



Cards

18 June 2013

American Express
Australia Limited
12 Shelley Street
Sydney NSW 2000
Australia
Tel: (61-2) 9271 1111

Mr Colin Neave AM
Chairman, Commonwealth Consumer Affairs Advisory Council
The Treasury, Langton Crescent
Parkes ACT 2600

Dear Chairman Neave:

Subject: Study on credit card surcharges and non-transparent transaction fees

On behalf of American Express, I want to thank you for the opportunity to respond to the CCAAC's current study on credit card surcharging.

About American Express

American Express is a premium provider of credit and charge cards for consumers, and business of all sizes. We also contract directly with merchants to accept our cards. Because of our bi-lateral arrangements with both cardmembers and merchants, we operate a three-party, or "closed loop" network. On average, our cardmembers spend approximately three times what other credit card users do.¹ In addition, we are able to provide businesses with a range of other marketing resources and consulting data which help merchants grow their businesses.

Because of these and other factors, we are able to bring more value to merchants. Merchants have a distinct choice about whether to opt-in to our value proposition and accept American Express cards. Many businesses in Australia, and a growing number each year, do choose to accept our cards and provide consumers with a greater variety of payment options.

American Express' position on surcharging

American Express strongly opposes the practise of surcharging. In our opinion, it is a purely anti-consumer practise and we do not think it should be allowed in any circumstance. We believe that businesses already factor the costs of accepting different forms of payments into their prices, just as they do labour, leasing, or electricity costs.

Since surcharging has been allowed in Australia, there has been no evidence that consumers have benefitted in any way. While credit card acceptance costs have dropped significantly over the past ten years, incidences of surcharging and "excessive" surcharging continue to persist.² According to the

¹ Data as of the third quarter 2012. Average Total American Express Card Spending - \$11,213, Visa - \$3,751, MasterCard - \$3,063. Company reports, 2012 data based upon four-quarters-ended September 30, 2012. Calculated using a five point average of worldwide total basic cards in force for AXP and credit card and charge accounts for Visa and MasterCard (excludes debit and cash). Visa's 2012 data assumes Q3'12 number of accounts equals Q2'12 number of accounts.

² Reserve Bank of Australia, *Average Merchant Fees for Debit, Credit and Charge Cards, Table C3*. Since the RBA payments system reforms of 2003, the average merchant service fee for American Express transactions has fallen from 2.51% to 1.80%. This is directly attributable to the reduction in interchange fees in the Visa and



research firm *East and Partners* "it is inevitable that the total number [of merchants that surcharge] will rise again over the next year."³ The level of average surcharges has also increased and is above the market average costs of card acceptance for all credit card schemes.⁴ This is a distinct loss for consumers.

In our opinion, surcharging does not send clearer price signals to consumers. First, there is no evidence to suggest that prices for goods and services at merchants who do surcharge are lower than at those merchants who build the cost of card acceptance into their prices. This should be the case if surcharging were truly working as intended.

In addition, card acceptance costs can vary widely between different merchants, industries, and card types. It is not uncommon for two businesses of equal size in the same industry to have vastly different card acceptance costs. This can be blurred further by the fact different cards from within the same scheme can carry significantly different costs.⁵ A merchant's choice to surcharge may give a consumer more information about a particular input to that merchant's cost of goods sold, but that information will be useless to a consumer if it is not consistent in all cases.

That said it is important to note that the vast majority of businesses in Australia choose not to pass on these extra costs to consumers. Of those that do surcharge, we believe the overwhelming majority are doing so in accordance with the spirit of the Reserve Bank of Australia's (RBA) rules and relevant consumer competition laws.

New rules from the RBA

Recently, the RBA intervened in an effort to curtail "excessive" surcharging. The Bank gave the credit card schemes the authority to amend their contracts with merchant acquirers to state that a business may not surcharge above a level "reasonably related" to their cost of accepting a particular scheme's credit card.

American Express welcomes these new regulations as they provide us more tools with which to protect our cardmembers.

American Express has updated its terms and conditions to say that if a merchant chooses to pass on a surcharge to our cardmembers, that surcharge must be reasonably related to their cost of accepting American Express. In determining a "reasonable cost" American Express is referring our merchants to the RBA's guidance on allowable costs.⁶ Further, any American Express cardmembers who encounter excessive (or potentially excessive) surcharges have two main avenues to report those incidents to us. Cardmembers can call us on the number on the back of their card, or they can visit www.americanexpress.com.au/cardacceptance.

MasterCard systems, whose average merchant service fees have declined from 1.45% to 0.83% over the same period.

³ East and Partners, *Australian Merchant Payments, Market Analysis Report*, December 2012, p. 10.

⁴ *Ibid.*, Figure 6, p. 10. As cited in footnote 3, the average merchant service fee for American Express transactions in Australia is 1.80% and 0.83% for Visa and MasterCard. This is well below the average surcharge of 2.20% cited by East and Partners.

⁵ American Express charges merchants only one fee to merchants for accepting our cards, regardless of the type of card presented. This is not always the case for the dominant schemes whose cards can carry different fees depending on the product type and the merchant. For more information see <http://www.visa.com.au/ap/au/aboutvisa/interchange/interchange.shtml> or http://www.mastercard.com.au/merchant/getting_started/interchange_rates.html (note that the interchange associated with a particular card does not include additional fees charged to merchants by acquiring institutions).

⁶ This is particularly straightforward for American Express. The only fee American Express charges businesses that choose to accept our cards is the merchant service fee. We do not charge additional statement fees, line rental fees, etc.



American Express is however concerned that the effectiveness of these rules may be diminished due to:

First, it is incumbent upon the credit card schemes to enforce these rules; there is no explicit direction from the RBA that they must do so. This problem is particularly evident in industries where competition is limited and where the schemes must provide card acceptance while doing all we can to protect our customers. In addition, scenarios may arise where schemes choose not to enforce the new rules on merchants if volume on their own networks is not being negatively affected.

Second, the decision to impose a surcharge upon a customer rests solely with merchants, over whom the RBA has no authority. Because American Express does not have market power, we do not have the same strength to enforce the RBA's new guidelines as the dominant schemes. We must balance our ability to protect consumers from excessive surcharges with the need for our cards to be accepted where our cardmembers want to use them. As a result, the only enforceable recourse available to American Express when confronting a merchant who is excessively surcharging is to cancel that merchant. Such a decision, however, may not be in the best interests of consumers as it will diminish competition and the ability for them to use their cards.

Lastly, the RBA's rules do not apply evenly to all types of surcharging which could be deemed "excessive." The form of surcharging in Australia that American Express finds particularly egregious is where a merchant will charge a surcharge for American Express transactions, but not surcharge for transactions on competing networks. This means that merchants are absorbing their acceptance costs for competing networks but discriminate against American Express cardmembers by making them pay the full cost of acceptance. This again sends an inaccurate and confusing price signal to consumers, but there is no recourse for American Express to address this issue through the RBA guidelines.

American Express believes that the new RBA guidelines should result in a reduction of excessive surcharging; however, reducing the level of a surcharge without eliminating the practise entirely will simply result in consumers being asked to overpay by a slightly lesser amount. In our opinion, the fairest outcome for consumers would be to amend the *Payment Systems (Regulation) Act of 1998* to specifically ban surcharging for credit and debit card transactions.

Thank you again Mr Chairman for the opportunity to respond. We look forward to working with you and your colleagues to achieve a resolution to this issue which benefits all consumers.

Yours sincerely,

A handwritten signature in black ink, appearing to read "R. Stocks".

Rachel Stocks
Managing Director, Australia and New Zealand