

9 February 2012

Dr Chris Kent
Head of Payments Policy Department
Reserve Bank of Australia
GPO Box 3947
Sydney NSW 2001



By Email to: pysubmissions@rba.gov.au

Dear Dr Kent,

Consultation on a Variation to the Standards Relating to Surcharging

I refer to the above mentioned Media Release and the associated "A Variation to the Surcharging Standards: A Consultation Document" released on 16 December 2011. The Commonwealth Bank of Australia (the Bank) appreciates the opportunity to respond to this material. We understand that this Submission will be published on the Reserve Bank of Australia (RBA) web site, and we look forward to meeting with you and your staff to discuss it at your convenience.

The Bank's views on surcharging, as set out in our 19 July 2011 submission, are closely aligned to the RBA's position and proposals for reform and we are thus broadly supportive of the draft amended Standards. Key to this support, as we argued in our earlier submission, is the suggestion to limit surcharging to the "reasonable cost of acceptance" and the desire to limit the incidence of excessive surcharging, even if such practices remain relatively isolated.

We do however wish to comment on a few aspects of the proposed reform:

- (i) Eligible costs for inclusion in calculating a merchant's reasonable cost of acceptance;
- (ii) Differential versus Blended surcharging; and
- (iii) Merchant compliance and monitoring.

(i) Eligible "Reasonable" Costs of Acceptance

The Bank's position, articulated in our earlier submission, is closely aligned with the reasonable costs of acceptance model now under discussion. Some additional clarity would, however, be useful.

To avoid uncertainty, mistakes by merchants, and unnecessary suspicion of merchants, and also to assist clarity for cardholders, it would be beneficial if the RBA were to provide additional guidance as to what costs can legitimately be included in a merchant's cost of accepting card payments. It would be beneficial to list examples of commonly incurred costs that are eligible for inclusion, but we again stop short of suggesting that there is a need for rigorous quantification of allowable costs. A list of acceptable cost headings, broad enough to encompass differing merchant circumstances, and likely formulated after further consultation with the merchant community, (without being too prescriptive), would, we believe, be a useful addition to the proposed Standard.

(ii) Differential vs Blended Surcharging

The Bank repeats its support for the adoption of differential surcharging by card scheme (for the reasons articulated in our earlier submission). However, we understand that some merchants may wish to apply a “blended” surcharge and while this is not our preferred option, we respect the right of merchants to adopt this practice.

We are, however, somewhat concerned by the suggestion that should a merchant wish to apply a blended surcharge, then the quantum of that surcharge would be limited to the merchant’s lowest cost of card acceptance. While we understand, and support, the intent behind such a position (being to discourage blended surcharging), we believe that a more equitable approach in such circumstances would be to limit the blended surcharge amount to the actual (reasonable) costs incurred by the merchant in accepting card payments, weighted by the transaction mix actually incurred by the merchant. This is, we believe, consistent with the reasonable cost approach, and is more reflective of actual merchant experience.

(iii) Compliance and Monitoring

The Bank considers it undesirable that a large compliance cost is placed on merchants or a large monitoring cost is placed on acquirers in complying with the revised Standards. We believe that establishing an intrusive, high cost compliance / monitoring system would be unjustified given there are limited known cases of excessive surcharging by merchants.

As we argued previously, the Bank advocates that merchant compliance with the RBA’s modified Standards and / or any associated Scheme rules occurs on an exceptions basis. This would mean only those merchants who are suspected, with reason, to be non-compliant or applying an excessive level of surcharging, would be required to demonstrate their compliance. This absolves the large majority of surcharging merchants, who, it would seem, do not surcharge in excess of reasonable costs, from any unnecessary burden.

The organisation charged with investigating the compliance of merchants should be independent, qualified and respected and one with whom the merchant needs to be confident in sharing confidential, and commercially sensitive, data if required. On this basis, acquirers should be excluded because they have an interest in maintaining their business relationship with their merchant customer and are also unlikely to be aware of all costs incurred by the merchant. Card Schemes should also be excluded from this role because they have a vested interest in discouraging merchant surcharging and are similarly not privy to commercial arrangements that may be in place between the merchant and their acquirer (as well as being unaware of other, reasonable, costs that the merchant may incur in accepting card payments).

We believe that there are a number of suitable candidates that are well placed to monitor merchant compliance with surcharging Standards and we again take this opportunity to remind the RBA of the Australian Securities and Investments Commission’s (ASIC) responsibilities with regard to ensuring that financial markets are fair and transparent and supported by confident and informed investors and consumers. ASIC already exercises oversight over surcharging practices and seems well placed to provide additional monitoring as the need arises.

Thank you again for the opportunity to contribute to this consultation process. We would be pleased to meet with you to discuss any aspect of this Submission and request that you contact the writer directly should you wish to do so.

Yours sincerely

[Signed]

Stuart Woodward
General Manager
Representation