

20 June 2013

Commonwealth Consumer Affairs Advisory Council
Mr Colin Neave AM
Chair of CCAAC
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Neave

Submission - Credit card surcharges and non-transparent transaction fees: a study

I refer to your letter of 3 June 2013 seeking comments on the Assistant Treasurer's reference to the Council of a series of matters relating to credit card surcharges and non-transparent transaction fees.

National Billing Group Pty Ltd (NBG) and its trading operations CabFare Pty Ltd have reviewed the reference. Set out below are NBG's observations on the issues underlying the Ministerial reference as well as our response to some of the specific matters on which the Council has sought input.

We have flagged a number of systemic flaws that arise in the interface between regulated and unregulated cards and potentially with emerging non bank payment systems. We believe it is these systemic flaws and the interaction between the regulated and unregulated cards that give rise to the market failures that the Minister's reference seeks to address. Accordingly we have made suggestions as to the appropriate response of the Council and have provided a case study that is illustrative of the failure. We also believe that there needs to be closer coordination between the ACCC as Competition regulator and the PSB/RBA other than an annual meeting to discuss payment systems regulation.

NBG would be pleased to contribute to the development of the best practices in card surcharging as a Merchant Network Service Provider. A comprehensive framework of ongoing reform in card payments practices in Australia is essential to deliver productivity gains, technological innovation, and therefore enable lower surcharging by merchants.

We are available to meet with the Council members or Departmental officers to discuss any of the matters contained in this submission.

Yours sincerely



David Hamilton
General Manager
Strategy and Regulation

Introduction

Background to NBG/CabFare

National Billing Group Pty Ltd (NBG) and its subsidiary CabFare Pty Ltd (CabFare) have been in the Taxi payment systems market since early 2008 offering EFTPOS and payment processing services to operators in the taxi and limousine (Hire Car) markets across Australia. (www.cabfare.com.au).

Our primary focus has been to offer simple, fast and secure electronic transaction services to our customers. NBG partners with Tyro Payments Limited (an APRA licensed ADI) providing customers with a fast and secure real-time EFTPOS payment system. Our online real-time transaction reports allow Taxi Operators to better manage their fleet of cars and taxi drivers. It is the only payment system operating in Taxis in Australia that offers customers, drivers, and operators with real time online transaction reporting to better manage their business. The Taxi Industry is a high-risk industry prone to card fraud and identity theft via skimming and card not present fraud.¹ Accordingly it presents special challenges in the development and operation of EFTPOS systems.²

NBG's business is as a Merchant Network Service Provider (MNSP) servicing the Taxi and Limousine industry. In this NBG is not only a Merchant but also a Payment Service Provider. As such NBG provides service aggregation and payment services to a market segment characterized by parties who are:

1. Disenfranchised by the traditional banking systems; and/or
2. For whom there are specific payment system requirements and the cost of meeting these for an individual is too high; and/or
3. For whom the costs of regulatory compliance are too high³.

NBG assumes these costs and risks and prices them into the surcharge paid by the purchaser of a good or service. NBG's target market is drivers and operators in the Taxi and Limousine Industries.

This is what differentiates NBG from other merchants in the use of EFTPOS. That is, it is both a Merchant and a payment system provider mirroring many of the functions traditionally ascribed to a Bank/Acquirer.

A MNSP such as NBG must have an expectation that it will be able to recover efficient costs both to remain solvent and to encourage further investment in technology and innovation in its payment systems and remain in business.

¹ APCA Fraud Statistics Report for 2012 highlighted the growth of such fraud in Taxis.

² AMEX categorizes EFTPOS in Taxis as being high risk on a level equivalent to On Line Gambling and Personal Services (i.e. Sex Workers and Brothels) and prices risk accordingly.

³ In the industries in which NBG operates there are specific regulatory requirements imposed by the ATO and State based regulators not found in other industries. A significant part of the business of NBG is meeting these requirements for its customer base.

Usefully, the Australian Competition Tribunal has on two occasions (in 2007 and 2010) provided clear direction as to the pricing methodology that is in the long-term interests of consumers (end users) in this situation. It did this in the context of discussing an access price for telecommunication services⁴. The Tribunal explained that the long-term interests of consumers is met at the point *where pricing recovers the costs of efficient investment including a normal return*.

The Merchant Payment Service Provider (such as NBG) is in this position and needs to recover a normal return on its asset base. Accordingly claims that Merchants should be able only to recover the Merchant Service Fee or when a Scheme develops a one size fits all models of “reasonable cost” that embeds a merchants pretax return at 10% exposes a Merchant Payment Service Provider to an unacceptable business risk at such a pretax return on capital.

Part A – General Observations

The search for Simple Solutions to a Complex Problem?

NBG is concerned at the level of disinformation and urban myth that continues to be propagated with respect to Surcharging. Much of what is being promoted as “reasonable” is misleading to the wider consumer community. It is done without any understanding of the commercial position of merchants, the risk allocation in a transaction, and the costs incurred by a Merchant.

Often underlying such views is the perspective that the provision of EFTPOS services is a free good. The “surcharge” debate appears to have served as a convenient way of distracting consumers from the high costs of card use and the growing margin between record low cash rates, the cost of funds to card issuers, and the interest charges and fees faced by consumers on cards.

The simplistic focus on Surcharging has prompted calls for additional regulation and price caps. None of which will address the competition problems, structural issues in the broader payment systems, and flaws in the design of the current regulatory framework.

Regulatory theory and practice demonstrates conclusively that the Regulators’ objective should be to promote competition either directly through market rules or indirectly through conservative transparent regulation of natural monopoly services. Further they should get out of the way if competition will do an adequate job. As Professor Stephen King (former ACCC Commissioner and current Professor of Economics at Monash University) observes *Regulators cannot and should not “attempt to maximise the long term interest of consumers” or “maximise economic efficiency”*⁵.

⁴ The characteristics of the telecommunications product, functional/technical, and geographic markets and particularly the access issues reflect those of Card Payment Systems so the approach of the Australian Competition Tribunal (ACT) provides a useful guide for payments and the interface between Schemes, Acquirers and Merchants.

⁵ Prof. Stephen King “Infrastructure Regulation Lessons from Australia’s Experience” paper presented to the ACCC Regulatory Economics Conference July 2012

The Current Regulatory Framework for Designated Payment Systems needs time to develop

It is surprising that the reference by the Minister has been undertaken so soon after the reforms of Card surcharging come into operation. The structural reforms initiated by the Regulator were formulated following an extensive period of consultation with all parties over a period of 2 years. As such the reforms need time to bed down before their effects can be evaluated adequately.

During the period of consultation the PSB considered a number of policy options and settled on one which is designed to provide arrangements that:

1. Promoted cost reflective pricing which recognised that the cost structures were industry and firm specific and also accommodated the requirements of merchants who were also payment service providers (MNSP);
2. Provided a balance between the interests of both consumers' needs for transparency in pricing and a merchant's needs to recover the costs on what is mistakenly believed to be a free good;
3. The corporate interests of card issuers some of whom perceive surcharging as an impediment to further penetration of their credit products.
4. Promoted the efficiency of the Payment System
5. Promoted competition in the Payment system by putting in place competitive neutral regulatory arrangements for those cards covered by the Regulator.

Given the diverse range of industries impacted by EFTPOS the PSB has developed a system that reflects good regulatory practice for a limited range of cards in that:

1. It affords a light-handed form of regulation
2. Relies on competitive market outcomes
3. It is an independent regulator that affords wide scale transparent input into the formulation of its regulatory decisions.

The reforms that came into operation on 18 March 2013 need to be allowed to operate for some time before any realistic assessment can be made as to the efficacy of them as a regulatory framework for surcharges on Visa, MasterCard, AMEX and Diners.

The Regulatory Framework

The Banking Sector argued post Wallis that it required an industry specific regulator that focused on the time critical payment systems issues necessary to balance the wider banking system. Logically this lay alongside the RBA's central banking function. The Government's response was legislation that created within the Reserve Bank the Payment Systems Board (PSB). Further the legislative base was designed to apply economic regulation to the Payment System including access arrangements and designation of payment systems that is set out in the Payment Systems (Regulation) Act 1998.

Government left the wider issues of economic regulation of the Payment System to the ACCC as they related to Competition, Mergers and Acquisition. Unfortunately Government failed to address the mechanisms by which the ACCC and the PSB would work together. This contrasted with its approach in energy markets and networks as well as telecommunications. With two economic regulators responsible for the conduct of the Payment System the division of policy responsibilities between the two regulatory bodies was left to the Regulators as detailed in the 1998 Memorandum of Understanding (MOU) between the PSB and the ACCC.

Economic Regulators⁶ seek to achieve efficient market outcomes balanced with consumer protection. Of particular interest to Economic Regulators is the performance of network industry assets. Such assets are often difficult to replicate, subject to bottlenecks that give rise to the imposition of excessive rents by the owner, and inhibit effective competition with resultant loss of community welfare at the consumer level. Governments see regulating the terms of access to these assets as essential to promoting economic efficiency and productivity. It is thus a matter of national interest for the operation of efficient markets. The technical and security issues of Payment Systems reflect many of these characteristics.

The Payment System's Board and Regulation of EFTPOS

Government vested the PSB with the responsibility of delivering open access arrangements for the payment system as a key element of the Payment Systems (Regulation) Act 1998. Central to the access arrangements was the concept of "designation" of a payment system. In some ways it is similar in form to the designation of an infrastructure asset under Part IIIA of the Competition and Consumer Act 2010 (CCA). The "tests" for declaration (coverage)⁷ of such assets are more complex in the CCA than the "public interest" test contained in the Payment Systems (Regulation) Act.

Comparable regulatory frameworks to the payment systems arrangements are also evident in the industry-specific competition and access regulation found in Parts XIB and XIC of the Competition and Consumer Act 2010 with respect to Telecommunications.

Both the Telecommunications and Infrastructure asset regulatory frameworks provide some guidance as to the nature and form of access and the regulatory arrangements that could be pursued by the PSB in its approach to Credit Cards and EFTPOS going forward.

Ideally Regulators seek to attain these outcomes in a light handed but strongly independent fashion so as to create an environment that unlocks potential bottleneck assets and stimulates competition, innovation and consumer welfare benefit.

⁶ Economic Regulators operate within an analytic framework underpinned by a rigor and discipline founded in the theory associated with industrial organisation, and the economics of the firm. To this is added an overlay of a legal framework to facilitate enforcement and compliance with the determinations of the regulator or the operation of the market. This may be contrasted to "process regulation" which characterises much of the regulation of the Australian financial services sector as found in the regulatory models of ASIC and APRA. These are "compliance" models with a legalistic and administrative law underpinning. It is the former frameworks that need to govern the regulation of Payment Systems in particular EFTPOS.

⁷ A process with a functional outcome similar to designation under the Payment Systems (Regulation) Act.

As an Economic Regulator the PSB's approach to establishing the frameworks to give effect to "Access" and "Designation" as specified in the legislation does not appear to have been pursued in the same manner that the ACCC has in network industries and telecommunications over the same period. This is despite the Payment Systems (Regulation) Act 1998 offering a far simpler regulatory framework to undertake this activity than set out for the ACCC in developing Access arrangements under the Competition and Consumer Act 2010 for both infrastructure assets and telecommunications.

Despite the simpler regulatory tests to be applied, the Regulator has not sought to put in place a wide-ranging and comprehensive framework of access arrangements for EFTPOS payment systems in Australia. Rather it has focused on a small number of EFTPOS cards systems associated with its traditional banking constituency.

Should the Regulation of the Payment System and Electronic Card Payments be subject to tighter coordination between the PSB and the ACCC as the National Competition Regulator?

At present the links between the RBA and the ACCC as competition regulator are weak at best. Aside from the 1998 Memorandum of Understanding between the RBA and the ACCC; the only formal link between the two regulators is that the Governor of the RBA and the Chairman of the ACCC meet at least once a year to discuss issues of mutual interest in the payments system⁸. A program of annual occasional meetings may be inadequate to address wider issues associated rapidly evolving electronic payments systems in Australia particularly as they impact on consumers and competition.

Within the context of the current review, the Council could consider alternative models of payment system regulation that better align the competition and economic regulator and the payment systems regulation going forward. This may open up the issues of:

1. Identifying comprehensive frameworks of payment system reform and how this can be addressed under the existing structural arrangements
2. How can issues associated with "Access" arrangements and their impact on competition be addressed on an ongoing basis outside a program of annual occasional meetings.
3. How can Consumer interest issues resulting from payments systems regulatory failures, and electronic card products in particular, be better addressed by both the ACCC and the PSB.
4. Interaction between the regulated and unregulated sectors of the payment system and the impact on competition.
5. Whether the current informal processes outlined in the Memorandum of Understanding between the ACCC and the PSB and an annual meeting between the Governor of the RBA and the Chairman of the ACCC is the most effective mechanism to manage access and enforcement in payment systems covering all electronic card products in Australia.

⁸ <http://www.rba.gov.au/payments-system/policy-framework/#withRB>

Need for a strong regulator and an Open access arrangements to cover all Electronic Card Products.

Only a strong independent economic regulator can oversee open access arrangements. This enables an active program of reform driven by a framework to achieve and maintain systems integrity via efficient and competitive outcomes; promote innovation; and offer safe transaction environment for all market participants via the implementation of common industry standards of security. That is, the PSB's "public interest" test as to whether to "designate" a payment system.

The PSB's approach with respect to EFTPOS seems to have the potential to maintain a narrow product definition of what constitutes EFTPOS. To keep pace with community expectations, the PSB needs to actively embrace a regulatory regime that covers all electronic payment systems offered not only by schemes/AMEX/Diners but other payment system providers (e.g. Cabcharge, PayPal, Google Wallet, Apple iTunes).

Flaws in the Current Regulatory Framework affected the PSB's Surcharging reform Agenda in 2012

The PSB's reform agenda in 2011 and 2012 was limited, as it could not address the imposition of surcharges in payment systems that it did not regulate. These systems are not designated under the Payment Systems (Regulation Act) 1998 and included:

- Paypal
- Cabcharge
- Google Wallet
- Apple iTunes

These payment systems impose surcharges on consumers/merchants of various levels from 3% to 33% plus any additional card fees and interest costs incurred by both the merchant and cardholder. The basis on which these surcharges are formulated is not transparent to either the merchant or the consumer.

The impact and interplay of these unregulated payment systems on the regulated sector was not possible to be considered in any of the PSB's recent regulatory analysis because these systems are unregulated.

Accordingly any structural and access issues resulting from unregulated payment systems may have the effect of undermining or limiting the effectiveness of the PSB's regulatory intervention. This is the case in the operation of EFTPOS in the Taxi Industry.

The question could be asked why the Regulator restricted itself to considering only those payment systems designated at the time of the review rather than engaging in a wider and more comprehensive review of surcharging as it is applied across all payment systems. Whilst that review may have taken longer or may have been more resource intensive it would have delivered an outcome tailored to meeting the needs of new and emerging payment system regulation in both the banking and non banking systems.

A review with this perspective may have acted as a stimulus to technology and innovation change in the banking system as well as serving to bring a growing unregulated sector within the appropriate regulatory umbrella and may well have avoided the current reference to the *Commonwealth Consumer Affairs Advisory Council*.

Why the Regulator hasn't/can't address the wider Payment Systems

The PSB approach to regulation is appropriately light-handed. BUT as a regulator its approach to regulatory reform appears to lack a framework of incorporating the wider non banking system elements of the market in its reform agenda.

Because the PSB as a regulator operates from its traditional banking constituency with needs for systems integration and cooperation to ensure integrity it appears to assume that the norm for parties in a market will be to develop the appropriate regulatory structures and rules and bring them as consent applications to the PSB to authorize after the event. This is not the norm in network industries in other parts of the economy where the regulator is required to play a far more active role in enabling the access seeker and access provider to reach a commercial landing.

NBG's application to the PSB for the designation of the Cabcharge Payment System has flagged the problem of relying on consensual access arrangements to remedy competition problems and has suggested an approach to deal with Designation and Access where consensual arrangements cannot be developed.

It is instructive that the Victorian Government, in the absence of a comprehensive approach to EFTPOS regulation by the PSB has turned to legislating its own set of regulatory reforms. This reflects a frustration with the absence of a comprehensive framework for a specific industry. This is poor regulatory practice as it imposes additional compliance costs on market participants. Further it has the potential for different regulatory regimes emerging across Australia culminating in a COAG reform down the track.

The lack of a comprehensive regulatory framework for payment systems leads to inefficiencies in the wider payment system and the Council in its current review could usefully address this issue identifying:

- 1. How resourcing of the payment systems regulator can be strengthened to enable it to actively assess the wider payment system and emerging payment systems outside the traditional banking structures.***
- 2. Whether the current informal processes outlined in the Memorandum of Understanding between the ACCC and the PSB including an annual meeting between the Governor of the RBA and the Chairman of the ACCC is the most effective mechanism to manage competition and access across all electronic payment products in Australia.***
- 3. Whether a comprehensive framework of reform of the wider Payment System, especially as it applies to EFTPOS payment systems, needs to be adopted.***

Part B - Surcharging in the Taxi Industry – A Case Study in how the unregulated sector impacts on the regulated sector delivering inefficient outcomes

In the Taxi Industry the existing payment regulatory arrangements fail for the want of a comprehensive regulatory framework. The role-played by the unregulated Cabcharge Payment system in the Taxi industry impacts on competition for EFTPOS systems in taxis and determines the fees paid by consumers in that industry. This problem can be seen in Figure 1 below and highlights the competition issues inherent in the Current Market structure.

Current Market Structure

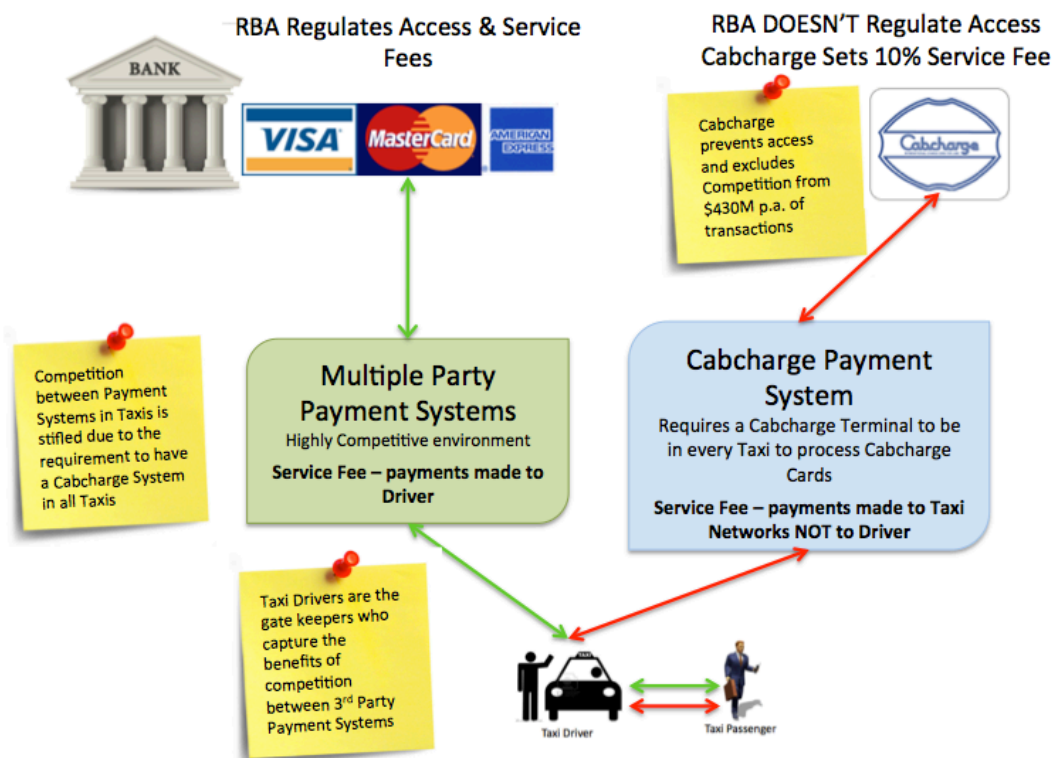


Figure 1 – Current Market Structure for Payment Systems in Taxis and Limousines, which highlights “Bottleneck” problem created by lack of access to Cabcharge Payment System by Third Party EFTPOS providers.

To address this issue NBG has made an application to the PSB under the Payment Systems (Regulation) Act 1998 for the “Designation” of the Cabcharge Payment System under Section 11 of that Act. This application is the first Third Party Application made to the Payment Systems Board (PSB) for Designation of a Payment System and setting the Access arrangements under the legislation since its enactment. To this end we have suggested a “process” for considering Designation and Access including consultation with the ACCC on the Competition issues pursuant to the Memorandum of Understanding in place between the RBA and the ACCC on Payment Systems Issues.

Designation of the Cabcharge Payment System and setting appropriate Access arrangements is essential to addressing the “bottleneck” payment issues in Taxis.

The full NBG's application to the Reserve Bank can be downloaded at <http://goo.gl/kse7K>. This highlights in detail the market failures inherent in the current arrangements that contribute to additional consumer costs with a loss in consumer welfare benefit. Figure 2 sets out the Market Structure that would exist following Designation. This arrangement is one that delivers a highly competitive environment and the ability to deliver lower prices.

Competitive Market Structure with Designation of Cabcharge Payment System by RBA

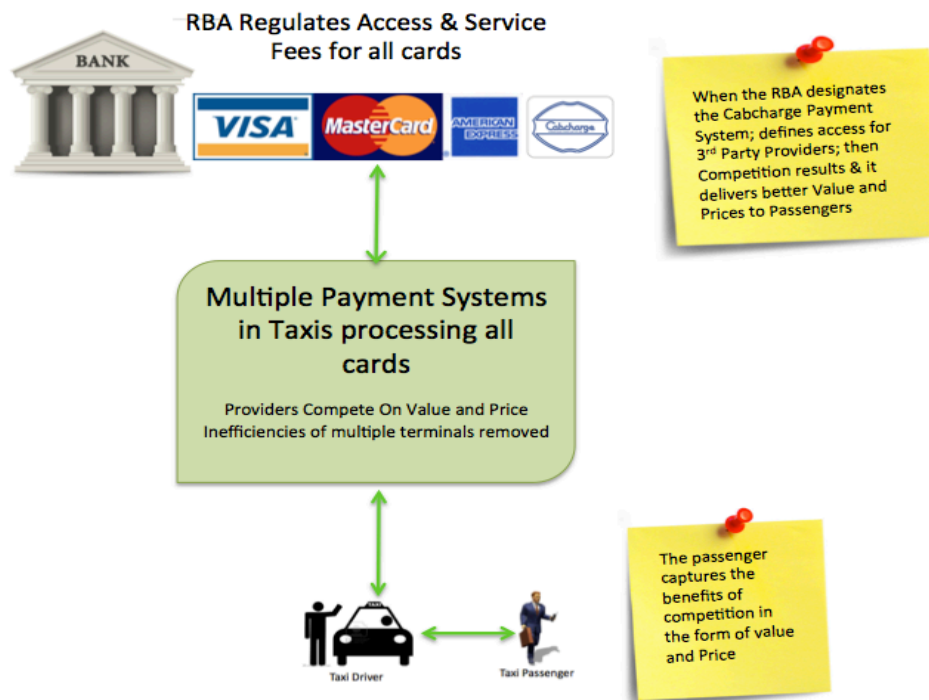


Figure 2 – Competitive Market Structure for Payment Systems in Taxis and Limousines, following Designation of Cabcharge Payment System and Access Arrangements in place that overcomes “Bottleneck”

Until this structural reform is in place:

1. Inefficient competition will be prevalent in the industry via the need to maintain multiple terminals in taxis
2. Price signals will be distorted via transfers from consumers to networks and drivers.
3. Cabcharge can continue to use the surcharges applied on Regulated payment systems to subsidise its own payment system as well as its own taxi networks and call centres⁹
4. The ability of new entrants to deliver lower surcharges will be inhibited
5. Introduction of new technology will be limited to what Cabcharge allows with a consequent loss in dynamic efficiency.¹⁰

⁹ Cabcharge's announcement to the ASX on 30 May 2013 in response to the Victorian Government's proposed reduction of the EFTPOS Surcharge from 10% to 5% flagged that it will remove \$6.0m it pays to networks in that state.

¹⁰ Cabcharge's policy requires a prospective merchant to provide a similar customer experience as Cabcharge by emulating its payment systems characteristics.

Part C - Responses to some of the Specific Questions Raised in the Letter of 3 June 2013

Recent Changes in surcharging Standards

In summary the reforms:

1. Empower the Schemes to work with their member Bank/Acquirer to determine whether a Merchant is recovering costs outside the regulatory framework and guidelines set by the Regulator.
2. The Bank/Acquirer is responsible for assessing, after due inquiry, whether the Merchant is in breach and if so warn the member Bank/Acquirer or request member Bank/Acquirer terminate the Merchant's facility.
3. Should the Bank, as a member of the Scheme fail to act, the Scheme can then fine the member Bank/Acquirer.
4. The Bank/Acquirer can either:
 - a. Recover the fine from the Merchant; or
 - b. Decide to absorb the fine as a cost of retaining the Merchant's business; or
 - c. Terminate its banking relationship with the merchant in the knowledge that this involves a significant loss of transaction as well as commercial lending business.
5. Conversely the Scheme, in pursuit of enforcement, has to trade off between:
 - a. Losing market share through the loss of its Bank/Acquirer Member and face the loss of cardholders as the Bank switches 100% of its card acquiring business to another Scheme. The Bank, NOT the Scheme controls the cardholder relationship; or
 - b. Accept the Merchant's behaviour without penalty; or
 - c. Work with the Bank and the Merchant to reach a commercial resolution that is within the RBA's guidelines.¹¹

For the Schemes and the Bank/Acquirer the level of interdependency on each to maximize revenue from different relationships will determine the position they adopt. As the Bank/Acquirer "owns" both the cardholder and the Merchant relationship it is clearly a key actor.

Given the economic interdependence between Schemes and their banking members it may be tempting for a Scheme to target a non bank small acquirer and their merchants as "soft token" targets. This brings into play the potential for unconscionable conduct. NBG has stated consistently that this is a clear and present danger in the current industry structures.

We do know that over time as market participants enter/leave the market, new or significantly disruptive technologies emerge, and more refined risk management tools emerge new equilibrium will emerge and consumers will benefit both in terms of service and price.

¹¹ NBG observes that Visa Australia Consumers Fact Sheet states that "it is opposed to surcharging under any circumstances" despite the RBA's reforms. Further on 13 July 2012 VISA announced it had settled out of court a USA class action taken by Merchants under which it agreed to pay merchants USD4.4billion in damages and agreeing to Merchants being able to surcharge on an ongoing basis.

Surcharges, fees and operational Requirements

The Council has sought information as to what factors a business considers when applying and determining credit card surcharges. At the start of this submission NBG outlined the nature of its business. This determines the basis on which it must determine the surcharging levels it charges.

NBG's business is as a Merchant Network Service Provider (MNSP) operating within the Taxi and Limousine industry. NBG is not only a Merchant but also a Payment Service Provider. As such NBG provides service aggregation and payment services to a market segment characterized by parties who are:

1. Disenfranchised by the traditional banking systems; and/or
2. For whom there are specific payment system requirements and the cost of meeting these for an individual is too high; and/or
3. For whom the costs of regulatory compliance are too high¹².

NBG assumes these costs and risks and prices them into the surcharge paid by the purchaser of a good or service. NBG's target market is drivers and operators in the Taxi and Limousine Industries.

This is what differentiates NBG from other merchants using EFTPOS. That is, it is both a Merchant and a payment system provider mirroring many of the functions traditionally ascribed to a Bank/Acquirer.

A MNSP such as NBG must have an expectation that it will be able to recover efficient costs both to remain solvent and to encourage further investment in technology and innovation in its payment systems and remain in business.

Transparency, disclosure and consumer Law

1. NBG trading as CabFare discloses its surcharge rate to customers at the point of sale in a prominent manner before the purchase is made and customers are offered alternative methods of payment. The surcharge is applied on a single transaction basis.
2. Customers who receive a refund on a purchase also receive the refund of the surcharge.
3. The existing Credit Card consumer provisions administered by both ASIC and the ACCC afford consumers with adequate protection in the CabFare EFTPOS payment system.

NBG observes that it would be preferable that all merchants surcharged. This would provide all customers with visibility as to the cost of card acceptance and EFTPOS provision by the merchant. At present merchants who do not surcharge smear EFTPOS costs across all customers and all payment methods including cash. This disadvantages those customers who pay with cash who are paying the same price as the customer who uses a premium card and its rewards program.

¹² In the industries in which NBG operates there are specific regulatory requirements imposed by the ATO and State based regulators not found in other industries. A significant part of the business of the Merchant Aggregator is to meet these requirements for its customer base.

In summary:

1. *The Current Regulatory reforms regarding surcharging that came into operation on 18 March 2013 should be allowed to operate for some time before any realistic assessment can be made as to the efficacy of them as a regulatory framework for surcharges on Visa, MasterCard, AMEX and Diners.*
2. *The interface between the regulated and unregulated segments of the electronic payments industry in Australia highlights systemic flaws in current arrangements, and the absence of a comprehensive regulatory framework for payment systems. Electronic payments systems in Taxis are an excellent case study of the flaws. In Taxis, a specialist card with \$438m of transactions per year defines the competitive landscape across a \$4.6b industry and disrupts the efficacy of the PSB's surcharging reforms. Unless addressed this situation:*
 - i. *Delivers inefficient competition in the industry with the need to maintain multiple EFTPOS terminals and systems in each taxi,*
 - ii. *Price signals are distorted via transfers from consumers to networks and drivers*
 - iii. *The introduction of technological change and innovation in payments is stymied*
 - iv. *Surcharges applied on Regulated payment systems are used to subsidise unregulated payment systems, taxi networks and taxi call centres*
 - v. *The ability of lower cost new entrants to deliver lower surcharges to consumers will be inhibited*

The combined effect of these failures leads to ongoing additional consumer costs and a loss in consumer welfare benefit.

3. *The lack of a comprehensive regulatory framework for payment systems leads to inefficiencies in the wider payment system and regulatory oversight split between a number of regulators. The Council, in its current review, could usefully address this issue identifying:*
 - i. *How resourcing of the payment systems regulator can be strengthened to enable it to actively assess the wider payment system and emerging payment systems outside the traditional banking structures.*
 - ii. *Whether the current informal processes outlined in the Memorandum of Understanding between the ACCC and the PSB including an annual meeting between the Governor of the RBA and the Chairman of the ACCC is the most effective mechanism to manage competition and access across all electronic payment products in Australia.*
 - iii. *Whether a comprehensive framework of reform of the wider Payment System, especially as it applies to EFTPOS payment systems, needs to be adopted.*

A comprehensive framework of ongoing reform in card payments practices in Australia is essential to deliver productivity gains, technological innovation, and therefore enable lower surcharging by merchants.