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Via email: CCAAC@treasury.gov.au

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To whom it may concern,

Credit card surcharges and non-transparent transaction fees

CHOICE welcomes the Assistant Treasurer's announcement that the Commonwealth Consumers Affairs Advisory Council (CCAAC) will investigate credit card surcharges and non-transparent transactions fees. CHOICE has advocated for reform in this area for several years including a report in 2010 with NSW Fair Trading, *Credit Card Surcharging in Australia*, and submissions to the Reserve Bank of Australia's (RBA) review of surcharging standards.

CHOICE has strongly supported reforms that came into effect on 18 March 2013 designed to limit credit card surcharges to the reasonable cost of card acceptance. While the RBA provided a guidance note to help the card schemes (Visa and MasterCard) and merchants apply the reforms, CHOICE has consistently expressed concerns that no government agency or regulator is responsible for enforcing or monitoring these new rules. Three months later, with no change in the excessive surcharges applied by the most prominent offenders in the marketplace, it is clear that further action is needed to enforce the new surcharging framework.

The two key issues that consumers are actively seeking guidance on are: what a reasonable surcharge is; and, how surcharges can be avoided. CHOICE believes that this review by CCAAC represents an immediate opportunity to back the RBA's rules with enforcement, and also promote greater transparency and accessibility of surcharge-free payment options.

Consumer concern

In a recent CHOICE-member survey, 94.7% of respondents indicated that "cracking down on excessive credit card surcharges" was extremely, very or quite important. In addition, over 6,700 Australian consumers signed onto our petition calling on five prominent excessive surcharging offenders – Qantas, Jetstar, Virgin Australia, Tiger Airways and Cabcharge – to reduce their surcharges in line with the RBA reforms.

Unlocking the power of consumers

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In May 2013, CHOICE commissioned a nationally representative survey to provide an updated overview of the surcharging experiences of Australian consumers. The survey found that 44% of people who had used their credit card in the last three months reported paying a surcharge. Around 40% of people who reported paying a surcharge said they did not know how much the surcharge was. Of particular concern is that 44% of respondents who reported paying a surcharge said they were not offered or made aware of another payment method that did not attract a surcharge.

These results highlight the need to address issues around the transparency and clarity of prices paid by consumers and the availability of appropriate payment alternatives where surcharges exist.

Options for enforcement

There are several options for ensuring the intent of the RBA's reforms is enforced and also addressing broader consumer concerns about the transparency and size of surcharges:

i. Empower a regulator to enforce the reforms

Our general position is that the RBA has done significant work to establish the reasonable cost of accepting credit card transactions, and that these limits now need to be enforced, irrespective of which regulator assumes responsibility.

As noted in the CCAAC background documents, the Australian Securities and Investments Commission (ASIC) is responsible for administering the consumer protection provisions of the Australian Securities and Investments Commission Act 2001, including where claims made about credit card surcharges are false or misleading. CHOICE believes that ASIC's power to monitor the implementation of the reforms needs to be confirmed and then applied.

ii. Improve the fee-free alternative

While the Australian Consumer Law (ACL) allows merchants to not include credit card fees in the headline price if payment by credit card is optional, there are no requirements around the availability or useability of the alternative fee-free payment method. For physical stores the "alternative" option is usually cash. For online purchases, the "alternative" option varies considerably by merchant and also timing of the purchase, and is frequently a niche system that has not been widely adopted by consumers. Further complicating awareness of the fee-free option is the way many web-sites present payment methods. Frequently the credit card payment option is prominently incorporated into the web-page, sometimes as a default, while the fee-free option is significantly less obvious.

CHOICE believes that there needs to be more definition as to what constitutes a fee-free payment option for the purpose of calculating a 'single price' as required by the ACL. This should include setting a minimum benchmark for what represents a mainstream and accessible fee-free option (for example that it is captured by the payments code and available to all Australian consumers).

A related concern is where the headline price is not accessible under any of the available delivery options. This has become an issue in the ticketing industry, where in some cases any delivery option (including the consumer receiving tickets electronically and printing them out) incurs a fee, usually calculated at a transaction level and not on a per ticket basis.¹

CHOICE believes that component pricing provisions of the ACL may need to be revisited to ensure that the headline price is easily achievable by the majority of Australian consumers.

iii. Improve transparency

The exact amount of a merchant's credit card fee is a confidential agreement between the retailer and their bank, not between the retailer and Visa or MasterCard. The data the RBA regularly publishes is the average fee retailers pay their bank to accept card payments, not the actual costs for particular retailers. However, this is currently the only publicly available guide for consumers of what is "reasonable".

For a \$100 purchase the average fee to process the payment is:

- \$0.85 for Visa and MasterCard;
- \$1.81 for American Express;
- \$2.08 for Diners Club; and,
- \$0.17 for Eftpos

CHOICE believes that public companies (or perhaps those over a certain size to exclude small business) should report annually on the total amount collected in credit card surcharges. This would allow a more transparent evaluation of the gap between average merchant fees and total surcharges.

CHOICE thanks CCAAC for the opportunity to provide comments to this review. Should you require any further information, please contact myself or CHOICE's Principal Advisor, Financial Services, Elizabeth McNess at emcness@choice.com.au.

Yours sincerely,



Matt Levey
CHOICE Director of Campaigns and Communications

¹ See 'The2012 Shonky Awards' accessed at <http://www.choice.com.au/reviews-and-tests/awards/shonky-awards/shonkys/the-2012-shonky-awards/page/ticketek-and-ticketmaster.aspx> on 21 June 2013