



ASIC

Australian Securities & Investments Commission

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4 April 2003

Mr Paul Palisi
A/g General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
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FILE No:
DOC:
MARS/PRISM:

Dear Mr Palisi

Thank you for your letter inviting the Australian Securities and Investments Commission to comment on the application for authorisation relating to reform of EFTPOS interchange fee arrangements.

As you are no doubt aware, ASIC is the consumer protection regulator for the financial services sector. While we do not have a role in the setting of interchange fees, or in fees per se, we do have an interest in the efficiency of the financial system and in promoting the confident and informed participation of consumers in the financial system. As such we are concerned to ensure that consumers receive adequate disclosure of any fees and charges that may apply to their transactions. We are also concerned to ensure the overall efficiency of the payments system.

We recognise the potential for the proposal under consideration to significantly eliminate costs from the payments system with the reduction of EFTPOS interchange fees to 0 for a period. We also recognise that the proposal, if it has the flow on effects expected of it, should result in real savings for consumers and have the potential to encourage consumers to use lower cost payment mechanisms. All of this we believe to be a good thing. This potential, however, is dependant upon consumers receiving the benefit of the reforms in terms of significantly reduced EFTPOS banking fees.

We note that the proposal has no built in mechanism to ensure that fee reductions are passed onto consumers, only an expectation that competition will ensure that this will be the case. In such circumstances we believe it would be sensible for any eventual authorisation to bolster the chances of this happening. One possible route would be to make it clear that any renewal of the authorisation would be dependant upon proof to the ACCC that the reduction of interchange fees to 0 had resulted in a significant reduction in the fees consumers' financial institutions charged them for their part in processing EFTPOS transactions.

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In supporting the proposal we also recognise that there is the potential for a consumer backlash against it. This will especially be the case if merchants begin surcharging consumers for EFTPOS transactions more frequently than is currently the case. Given that one likely consequence of the reforms is that merchant fees for all but some of the largest merchants are likely to increase, this must be seen as a real possibility in at least some cases. If this occurs, consumers will face the prospect of paying two fees for some EFTPOS transactions – a surcharge imposed by the merchant and a fee imposed by their own financial institution (even if that fee is significantly reduced from the current fee once the cardholder's institution doesn't have to pay an interchange fee on the transaction). This is likely to lead to some confusion for consumers.

It is therefore essential that there is adequate disclosure about the new system. This could involve a number of steps:

- It should be a requirement that all merchants that surcharge for EFTPOS transactions disclose the fact, and the amount of the surcharge, prior to the transaction (i.e. in sufficient time for the consumer to cancel the transaction without cost). This will hopefully be assured as a result of clause 4.6 of the EFT Code which came into effect 1 April 2003. This clause requires all code members (which is all bar one or two very small ADI's in Australia and should soon be all) to include in their merchant agreements from this date a requirement that such disclosure be made. The wording of the provision is:

An account institution shall include in its agreements with any person who makes electronic equipment available to a user so that the user may perform an EFT transaction, a requirement that the person disclose to the user (at a time which enables the user to cancel the EFT transaction without cost to the user) the amount of any fee (such as a surcharge) charged by the person for the use of its electronic equipment which will be directly passed on to the user or account holder.

- As proposed in ASIC's Guide to Good Transaction Fee Disclosure for Bank, Building Society and Credit Union Deposit and Payment Products (Transaction accounts), there should also be adequate disclosure to consumers of the issuer's EFTPOS fee at all relevant times, including on statements.
- Finally, it should also be a requirement that all parties to the EFTPOS agreement provide their cardholders with a clear explanation of the rationale of the reforms and a clear explanation of their implications for the fees their cardholders will pay to them. This explanation should include disclosure of whether or not they are reducing their standard fees for EFTPOS transactions and, if so, by how much. Such disclosure should also include clear information on how much their fee was prior to the reforms and how much it will be once the reduction in interchange fees comes into place.

The first of these three steps is an essential feature of good fee disclosure. As well as being supported by the EFT code, it is also a principle of ASIC's Guide to Good

Transaction Fee Disclosure. The second proposal is also essential to effective and timely disclosure.

The third of our proposals should help to ensure that consumers understand the nature of the reforms and the effect they will have on the fees they can expect to pay for EFTPOS transactions. If the proposal works as planned it should show that despite the potential confusion of having two separate fees for a single transaction, the consumer is still better off in terms of the overall cost of the transaction. It is also important that industry takes some responsibility for educating consumers about the reforms as ASIC has not been funded to fulfil this role.

A final consumer issue, which is really outside ASIC's jurisdiction, is whether or not there should be included in merchant agreements any provision to cap the surcharges that can be imposed for EFTPOS transactions. On this point, we note that our work on rural and remote Indigenous consumer issues has exposed some extremely high EFTPOS surcharges which would seem to far exceed the cost to the merchant of providing the service. These have usually occurred in areas where merchants had little or no competition.

If ASIC can provide you with any further assistance on this matter please do not hesitate to contact me on 02 6250 3801 or at delia.rickard@asic.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Delia Rickard', with a long horizontal flourish extending to the right.

Delia Rickard
Deputy Executive Director, Consumer Protection.