

**10 July 2012**

Payments Policy Department  
(Dr Tony Richards)  
Reserve Bank of Australia  
BOX 3947  
**SYDNEY NSW 2001**

Dear Dr Richards

**RE National Billing Group Pty Ltd (NBG) Comments on RBA Variation to the Surcharging Standards: Final Reforms and Regulation Impact Statement**

The RBA has sought comments from interested parties on the Variations to the Surcharging Standards, in particular the draft Guidance Note attached to the Standards.

The RBA variation to the Standards to the Surcharging Standards addresses effectively the public policy issues canvassed during its consultation process. In particular it:

1. Introduces the concept of “reasonable cost of acceptance of credit cards”
2. Clarifies, for the avoidance of doubt, that a merchant can charge fees or surcharges to credit card holders to recover all or part of the reasonable costs of acceptance of credit card payments.
3. Further, the RBA has proposed that merchant’s reasonable cost of acceptance is NOT limited to the “merchant service fee” but should include a wider basket of costs related to the costs of acceptance.

In developing its preferred policy option the RBA has recognised that the costs of acceptance varies both across industries and between merchants.

**NBG Comments in Response to Variation to the Standard:**

NBG’s position is that it agrees with the RBA’s proposals and the timeframe for implementation from 1 January 2013. In agreeing with the Variation to the Standards NBG flags the following:

1. The RBA’s proposal is a light-handed form of regulation in the circumstances relying on competitive market outcomes and this is to be applauded.
2. The RBA has chosen a “cost of service” regulatory model and rather than attempt to determine the rates for different industries or merchants it has left that to the market to resolve. Again that is to be applauded as it avoids the RBA, as regulator, engaging in extensive and costly exercises of Cost of Service Regulation for each market type. The

Framework provides Merchants and Card Issuers with a workable framework within which they can develop bilateral arrangements appropriate to the needs of specific industries and merchants. In this way it avoids “one size fits all” solutions.

3. The RBA has responded to the previous consultations and provided a workable Guidance Note on the “costs” to be recovered but has stopped short of defining these costs. Clearly we have available to us a body of literature on price regulation in utilities to guide the formulation of what should be included in the “building blocks” and determine what “reasonable cost” that can be recovered by way of a surcharge by a Merchant on Credit Card acceptance.
4. The Standards and the Guidance Note provide a framework within which both the “expense” and the “allowable Rate of Return” elements can be recognised in any determination of the “reasonable cost” of card acceptance levied by a merchant in the form of a credit card surcharge. The market can then be provided with appropriate price signals for card acceptance. Wisely it removes elements that could be attributable to internal transfer pricing from “reasonable costs”.
5. Whilst the asymmetry in the relationship between a Scheme and a Merchant still exists with the potential for behaviour that could be characterised “unconscionable conduct” or for “Refusal to Deal” issues to emerge, we believe that the Guidance Note will provide the ACCC and Courts with a framework within which they can address these issues with the parties.

**In Summary:**

1. NBG supports the Standards as Detailed in Attachments 1 and 2 to the RBA Paper “*A Variation to the Surcharging Standards: Final Reforms and Regulatory Impact Statement*” issued on 12 June 2012.
2. NBG believes that the RBA’s Guidance Note attached to the Standards provides all parties with an effective framework and overcomes the shortfalls identified in the “exposure draft” of the Standards published in December 2011. Accordingly NBG supports the Guidance Note as drafted being confirmed by the Board and incorporated into the Standards on implementation.
3. NBG supports implementation from 1 January 2013.

We are available to discuss aspects of this submission with the Board if required.

Yours sincerely



David Hamilton  
**General Manager**  
**Strategy and Regulation**