



9 February 2012

By email: pysubmissions@rba.gov.au

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

Dear Sir or Madam

Consultation paper -- A Variation to the Surcharging Standards

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Reserve Bank of Australia's (**RBA**) December 2011 consultation paper proposing a variation to the card surcharging standards (**the consultation paper**).

We support the RBA's proposal to allow card schemes to limit the level of surcharges so that merchants could not recover an amount significantly in excess of the cost of acceptance. However, we believe the amendments will be more successful if they are combined with measures to assist consumers (as well as the card schemes) to respond to unreasonable charges.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

We also operate MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians experiencing financial difficulty.

General remarks

We support the use of regulation to prevent excessive card surcharging, particularly in light of RBA findings and consumers experience that excessive surcharging is becoming more widespread. We believe that an approach which attempts to limit merchant surcharges to the

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'reasonable cost' of card acceptance is appropriate and note that it has some precedent overseas. The EU Consumer Rights Directive (to come into force in all member states by June 2014) will prevent traders from charging "consumers more for paying by credit card (or other means of payment) than what it actually costs the trader to offer such means of payment"¹. The UK Government will implement the ban on excessive card surcharging by the end of 2012.²

While we do not in principle oppose merchants levying surcharges for particular payment methods, those surcharges should be transparent and be a reasonable reflection of the merchant's costs. We share the RBA's concerns that some merchants are applying excessive surcharges. In particular, we are concerned about the surcharges applied in situations where there is little choice between traders and cards are the only practical payment option for many consumers. One such example is buying air tickets online, where card surcharges can be as high as \$7.70 for a domestic flight.³ Considering that a domestic flight can cost as little as \$100 (meaning a surcharge of up to 7.7%) and the average surcharge for Visa and Mastercard is under 2%,⁴ this surcharge appears excessive.

It also appears to us that surcharges are not sufficiently transparent in online transactions because they are not disclosed up-front. In our view, businesses quoting prices online should recognise that most consumers will be paying by card and either include card surcharges in the headline price or note at the point the price is quoted the surcharge that applies. Disclosing surcharges later in the purchasing process on the basis that a consumer may choose to use another payment method on offer (even though the other methods are rarely used or impractical) is disingenuous and contrary to the spirit of component pricing prohibition at section 48 of the Australian Consumer Law.

We recognise that the RBA does not have a consumer protection mandate. However the possibility that poor surcharging practice is more common in businesses with more market power and online traders is a matter of some concern. If the RBA has data which indicates this is the case, it should be referred to Treasury for further investigation.

Response to the proposed amendment

The RBA's proposal intends to control excessive surcharging by allowing card schemes to limit merchant surcharges to the reasonable cost of card acceptance. While we agree that merchants should be prevented from applying unreasonable surcharges, we are not convinced that the card schemes on their own are best placed to police excessive surcharging.

¹ European Union (10 October 2011), Media Release: *New EU rules on consumer rights to enter into force*. Accessed 24 January 2012 from

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/675&type=HTML>

² HM Treasury (23 December 2011), Media Release: *Government to bring forward legislation to tackle excessive card surcharges*. Accessed 24 January 2012 from http://www.hm-treasury.gov.uk/press_148_11.htm

³ Qantas, 'Schedule of Fees'. Accessed 1 February 2012 from <http://www.qantas.com.au/travel/airlines/schedule-of-fees/au/en>

⁴ Research by East and Partners, the average surcharge in December 2010 was 1.8% on Mastercard, 1.9% on Visa and 2.9% on American Express. Cited by the RBA (2011), *Review of Card Surcharging: A Consultation Document* p 3. Accessed 1 February 2012 from <http://www.rba.gov.au/publications/consultations/201106-review-card-surcharging/pdf/201106-review-card-surcharging.pdf>

In our view, the proposed amendments will be more effective if consumers as well as card schemes are empowered to respond to excessive surcharges. However, we agree with the RBA's assertion that most consumers may be less able than the schemes to judge whether a surcharge is reasonable.⁵ That being so, the proposed amendments to surcharging standards should be combined with measures to assist consumers to be more aware of the surcharges they are paying and how to complain about unreasonable surcharges.

We suggest this should have three elements:

1. Publication of guidance on the range of reasonable surcharges would be for consumer transactions.

As discussed in the consultation document,⁶ public statements from the RBA on reasonable surcharge levels may prompt consumers to question excessive surcharges and shop around.

2. Clear disclosure at point of sale by merchants of surcharges they apply.

The RBA should consider ways to require merchants who apply a surcharge to disclose the amount of the surcharge at point of sale, and put retailers on notice that they will be required to disclose surcharges in standard form notices at point of sale if the proposed amendments do not reduce the incidence of excessive surcharging. If this kind of requirement is introduced, merchants should be required to disclose the surcharge upfront (rather than delaying disclosure until later in the transaction, as is common in online sales).

This proposal would not require merchants to disclose merchant service fees at point of sale. We note that there was considerable opposition to this idea in the last round of consultation⁷ and indeed we do not believe disclosing merchant service fees will provide any additional consumer benefit. If consumers are provided with information about what level is reasonable for a surcharge and all merchants are required to disclose their surcharge at point of sale, consumers will quickly be able to determine if a merchant's surcharge is excessive.

3. Create a simple channel for consumer complaints about excessive surcharges

Better information about card surcharges will allow consumers to exert competitive pressure, but they also need a simple and accessible complaints channel to make regulators aware of systematic or severe examples of gouging. In turn, regulators should publicly report on the information they receive to place additional pressure on problematic traders or industries.

We do not have a firm view about which regulator will be best placed to receive and respond to these complaints, but we are confident that the RBA, ACCC, ASIC and/or Treasury could develop such a mechanism.

⁵ Consultation paper, page 10.

⁶ At page 11.

⁷ We note that there was considerable opposition to imposing this kind of requirement (discussed at pages 7 and 9 of the consultation paper).

Recommendation

We recommend that the RBA:

- Publish clear and accessible information on what a reasonable range of card surcharges to allow consumers to more easily assess whether a surcharge is excessive;
- Consider introducing a requirement (perhaps in partnership with the ACCC) that merchants disclose card surcharges at point of sale if the current proposal is not effective in reducing the incidence of excessive surcharging; and
- Work with the ACCC, ASIC and Treasury to develop an accessible channel for consumer complaints about excessive surcharging, and processes for responding to and reporting on systemic or severe overcharging.

Please contact David Leermakers on 03 9670 5088 or at david@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

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