



27 June 2013

Mr Colin Neave AM
Chairman
The Commonwealth Consumer Affairs Advisory Council

via email: ccaac@treasury.gov.au

Dear Chairman

The Commonwealth Consumer Affairs Advisory Council Review of Surcharging

Introduction

Visa welcomes the opportunity to participate in the Federal Government's review of card surcharges being undertaken by the Commonwealth Consumer Affairs Advisory Council (CCAAC). Visa supports the review's focus on consumer experience regarding surcharging.

Visa has been concerned for many years now that the prevalence and excessive levels of surcharging in Australia are negatively impacting on Australians. It is time to reform and improve current regulations.

In short, we contend that a 'no surcharge rule' for debit transactions in Australia, coupled with a clear approach that limits the permissibility of surcharging of credit transactions and enforceability of such a rule via a statutory authority, would be a pro-consumer policy package and needs to be assessed. Policymakers need to balance industry regulations with consumer benefits. On surcharging, the market is failing consumers, with excessive surcharges still a feature and so direct intervention is warranted by policymakers.

Allowing merchants to surcharge in excess of acceptance costs forces consumers to pay more than 100 per cent for the substantial benefits that merchants receive from accepting card payments. Surcharging is also welfare reducing, that is merchants who surcharge generally have control of certain industries or market power. Surcharging is now prevalent across not just credit card transactions but also debit card transactions.

Executive Summary: Visa's Position on Surcharging in Australia

It is Visa's position that excessive surcharges in Australia have been an unfair cost burden on consumers.

Penalising consumers via added fees or "surcharges" for using the secure and reliable electronic payment systems such as Visa is a practice Visa has always strongly opposed in the interests of consumers. There is no evidence that shows surcharging has led to a reduction in prices charged by merchants.

Visa's view about the need to limit surcharging remains despite the reforms put in place by the Reserve Bank of Australia (RBA) which took effect from March 2013 that allowed a voluntary "reasonable cost of card acceptance" limitation to be put in place by card schemes.

Visa is committed to playing a role in addressing excessive surcharging. We believe that the current means of implementing the "reasonable costs of card acceptance" test places Visa squarely as the quasi-regulatory umpire with merchants and acquirers – a position which is problematic. To give weight to the RBA's new limitation rules, enforcement by a statutory body would be the best policy option. This will provide accountability through more transparency and disclosure by merchants and enforcement of penalties. Monitoring and enforcement by a statutory body will ensure that surcharging rules are appropriately adopted by merchants.

Visa's full submission, which is attached, provides a summary of recent nationwide opinion polling conducted by UMR Research on consumer attitudes towards surcharging. Visa's submission also provides a comparative analysis of jurisdictions overseas where surcharging prohibitions, limitations and/or public enforcement have been effectively implemented.

Visa Recommendations:

Visa Recommends the Federal Government:

(A) Prohibit surcharging on Debit transactions

(B) Adopt a clear approach that limits the level of permissible surcharging; and

(C) Create enforceability of any policy approach to surcharging via empowering a statutory body with powers to monitor and enforce surcharging rules in Australia.

Visa looks forward to further consultation and would welcome any questions the CCAAC may have. Please direct all enquiries to Ms Kristen

Foster, Director of Government Relations, Australia, New Zealand and the South Pacific (krfoster@visa.com).

Finally, Visa thanks the CCAAC for consideration of our submission and for our involvement in the consultation process.

Yours sincerely

Vipin Kalra

**Country Manager
Australia**



***The Commonwealth Consumer
Affairs Advisory Council
Review of Surcharging***

27 June 2013



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1. Electronic Payments in Australia

(a) About Visa

As you would be aware, Visa Inc. is the world's largest retail electronic payments network, with US\$6.5 trillion transacted on our payment products over the 12 months ending 31 March 2013. Visa connects consumers, businesses, financial institutions and governments in more than 200 countries and territories to fast, secure and reliable electronic payments.

We operate one of the world's most advanced processing networks—VisaNet—that is capable of handling more than 24,000 transaction messages a second, with fraud protection for consumers and assured payment for merchants.

Visa is not a bank and does not issue cards, extend credit or set rates and fees for consumers. Visa's innovations, however, enable its financial institution customers to offer consumers more choices: pay now with debit, ahead of time with prepaid or later with credit products.

Visa's global network spans:

- 14,800 financial institution customers
- 2.0 million ATMs (as of December 31, 2012)
- 200 countries and territories
- 2.1 billion Visa cards (as of December 31, 2012)

(b) Growth and Benefits of Electronic Payments

Electronic payments usage is significantly increasing and it is therefore timely for the Government to assess the impact of excessive surcharging on consumers given the breadth and depth of usage of credit and debit cards for transactions.

The broad benefits of electronic card payments include, for example, cost savings, incremental additional sales for retailers, enhanced security, broad convenience for consumers and retailers, security and fraud detection and wide acceptance. Electronic payments enable consumers, businesses, financial institutions and governments to use electronic cards instead of cash and cheques.

The growth in the use of electronic payments, such as credit and debit cards, added nearly US\$21 billion (AU\$20.2 billion) to the Gross Domestic Product (GDP) of Australia, according to Moody's Analytics, February 2013¹ (Moody's Study) which concluded that, "card usage makes the economy more efficient, yielding a meaningful boost to economic growth". Globally, in the same study, electronic payments were found to have contributed US\$983 billion to the GDP of the 56 countries examined between 2008 and 2012. This growth in the use of electronic payments systems is important in the context of surcharging consumers for utilising credit cards.

With increased electronic payments usage contributing almost US\$21 billion to Australia's GDP, there are key benefits from electronic payments for our economy. Australians are increasingly relying on electronic payments along with mobile technology to use their money any time, make purchases online, transfer funds across borders and access basic financial services. Electronic payment solutions make their lives easier, grow economies and contribute to employment opportunities.

The Moody's Study also concluded that increased credit and debit card usage contributes to economic activity by reducing transaction costs and improving efficiency in the flow of goods and services. The advent of credit and debit cards has greatly aided consumers' ability to optimise consumption decisions by giving them secure and immediate access to all of their funds on deposit or via a line of credit. Merchants also benefit because there is less cash and cheque handling in the payments system, eliminating the burdens and risks associated with such forms of non-electronic payments. In addition, the dramatic growth of e-commerce and mobile payment methods would not be possible without global electronic payment systems which allow the safe and easy transfer of funds and guaranteed payment to merchants.

¹ <http://corporate.visa.com/media/moodys-economy-white-paper.pdf>

The abovementioned economic backdrop highlights the importance of the Government's review of surcharging given the uptake of electronic payments in Australia.

2. Surcharging

(a) History and Prevalence of Surcharging in Australia

Prior to earlier RBA changes which were announced on 27 August 2002 and came into effect in 2003, the four party/open schemes in the market (Visa, MasterCard and BankCard) operated 'no surcharging' policies, that is under their respective governing rules it was stated that merchants could not surcharge transactions and acquirer members were expected to ensure this outcome from their merchant clients.

On 1 January 2003 the RBA introduced a new Merchant Pricing Standard which required Visa (and our relevant competitors) to remove this no surcharge rule. It allowed merchants to apply a surcharge when cardholders used a Visa, MasterCard or Bankcard to make a payment (closed card schemes American Express and Diners Club offered matching undertakings to the RBA which allowed their merchants to start surcharging). There were no limits/caps placed on permitted surcharge levels.

The original 'no surcharge' policy was proactively established to protect consumers from merchants seeking to impose checkout fees thereby punishing consumers who choose the convenience, security and reliability of Visa over other methods of payment. This no surcharge rule remains in place in most jurisdictions in which we operate.

In 2002, Visa produced a paper which assessed the 'no surcharge rule'. The paper highlighted issues that may transpire if the RBA moved away from the 'no surcharge rule' ie that:

"in the absence of the no surcharge rule, some merchants may be tempted to exploit their market power and surcharge consumers as much as the market can bear that is as much as possible, but not so much as to drive customers away. This is of particular concern in Australia because of our highly concentrated retail sector, so that some Australian retailers are likely to have substantial market power and therefore can 'get away with' surcharging excessively. Similarly, it is of concern in rural and regional areas where there is often limited competition in the retailing (and other) sectors." – pp 18-19, 'Credit Card Schemes in Australia' Visa 2002

Evidence indicates that in the handful countries that permit surcharging today, including Australia, some merchants have been penalising their

customers with excessive surcharges that far exceed the cost of card acceptance.

Such surcharging has significant negative impacts on consumers by increasing consumer costs and negatively impacting on rising cost-of-living pressures while failing to provide any relevant “signal” to the cardholder.

CHOICE has conducted research over many years on the issue of surcharging and on 15 November 2010 released a report entitled *Credit Card Surcharging in Australia 2010*, which was commissioned by the New South Wales Government, and found the prevalence of surcharging in Australia was then very high, with 88 percent of 1,374 survey respondents reporting paying a credit card surcharge in the previous year.

When Visa assesses the current state of surcharging, we can identify both excessive and blended surcharging as two developing and expanding practices, despite the recent introduction of the new RBA rules on surcharging.

(b) Excessive surcharging

Visa is concerned by the spread of surcharges in all forms, but especially those that go beyond a merchant recouping the genuine costs of accepting card payments through the inclusion of a growing range of other normal business costs as a justification for a higher surcharge level. These ‘add-in’ costs are often only tangentially or marginally related, if they are related at all, to the costs of accepting electronic payments.

The implementation of surcharging was never meant to become a source of unrestrained cost offsetting or extra profit for some merchants.

The East & Partners *Merchant Acquiring and Cards Markets* research program in 2010 found that “the average surcharge applied has also increased over the past five years from 1.4 percent to 2.5 percent”. Indeed, the RBA has itself in the 2008 *Australia’s Payments System* report highlighted that, in some cases, merchant surcharges ‘appear considerably higher’ than the actual costs.

(c) Blended surcharging

Visa is also concerned about the proliferation of blended surcharging.

Blended surcharging occurs when merchants ‘blend’ different surcharge levels so as to apply one flat surcharge across all card schemes, regardless of whether this final figure bears any true relationship to the actual cost of accepting the relevant scheme as a means of payment. This may occur by the merchant averaging the Merchant Service Fee (MSF) of

all schemes – including less expensive four-party schemes and generally more expensive three-party schemes. This is usually set at an arbitrary figure higher than the true costs of acceptance of four-party scheme cards, but lower than the true cost of accepting three-party cards. The effect of blended surcharges on consumers is that consumers determine their payment method based on incorrect price signals and has obscured costs from cardholders and this surcharge level paid is almost always excessive as it relates to four party card costs of acceptance.

According to the RBA's own data from June 2010, the average MSF for the two four-party card schemes, being Visa and MasterCard, is just 0.86 percent, whereas the average MSF for the three-party card schemes, being American Express and Diners Club, is 1.93 percent and 2.44 percent, respectively. However, the application of a blended surcharge masks these cost differences, hindering the stated goal of making more transparent the true cost of acceptance of a credit card scheme.

(d) Surcharging in Other Jurisdictions

Global Practice

Visa notes that most jurisdictions around the world support prohibitions on excessive surcharging, including through Visa's rules.

United States

In the United States, the recent litigation settlement incorporated revised Visa rules that prevent surcharging of debit transactions and limit surcharging of credit transactions to a merchant's cost of acceptance.

United Kingdom

Most recently the Government in the United Kingdom took action against excessive surcharging as it relates to "excessive" credit and debit card surcharging and under the new rules requires traders to "make sure that any payment surcharges are representative of the actual processing cost involved and they do not charge more than this".

The new rules, the *Consumer Rights (Payment Surcharges) Regulations 2012*², came into force on 6 April 2013 and are aimed at putting an end to unscrupulous market practices with a focus on hidden surcharges at the back end of transactions where consumers may be slugged with excessive fees and hence charged with a much higher price than they were entering in to at the front of the transaction process.

Section 4 of the abovementioned regulations state that:

² www.legislation.gov.uk/ukSI/2012/3110/made Statutory Instruments **2012 No. 3110** Consumer Protection The Consumer Rights (Payment Surcharges) Regulations 2012

“Excessive charges prohibited 4. A trader must not charge consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of that means”.³

Minister Jo Swinson MP stated in a media statement announcing the new rules on 6 April 2013, that:

*“I am delighted that the ban will stop retailers from cashing in by charging add-on fees that simply do not reflect the real cost of processing the payment. Consumers will be less likely to get nasty surprises as they will have a clearer and more transparent breakdown of what they are paying for”*⁴.

According to the Minister, in the UK the Office of Fair Trading (OFT) estimated that consumers spent around £300 million on payment surcharges in 2010 in the airline sector alone. In the same media release the Minister revealed:

“Surcharges are often cited in the airline sector but are also imposed by some retailers in other sectors, including rail, event tickets, cinemas, car dealerships and hotels. The Office of Fair Trading (OFT) estimate that consumers spent around £300 million on payment surcharges in 2010 in the airline sector alone. The OFT’s consumer research conducted in 2010 found that 87 per cent of consumers objected to extra charges for credit cards and 91 per cent objected to extra charges for debit cards.” – 6 April 2013⁵

Richard Lloyd, the executive director of Which? in the UK however revealed some of the issues relating to enforcement to the BBC when he stated that:

*“For it to be effective, there must be a tough enforcement regime and companies must play fair and not pass costs on to customers in other ways. We will be monitoring the ban closely and want people to tell us about surcharges they think are excessive.”*⁶

Under the new UK rules, consumers can receive refunds for surcharges that are deemed excessive. Consumer’s rights of redress are clearly outlined in the regulations and are as follows:

³ www.legislation.gov.uk/uksi/2012/3110/made Statutory Instruments **2012 No. 3110** Consumer Protection The Consumer Rights (Payment Surcharges) Regulations 2012

⁴ www.gov.uk/government/news/crackdown-on-rip-off-card-charges-begins 6 April 2013

⁵ www.gov.uk/government/news/crackdown-on-rip-off-card-charges-begins 6 April 2013

⁶ www.bbc.co.uk/news/business-22042309 5 April 2013

“Where a trader charges a fee in contravention of regulation 4 - (a) any provision of a contract requiring the consumer to pay the fee is unenforceable to the extent of the excess charged, and (b) the contract for the purposes of which the payment is made is to be treated as providing for the excess to be repaid to the consumer.”⁷

In the UK the OFT is the authority who will receive complaints for contraventions of the rules.

The ACCC or ASIC would be the appropriate bodies in Australia for enforcement of new rules preventing excessive surcharging in the Australian market.

Victoria, Australia

There have been recent moves in Australia to address excessive surcharging within particular industries such as the taxi industry. Visa supported the Victorian Government's May 2013 announcement to halve taxi surcharges (from 10 percent to 5 percent) in Victoria as part of its broader inquiry into taxis.

Visa's view is that taxi surcharges have been an unfair cost on consumers for too long. Visa hopes to see taxis in other States follow suit and reduce their surcharging levels.

The Bill prohibits a taxi surcharge being imposed that is more than the 5 per cent cap or the level determined by the pricing authority. In Victoria the power of enforcement is with the Taxi Services Commission (this includes civil and criminal sanctions).

3. Current Consumer Opinion Towards Surcharging

The majority of consumers are strongly opposed to surcharging for making electronic payments.

Nationwide consumer research conducted by UMR Research from 1-4 June 2013⁸ found that:

⁷ www.legislation.gov.uk/uksi/2012/3110/made Statutory Instruments **2012 No. 3110** Consumer Protection The Consumer Rights (Payment Surcharges) Regulations 2012

⁸ The UMR Research methodology included 1000 interviews conducted online as part of UMR's Nationwide Omnibus Survey. Those polled were age: 18+; enrolled voters. Quotas are applied & data is weighted by age, sex and location to reflect actual population distribution. Fieldwork was conducted from 1– 4 June 2013. Maximum margin of error at 95% confidence level for n=1000: ±3.1%

- Australians are opposed to merchant surcharging. They believe that merchants who surcharge, surcharge more than it costs them to accept cards and do not do enough to inform customers
- There is very limited awareness of the RBA's changes to the surcharging rules, and in fact most believe that the proportion of merchants surcharging has increased in recent months. Nevertheless, there is strong support for further government action to protect consumers from excessive surcharging
- Just over six in ten Australians say they have personally been faced with a surcharge in the past six months.
- The merchants where surcharging is most apparent are airlines and restaurants, followed by grocery.

As a comparison, UMR Research also conducted quantitative research in 2004 of consumer attitudes towards the RBA's regulatory changes from 2003, including on surcharging. The survey found that 30 percent of respondents had paid an extra fee using credit cards and 58 percent indicated that they were less likely to shop at the retailer. Based on the 2013 results, we can see that the incidence of surcharging has increased substantially from the 2004 survey.

The current research found that most respondents disapprove of payment surcharges with 79 percent of Australians disapproving (82 percent for Australians with cards). As such we feel there is a strong case for a prohibition on surcharges.

66 percent of those Australians polled believe merchants are not doing enough to notify customers of surcharges (68 percent for Australians with cards). As such we feel there is a strong case for disclosure and transparency.

Most Australians believe merchants who surcharge are gouging with 62 percent of all respondents (68 percent of card-holders) thinking the amount merchants generally surcharge their customers is more than what it actually costs them to process those cards.

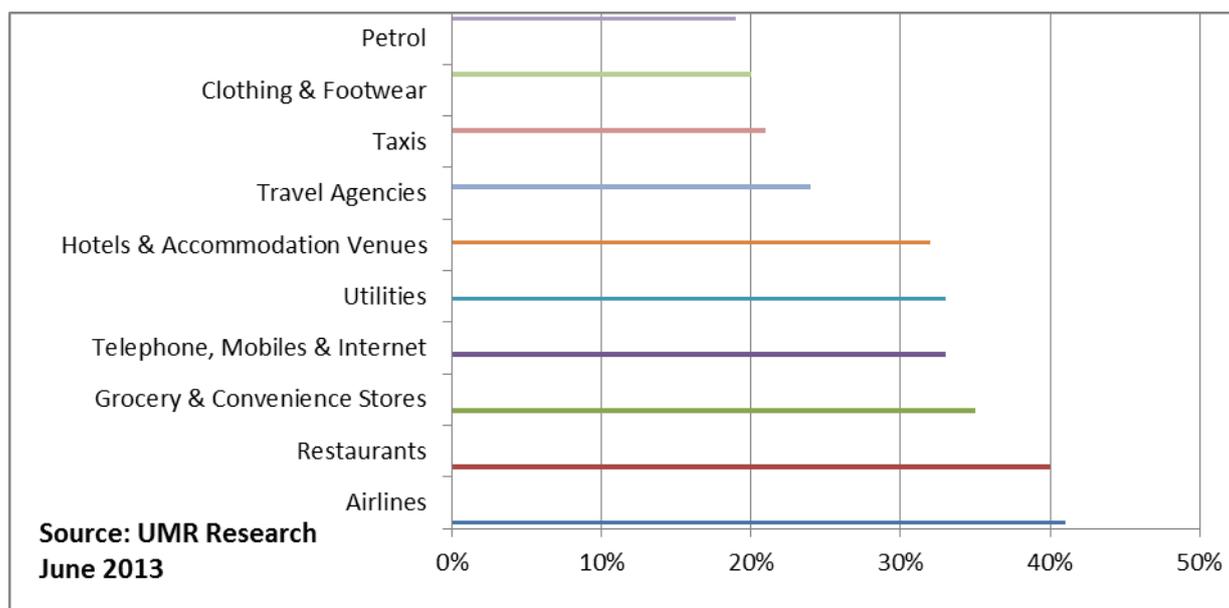
In terms of the incidence of surcharging, most Australians say that surcharging has increased recently with 62 percent of Australians believing this (64 percent amongst card-holders).

On the RBA's recently revised rules, there is little awareness of these reforms. Overall, only 15 percent of Australians (17 percent of card-holders) are aware that the RBA has brought in recent rules to ensure the amount merchants surcharge reflects what it actually costs the merchant to process the transaction. This means that 85 percent of Australians have no knowledge of the RBA's guidelines on surcharging. There is a case for a

consumer watchdog to educate the Australian public about their rights regarding surcharging.

The research also found that surcharging affects most Australians with 61 percent facing surcharging in the past six months. Chart 1 outlines the top merchants who Australians have ranked as imposing surcharges.

Chart 1: Top 10 Merchants Imposing Surcharges: Industries where Australians see surcharges applied for credit or debit card payments (percentages of Australians who saw surcharging in various industries)



Based on the abovementioned research it is clear that Australians are dissatisfied with the levels of surcharging and “gouging” in the Australian market and would support Government/regulatory intervention to rectify this issue.

4. Recent Reforms

(a) *The RBA’s Surcharging Standard*

There have been some recent regulatory reforms in relation to surcharging in Australia.

In June 2012 the RBA concluded determined that it would vary the previously mentioned Standards in relation to surcharging on scheme credit and debit transactions. Whereas the Standards of 2003 required the removal of the ‘no surcharge rule’ in from scheme operating rules, the 2012 variation permitted, from 18 March 2013, card scheme rules to again limit surcharges, in this case to the merchant’s “reasonable cost of acceptance”.

In principle, when compared to no rules around surcharging in any way (the situation between 2003 and 2012), Visa welcomed the RBA's efforts on this matter.

A supplementary Guidance Note was also issued by the RBA with the goal of assisting schemes, merchant and financial institution as to what the RBA deemed the "reasonable cost of card acceptance. This Guidance Note indicated that the reasonable cost of card acceptance, includes, but is not limited to, the merchant service fee. An extensive list of additional possible inclusions if offered in the Guidance Note including, among other things, the ability to include other cost payable to acquirers, costs payable to other services providers, other merchant costs, fraud costs and any fixed equipment, systems or development costs.

As Visa set out in our public submissions to the review process into the Guidance Note, we feel this is a very broad list of potential inclusions.

(b) Implementation of new limitation allowance

As outlined, from 18 March 2013, schemes that have been legally defined as "designated payment schemes" by the RBA under the relevant legislation, such as Visa, were again voluntarily permitted to limit surcharge levels in Australia. That is, the RBA Standard itself has no direct impact on merchants, but rather designated card schemes have been empowered to attempt to effect the implementation of this new limitation.

Acting in good faith and in accordance with the revised RBA Standard, Visa duly altered our operating regulations as of the permissible date to include the new reasonableness limitation.

Equally, the RBA Guidance Note states (emphasis added):

"The Standards allow the card schemes to limit surcharges to 'the reasonable cost of acceptance', which includes, but is not limited to, the merchant service fee...the merchant service fee charged to the merchant forms part of the reasonable cost of acceptance... there is nothing in the Standard which prevents a scheme from seeking verification of costs in the event that it believes a merchant is surcharging in excess of reasonable costs"⁹

Naturally, to determine if any given surcharge is unreasonable (that is, excessive), the reasonable cost of accepting card payments for a particular merchant must first be understood. As such, Visa introduced an Acquirer's

⁹ Reserve Bank of Australia: Guidance Note: Interpretation of the Surcharging Standards – November 2012 pp 1

Surcharging Program (Program) at the same time as amending our operation regulations. The aim of this program was to establish a low compliance, low cost, arms-length, commercially protective mechanism through which the new Standard could be practically implemented. The Program aims to assist merchants and acquirers in calculating their reasonable cost of card acceptance pursuant to the guidelines issued by the RBA. It provides a calculator to measure quantitatively a merchant's "reasonable cost of acceptance" against the qualitative criteria included in the RBA's Guidance Note.

It is important to remember however that the Visa system resides on a set of operating regulations that only member institutions subscribe to, that is, financial institution issuers and acquirers. As a four-party scheme, we have little or no direct contractual relationships with Australian merchants. That relationship is normally and appropriately a bilateral one between such merchants and their acquirer, with the acquirer being a Visa member who has subscribed to the Visa operating regulations.

The situation is therefore one in which card schemes have been asked, under the new Standards to (admittedly voluntarily), seek to assess, limit or alter the activities of a class of entities (merchants) with which we do not have direct connections or means to effect or influence change, leaving only the option of using our operating regulations to require our clients, in a two-step removed process, to seek to do so.

There are also various commercial conflicts in how such a system would operate – Visa clearly has incentives to maintain positive relationships with our clients, as do those clients with their customers, the merchants. CHOICE recently reported on this difficult commercial scenario, with CHOICE CEO Alan Kirkland stating on 29 May 2013:

*"We urgently need strong enforcement and policing of the surcharging rules, beyond what Visa and MasterCard can bring to bear through their commercial dealings, and we are glad the government has recognised this."*¹⁰

There is also a further risk in that even if both schemes legitimately act in the same manner, this potentially could raise competition legal matters for which the RBA is not empowered to provide any safe harbor protection even though schemes may be simply seeking to act in good faith and implement the content of the revised RBA Standard.

Naturally this is a very challenging scenario for all involved and the fact we have seen very little change in any merchant surcharging behaviour since

¹⁰ www.choice.com.au/media-and-news/consumer-news/news/credit-card-surcharging-update.aspx

18 March 2013 indicates an empirical case as to the scale of these challenges.

Again CHOICE recently made public statements on this matter, finding that despite the RBA's new rules on "reasonable costs", excessive surcharging remains in existence and stating that:

*"it's apparent that any compliance and auditing program is not having any real effect."*¹¹ – 29 March 2013

As set out in the Recommendations section below, we feel that the current quasi-regulatory framework puts cards schemes, and our acquirer financial institution clients, squarely into an enforcement and investigative role which should be more appropriately carried out by an independent statutory body.

5. Surcharging Policy Options

There are numerous policy measures that could be considered, however on balance Visa contends that the following potential solutions warrant assessment.

(a) *Prohibition on debit surcharging*

Visa believes debit surcharging should be banned as we feel surcharging on debit transactions are very frequently in excess of the merchants true costs of debit acceptance, particularly disincentivise the uptake of efficient electronic payments by a growing portion of the community who prefer to use debit payments and act as an unfair "tax" on accessing use of a cardholder's own savings.

The costs of accepting credit and debit cards are different, yet we increasingly see the presence not just of surcharging on debit transactions but the same flat surcharge being imposed on both debit and credit transactions. This means debit transactions are being significantly blended upwards, which destroys price transparency for a lower cost payment tool.

As such we support an arrangement under which different surcharges limits operate for credit and debit, that is, a limit for credit transactions (see next section) and a ban for debit transactions, being reflective of the different costs and natures of both payment methods. This approach replicates that employed by the RBA in relation to interchange regulation which recognises the differences between credit and debit by imposing differing interchange basket caps.

We understand that merchants may, in some cases, be paying a flat blended credit/debit MSF. However, merchants can and do negotiate with

¹¹ www.choice.com.au/media-and-news/consumer-news/news/credit-card-surcharging-update.aspx

acquirers for unblended credit and debit rates, and would be free to do so if they wished to surcharge and could not surcharge at the same level for credit and debit.

(b) *Limitation on surcharging*

Visa supports the ongoing imposition of a limitation of some form on the level of permissible surcharging of credit transactions (as well as of debit transactions if the debit surcharge ban as proposed above is not enacted.

An environment with no limitation in place, as occurred between 2003-2013 is, we feel, untenable and not in Australian consumer interests so a limit is preferable to reverting to that scenario.

It is important however that this limitation be clear, quantifiable and commonly understood by all parties.

The option that would be preferable is further clarifying and quantifying the limitation so that all market participants have a consistent interpretation of the definition, one which is consistent and readily calculable.

(c) *A new approach needed on enforceability*

Finally, and regardless of which of (a) a debit surcharge ban , or (b) a limitation of some form, is enacted, it is critical that the position be enforceable. As such we strongly support creating enforceability of any policy approach to surcharging via empowering a statutory body with powers to monitor and enforce surcharging rules in Australia.

For all the reasons set out in section 4 of this submission, the current approach which calls on payment schemes to implement and enforce surcharging limitations through a two-step process involving acquiring banks is very challenging. In our view it is empirically clear from actual events since the 18 March commencement of Visa's best good faith efforts to effect change that only enforceability by a statutory authority will stand a realistic chance in bringing about a reduction in excessive surcharging and be in the interests of consumers. This holds true whether a ban or a limit is supported and implemented.

In terms of this case for intervention on enforcement, in the recent UMR Poll 74 percent of Australians (77 percent of cardholders) believe the Government is not doing enough to protect them from excessive surcharges. Solutions that consumers support include:

- 79 percent (80 percent of cardholders) support a complaints phone line or website where customers can report excessive surcharging; and

- 67 percent support a Government agency to resolve disputes and enforce any rules on surcharging where customers feel they have been unfairly surcharged

As outlined above, the recent legal developments in the UK have included charging the UK Office of Fair Trading with this task. In the Australian context, we feel that one of either the Australian Securities and Investments Commission, as the consumer watchdog, or the Australian Competition and Consumer Commission, as the competition and consumer watchdog, are already established statutory authorities that are natural candidates who would be well equipped to take up this function.

6. Visa Recommendations

While the history behind surcharging in Australia is complex, in the interests of consumers, Visa contends that there is a very strong case for the Federal Government to move to ban surcharging.

In summary, Visa recommends:

Visa Recommends the Federal Government:

(A) Prohibit surcharging on Debit transactions.

(B) Adopt a clear approach that limits the level of permissible surcharging ; and

(C) Create enforceability of any policy approach to surcharging via empowering a statutory body with powers to monitor and enforce surcharging rules in Australia.

7. Conclusion

Visa welcomes the opportunity to be part of the CCAAC consultation process. We believe that banning debit surcharging, adopting a clear approach to limit the level of permissible credit surcharging, and enforceability via empowering a statutory authority are in the interests of consumers, particularly with rising cost of living and uncertainties in the global and domestic economies. We welcome feedback from CCAAC and constructive ongoing dialogue to find the most appropriate policy solutions in the interests of all Australians.