

SUMMARY OF NBG'S APPLICATION TO THE RESERVE BANK OF AUSTRALIA FOR DESIGNATION OF THE CABCHARGE PAYMENT SYSTEM

This submission by National Billing Group Pty Ltd (NBG) and its subsidiary CabFare Pty Ltd (CabFare) to the Reserve Bank's Payment System Board seeks designation of the Cabcharge Payment System by the Reserve Bank of Australia pursuant to section 11 of the *Payment Systems (Regulation) Act 1998* (Cth) (the **PS(R) Act**). For the reasons stated in the submission, NBG believes that designation of the Cabcharge Payment System is clearly in the public interest. NBG believes that Designation, with a view to the future imposition of an access regime pursuant to the PS(R) Act, will:

- Promote competition;
- Enable more efficient outcomes leading to lower prices for passengers;
- Provide scope for the Reserve Bank to enhance the security of the Cabcharge Payment System, and thus Australian payments systems more generally; and
- Ensure that the Cabcharge Payment System, which currently operates outside any financial regulatory framework, is brought within the auspices of the Reserve Bank's regulatory powers.¹

SUMMARY OF CONCLUSIONS

As observed in the Wallis Report, "The general case for regulation is founded in market failure, where efficient market outcomes are inhibited".² At present, there is no competition of any note in the market for non-cash payment instruments that can only be used to pay taxi fares and ancillary charges (the **Instruments Market**). Although there is now limited competition in the market for processing services enabling the acceptance of non-cash payments for taxi fares and ancillary charges (the **Processing Market**), such competition is highly distorted and does not permit the best and most efficient businesses to compete on their merits. This in turn has a severe adverse impact on efficiency in a number of respects. Even though the competition issues affecting the relevant markets have been long acknowledged, they are yet to be resolved. As such, designation is likely to provide the fastest, most complete, national solution to the problems identified in this submission.

To this end, designation of the Cabcharge Payment System – with a view to access – will assist in achieving the benchmarks identified by the Reserve Bank as appropriate for markets for payment services, *viz*:

- prices charged should reflect the relative cost of providing payment instruments, as well as demand conditions;

¹ NBG has flagged to the RBA that at present the Cabcharge Payment System is not regulated by ASIC, APRA, ACCC or the RBA. NBG believes that the RBA is the Regulatory charged with oversight of Cabcharge and thus should intervene to bring it within its scope.

² Financial System Inquiry, *Final Report* (1997), 175; see also at 15.

- merchants (and other market participants) should be free to set prices for customers that promote the competitiveness of their business;
- prices of payment instruments should be transparent;
- restrictions on participation in a payment system should be the minimum necessary for the safe operation of that system; and
- competition within the market for a payment instrument, and between different payment instruments, should be open and effective.

As the Reserve Bank has said:

If markets for payment services meet these benchmarks, the community can be confident that the price mechanism will allocate resources efficiently to meet the demand for different payment instruments, while the ‘contestability’ of the markets – that is, the threat of entry by new competitors – would ensure that payment service providers earned no more than a competitive return on their investments over time.³

OUTLINE OF SUBMISSION

The submission considers the Reserve Bank’s powers to designate a payment system. Given that this is a third party application for designation NBG has set out a suggested process by which the Reserve Bank may consider this application, as well as a recommended timeframe for reaching a decision. It has proposed that the Bank consult with the ACCC under the Memorandum of Understanding between the PSB and the ACCC to consider “competition” issues. Further it has canvassed the potential for the PSB to use its powers under Section 26 of the PS(R) Act to obtain from Cabcharge information it may require in formulating its decision on Designation and Access.

NBG’s submission articulates why the Cabcharge Payment System is a payment system within the meaning of the PS(R) Act. It also considers the Cabcharge Processing System, which is the only system currently able to process payments made using the Cabcharge Payment System. Finally, it explains the Cabcharge Surcharge – being the 10% charged on the face value of all taxi fares paid using the Cabcharge Processing System

NBG considers the prospects of Cabcharge voluntarily granting access on “on a commercial basis on terms that are fair and reasonable” (as per the definition of access in the PS(R) Act). In light of the Federal Court decision in *ACCC v Cabcharge*,⁴ the resulting Cabcharge Request Policy implemented on order of the Federal Court, and Cabcharge’s subsequent conduct using this Policy, NBG considers that voluntary access is extremely unlikely and will certainly not occur in a timely fashion.

³ Reserve Bank of Australia, *Reform of credit card schemes in Australia I: a consultation document* (December 2001), 11-12.

⁴ *Australian Competition and Consumer Commission v Cabcharge Australia Limited* [2010] FCA 1261 (17 November 2010) (*ACCC v Cabcharge*).

NBG application specifically addresses the relevant criteria for designation by the RBA, namely that it is in “public interest”. NBG addresses the following issues which are contained in the PS(R) Act :

Security: It is obvious that designation of the Cabcharge Payment System will not materially cause or contribute to increased risk to the financial system. In fact, designation provides the Reserve Bank with an opportunity to ensure all participants in the Cabcharge Payment System comply with Payment Card Industry Data Security Standards. (PCI-DSS)

Competition: designation with a view to access will clearly promote competition. The lack of competition in each of the Instruments Market and Processing Market is broadly acknowledged. Cabcharge continues to have substantial market power in the Processing Market and is clearly dominant in the Instruments Market, even following *ACCC v Cabcharge*. The reinforcing nature of its power across these two markets has allowed the Cabcharge Surcharge to remain unchanged at 10% for 36 years – a rate which is clearly excessive and, given current market dynamics. It has become standardised in the industry. As such, designation provides an opportunity to impose the structural adjustment necessary to place pressure on the Cabcharge Surcharge, promoting competition in the Processing Market and, in time, the Instruments Market.

Efficiency: while there are clearly adverse efficiency effects – not to mention, severe consequences for consumer welfare – resulting from the excessive nature of the Cabcharge Surcharge, these are not confined to the resulting impact on allocative efficiency. The Cabcharge Surcharge also results in distorted price signals, which are further exacerbated by the ‘blended’ nature of the surcharge. Consequently, consumers are not able to make informed decisions such that lower cost and more efficient payment instruments can compete effectively. Further, such competition as there is in the Processing Market is by way of secondary terminals – a situation that is inherently inefficient. Finally, the lack of competition in the relevant markets is having an adverse effect on dynamic efficiency, such that consumers’ desires and security issues are not being appropriately addressed – to this end, the failure of the Cabcharge Processing System to provide real-time clearance is a significant shortcoming.

Other relevant factors: NBG believes that there are a number of other reasons why the Reserve Bank should conclude that the public interest requires designation of the Cabcharge Payment System. These include that:

- There is no other timely and/or sufficiently broad market or regulatory solution to the competition issues identified;
- The Cabcharge Payment System and Cabcharge Processing System currently operate completely outside regulatory scrutiny appropriate for, and indeed applicable to, any other significant payment system.
- Designation would also ensure the Reserve Bank acts consistently with its previous approaches to designation issues.

WHAT SHOULD FOLLOW DESIGNATION?

Designation of itself will not result in substantive change to the affected markets. Accordingly, NBG has submitted that the Reserve Bank should designate the Cabcharge Payment System with a view to imposing an access regime. While Cabcharge may respond to designation by allowing access of its own accord, history suggests this is extremely unlikely – the relevant markets have suffered from a lack of competition for far too long.

NBG submits that the Reserve Bank should not wait to see whether the leopard will change its spots.

NBG has submitted that the access regime should address:

- The technical pre-requisites appropriate for participation in the Cabcharge Payment System.
- Insist on compliance by any participant with appropriate industry security standards, such as the PCI-DSS in order to enable Cabcharge to achieve and/or maintain their PCI-DSS compliance, and a commitment from the access seeker not to process paper transactions or cash paper dockets/e-tickets⁵. These measures would provide Cabcharge with the assurance of security it has continuously required of any party seeking access to its Payment System, as well as promote the Reserve Bank’s objective of ensuring the security of the financial system⁶.
- NBG has submitted that at this stage further steps, such as the imposition of a regulated price or price cap pursuant to a Standard should be delayed. This will provide some scope for interested parties to reach a negotiated outcome. Such an approach is consistent with other access regimes (whether industry-specific or general in nature), allowing those best informed as to applicable cost structures to have the first opportunity to attempt a resolution. Nonetheless, NBG does not rule out the need for the imposition of a Standard at some later time.

In summary NBG believes that the RBA should establish a clear set of criteria for eligibility of an entity to become a participant in the Cabcharge Payment System, as a user of the system, “on a commercial basis on terms that are fair and reasonable”,⁷ while ensuring that membership restrictions:

- do not inhibit competition more than is necessary to protect the financial soundness of the Cabcharge Payment System;

⁵ In the Taxi and Limousine Industry “Paper vouchers” are used as a “substitute” for EFT and are processed at a later date as a Card Not Present transaction on fixed EFTPOS terminals by possibly another party such as a “taxi factorer” (Cash Booths). Current practice is that “paper voucher” shows the taximeter amount then when the Card Not Present transaction is processed at some later date any service fee is added without the cardholder’s knowledge nor consent. The passenger receives a single line item on their card statement and is unable to unbundle the fare, service fee, and GST components. This practice is believed to be the major source of Card Not Present Fraud in the industry. AMEX cites the extensive use of “Paper Vouchers” as the reasons for higher MSF in Taxis as well as imposing automatic full recourse Charge Backs. The prevalence of Paper thus adds to passengers’ costs.

⁶ The Payment Systems Board’s Annual Report for 2012 documents the significant rise in Card Not Present Fraud in the Australian payment System P22.

⁷ As per the definition of “access” in section 7 of the PS(R) Act.

- are clearly targeted at the risk incurred by the likely participants in Cabcharge Payment Scheme, Cabcharge as an issuer and other affected third parties (e.g. taxi networks, operators and drivers); and
- does not discriminate against participants, e.g. because their business competes with Cabcharge in a market (regardless of what market that may be).

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FURTHER INFORMATION

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ABOUT NATIONAL BILLING GROUP AND CABFARE

1. National Billing Group Pty Ltd and its subsidiary CabFare Pty Ltd (together, **NBG**) have been offering EFTPOS and payment processing services to operators in the taxi and limousine (hire car) markets across Australia since early 2008.
2. 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 Authorised Deposit-taking Institution), providing customers with a fast and secure real-time EFTPOS processing system. NBG provides the only system for taxis in Australia with real-time online transaction reporting, allowing customers, drivers, and operators to better manage their respective businesses.
3. What differentiates NBG's EFTPOS Payment system and EFTPOS Terminals from the Cabcharge Processing System is that we:
 - 3.1. provide higher levels of transaction security for the passenger, driver and taxi operator;
 - 3.2. offer real-time online transaction reporting to both the operator and the passenger; and
 - 3.3. share part of the 10% service fee with the taxi driver or operator.

Further details can be found on the company website: <http://www.cabfare.com.au>