until the ecosystem seeks to launch in the local market.

In eftpos’ view, any innovation, such as mobile payments or tokenisation of mobile payments should enable competition and not remove choice for consumers and merchants.

**Recommendations**

*eftpos submits that the RBA should regulate:*

1. *the payment ecosystems that administer mobile wallets with appropriate enforcement mechanisms put in place to ensure compliance;*
2. *to require dual network functionality, which includes eftpos, on all debit cards issued by all issuers in Australia across all form factors and channels, including mobile; and*
3. *that DNDCs in any new channel such as a mobile wallet should have both scheme’s functionality made available in that channel at the same time.*

*Any regulation should be technology neutral, public (with clear intent) and meaningfully enforceable, including fines based on a percentage of revenues where a breach of regulation has an adverse effect on competition.*

**3.3 Interchange and Net Compensation Regulation**

3.3.1 Interchange fees

1. **Is there a case for a further lowering of the credit or debit interchange benchmarks or any change in the way they are applied?**

eftpos supports the need for regulation of interchange and submits that the credit and debit interchange fee regulation should be more closely aligned (as it is in Europe). However, in eftpos’ view, card interchange regulation in Australia should also be coupled with regulation of other fees, such as scheme fees, and pricing transparency to have a positive impact on the cost of acceptance for all merchants, including small business.

Small merchants are currently bearing the lion’s share of scheme costs.

Tackling issues around transparency of pricing, lack of regulation around non-interchange fees such as scheme-imposed fees, price bundling and cross subsidisation would have a significantly larger benefit for small merchants, and the broader economy, than minor adjustments to interchange benchmarks.

Increasing the availability of merchant choice through LCR in more channels would also drive competition and reduce costs. Since the introduction of LCR, the market has seen lowered rates in channels where LCR is possible and increased rates for channels where there is not LCR possible.

Introducing regulation which requires interchange plus plus would:

* + 1. prevent cross subsidisation of one type of payment method by another; and
    2. support LCR, simplicity of pricing to merchants and all merchant regardless of size.

**Recommendation**

*eftpos submits that interchange regulation should be retained but should be changed to interchange plus plus and that credit and debit interchange benchmarks should be closer than currently exists in Australia.*

*eftpos submits that the RBA should regulate for full price transparency, including scheme and other fees, for all fees for all participants.*

1. **Should regulation of interchange be extended to inter-regional interchange fees (i.e. interchange fees applying to transactions in Australia using foreign-issued cards)? What is the typical cost of transactions on foreign-issued cards, and how much of this is attributable to interchange fees?**

Yes, in eftpos’ view, the same structure of regulation should apply, even if not the same value. To reduce potential cross subsidisation and costs to merchants, interchange regulation should be applied to internationally issued cards in the same way as it applies to domestic cards. Also, all providers of payment systems to cardholders in Australia should be regulated.

This change would not be unprecedented. In April 2019, Mastercard and Visa agreed to cut interchange fees for payments made in Europe by cards issued elsewhere by an average of 40% following an EU anti-trust investigation[[5]](#footnote-6). eftpos understands that similar challenges have occurred in Taiwan, Malaysia, Singapore, Thailand and Indonesia on the basis that interchange regulation also applied to foreign issued cards.

**Recommendation**

*eftpos submits that the RBA should apply the same regulatory structure to interchange on transactions initiated by internationally issued cards as applies to domestic cards for transactions made in Australia.*

1. **Is there a case for applying regulation to three-party card systems? What form could this take?**

As an overarching policy position, eftpos believes the RBA should designate all electronic retail and consumer payments and regulate all participants to ensure a level playing field and guarantee the best outcomes and protections for merchants and consumers.

Additional matters for stakeholder views

The RBA asked for stakeholder views about:

* 1. effect of the changes to interchange regulation in 2015/2016

eftpos is supportive of interchange regulation, as well as the need to certify compliance, now, on a quarterly basis. The 2015/2016 regulation measures have had the effect of keeping interchange fee rates low but have led to gaming of fees and some responses from market participants that are not consistent with the regulatory intent of LCR. In addition, not also regulating for scheme fee transparency negates the benefit of requiring the publication of wholesale interchange and enables scheme fees and incentives to be used in a way to have a similar effect to interchange.

* 1. developments in debit interchange strategies in response to LCR

Interchange has increased in channels with less competition since the introduction of LCR, i.e. all channels other than POS, effectively acting to incentivise lockout of potential competition e.g. online and transit. This undermines the regulatory intent of LCR of enabling merchants to control their costs.

* 1. the costs and benefits of including reversals, credits and chargebacks from transactions in interchange regulation or defining transactions to be net of these things.

eftpos is supportive of full transparency of fees across all merchant categories and especially for merchants to make informed decisions about LCR. Schemes make significant fees from those transaction types, which are weighted heavily against acquirers and merchants. The disparity of cost between issuers and acquirers means the fees have the effect of interchange. However, there would be a benefit to international schemes, given their fee structures, if these were included for a net calculation of weighted average interchange or in the pool of fees that could be used for incentive payments. eftpos favours definitions being net of these transaction types.

* 1. implications of the ongoing fall in average value of card transactions, especially for debit

eftpos suggests that the RBA consider the proportional cost of all fees to merchants as average transaction values decline, and whether there is a preference for ad valorem over fixed fees for micro transactions.

However, while price bundling continues to occur in the market, particularly for small merchants, and price transparency for all fees does not exist, eftpos believes other regulatory changes in this area would have little benefit in terms of costs to merchants.

* 1. issuances of premium international scheme debit cards

Increased issuance of premium debit cards appears to be counter to RBA objectives to reduce the cost of debit transactions as a low-cost alternative to cash and are subject to additional surcharging if fees are higher for merchants. eftpos is supportive of premium products being capable of being issued for any scheme, provided there is no differentiation in the application of the regulation between standard and premium products.

**3.3.2 Net compensation**

1. **Is the revised net compensation provision in the interchange standards working effectively?**

eftpos accepts the net compensation regulation, in its current form, and supports it applying to both issuers and schemes with appropriate enforcement against the entity(ies) that benefit from any non-compliance. If the only enforcement remedy is repayment of the funds by an issuer to the scheme involved, then the scheme would benefit twice from the entry into the non-compliant incentive arrangement, first when the issuer undertakes activities for the payment and secondly by reimbursement of the expense.

The revised net compensation provision in the interchange standards could work more effectively if it applied to all entities that can influence consumer and merchant choice of payments. Net compensation would be more effective if extended to acquirers, merchants and gateways to promote a level playing field and avoid the potential for technology or commercial lockout.

Additionally, eftpos appreciates the guidance issued recently in respect of “core” services and suggests that active monitoring may be required to ensure that both the Standard is met together with the obligations that currently apply to scheme via undertakings to not take any steps to prevent merchants exercising choice in relation to payment card acceptance, including through rules related to “core” services.

**Recommendation**

*eftpos submits that the current net compensation obligations should apply to schemes as well as issuers.*

*eftpos also submits that the RBA should extend the net compensation rules to acquirers, merchants and gateways to promote a level playing field and avoid competition issues.*

1. **What enforcement mechanisms would strengthen observance of the net compensation provision?**

Recent developments in regulatory approaches of other Financial Services agencies since the Royal Commission have shown a stronger approach to breaches, involving increased potential fines and sanctions as a more effective regulatory response which has been shown to be more acceptable to Australians.

Any enforcement should be against the entity(ies) benefitting from the non-compliance. The enforcement mechanism needs to deter non-compliance as well as provide an effective sanction if it occurs. For example, a non-compliant year 1 payment that causes a mass form factor issuance with attendant splash advertising of the brand of a scheme could be seen to be commercially justifiable by a scheme if the penalty was only a repayment to them of the overpaid amount or a lowering of the potential threshold in subsequent years. Indeed, either the repayment or the lowering of future payment obligations would itself be a benefit for a scheme.

**Recommendation**

*eftpos submits that the substantive obligation for net compensation should be imposed on schemes, in addition to issuers, breaches should be made public and result in enforcement mechanisms that outweigh the reward to be gained by non-compliance. Any combination of a lowering of the threshold to apply in subsequent years, an ability of the counterparty to re-open the contract, substantial sanctions or fines equal to the overpaid amounts and a percentage of revenues resulting from the non-compliant payments would be appropriate.*

3.4 Surcharging

15: **Is the surcharging framework working well? Are there any changes that should be considered?**

There is opportunity for improvement in the surcharging regulation as it has had the consequence of many acquirers introducing bundled pricing, particularly for small merchants.

Bundled pricing may result in higher costs to merchants, cross subsidisation and an inability for some merchants to access Least Cost Routing as a result of acquirers limiting LCR to specific plans. Bundled pricing also negates the price signals provided through publication of wholesale interchange rates.

For merchants to be able to meet the regulated limitation on surcharging, full transparency of both interchange and scheme fee/other fee pricing is needed, such as for pricing known as “interchange plus plus”.

The surcharging regulation would also benefit from more consistent monitoring and policing.

**Recommendation**

*eftpos submits that the RBA and ACCC should revisit surcharging rules to ensure they do not lead to bundled pricing and potentially higher costs for merchants and their customers.*

*eftpos also submits that the RBA should regulate to ensure that LCR is made available broadly across all merchant segments with full transparency to merchants of their true costs for payment acceptance per payment method*.

Additional matters for stakeholder views

The RBA sought stakeholder views about the UK’s ban on surcharging being extended to all non-commercial payment methods beyond cards.

In eftpos’ view, if there was a ban on surcharging then there would have to be capped interchange and scheme fees so that merchants obtained certainty of payment costs, and LCR would have to become opt-out only so that merchants could manage their costs.

16: **Is there a case for policymakers to require that BNPL providers remove any no-surcharge rules, consistent with earlier actions regarding card systems that applied such rules?**

With regards to Buy Now Pay Later services, eftpos believes the RBA should designate all electronic retail and consumer payments and regulate all participants to ensure a level playing field and to guarantee the best outcomes and protections for merchants and consumers.

In this case, merchants should be able to surcharge to recoup the cost of acceptance, in order to prevent cross subsidisation of more expensive payment methods by lower cost payment methods such as eftpos or cash.

**Recommendation**

*eftpos submits that the RBA should regulate to ensure merchants can surcharge to recoup the cost of acceptance on all payment types, in order to prevent cross subsidisation of more expensive payment methods by lower cost payment methods such as eftpos or cash.*

3.5 Regulation and enforcement

**17: Are there potential enhancements to the Bank’s regulatory powers and enforcement mechanisms that could improve the effectiveness of retail payments regulation?**

In eftpos’ view, the RBA has regulatory power to designate and regulate for the electronic retail and consumer payments system and its many facets that enable value exchange to occur and commerce to be performed. The *Payment Systems (Regulation) Act 1998 (C’th*) (PSRA) would benefit from updating of terminology to be technology neutral, to itself keep pace with the changing nature of payments and cash replacements. For example, to reflect that cryptocurrency is “money” the same as other methods for electronic value exchange. There is also a need to significantly speed up the process of consultation and implementation of regulatory reforms in order for the regulation to keep pace with this fast-changing market, which truncated process is contemplated by the PSRA although the timelines are too long in a world of electronic communications.

Recent developments in regulatory approaches of other Financial Services agencies since the Royal Commission have shown a stronger approach to breaches, involving fines and sanctions, is a more effective form of regulatory response which has shown to be more acceptable to Australians.

Payments regulation should not be seen as a barrier to entry or a path of last resort. Regulation is a necessary process to ensure that Australia maintains a payments system that is efficient, secure, innovative and resilient into the future, in order for it to retain choice, competition and the trust of Australia’s merchants and consumers.

In the new environment around financial services regulation following the Royal Commission, eftpos believes that the RBA should make all regulation public, rather than in the form of private undertakings, and regulate quickly rather than waiting to see if the industry voluntarily implements changes. More prescriptive regulation with clear timelines and penalties, would assist to ensure consistent outcomes and certainty across the industry.

The community expectation now is that interpretations that are not consistent with regulatory intent and non-compliance with regulations should be dealt with swiftly, publicly and involve significant penalties.

**Recommendations**

*eftpos submits that regulation should not be a last resort for regulatory policy initiatives, should be public and both enforceable and enforced, including through fines and sanctions.*

*eftpos suggests that the RBA reconsider its approach to three yearly payments regulation reviews and move to a faster, more measurable and more efficient process that keeps pace with changes in the industry. eftpos appreciates that this may require a change to the Payment Systems (Regulation) Act 1998 in respect of future regulatory review processes.*

*eftpos also submits that the RBA should take a far more prescriptive and defined approach to regulation, including clear timelines and penalties, to ensure consistent outcomes and certainty across the industry.*

eftpos looks forward to discussing this response with the RBA.

Yours faithfully

**Stephen Benton  
CEO and Managing Director**

**Appendix A – Hierarchy of choice**

Without merchant choice, merchants would incur the cost of acceptance of a consumers’ selection of the account for the payment (surcharging is not a full answer given the negative competition effects on merchants from surcharging). The regulatory principle is that the party to bear the cost should be able to mitigate that cost.

Merchant choice

Consumer choice

A consumer chooses the account from which the payment is to come when they present the form factor for payment. Once the consumer chooses this, then the merchant should be able to choose the rails that allows them to mitigate their costs.

Issuer choice

Issuers choose the product features and benefits to make available to their customers for the account, always providing more than one choice of network.

Schemes choose what functionality to make available and according to what development and priority timeline to deliver their business strategy and address their customer needs.

Scheme choice

1. <https://www.pmc.gov.au/regulation> [↑](#footnote-ref-2)
2. Ibid p4 [↑](#footnote-ref-3)
3. The competition effect of this is the subject of a current inquiry by the US Federal Trade Commission as to whether it contravenes the Durbin Amendment <https://www.bloomberg.com/news/articles/2…>; <https://www.reuters.com/article/us-ftc-visa-mastercard-probe/visa-mastercard-draw-ftc-inquiry-over-debit-card-transactions-bloomberg-law-idUSKBN1XN291>; <https://www.paymentsjournal.com/here-we-go-again-ftc-looks-into-mastercard-and-visa-regarding-debit-routing/>. The report at <http://rpgc.com/resources/>, which is written for the USA but resonates in Australia, summarises the issue. [↑](#footnote-ref-4)
4. https://www.theguardian.com/money/2018/jun/17/credit-debit-cards-fees-costs-rules [↑](#footnote-ref-5)
5. https://www.mobilepaymentstoday.com/news/visa-mastercard-to-lower-european-interchange-fees-under-deal-with-regulators/ [↑](#footnote-ref-6)