

Parliamentary Joint Committee on Corporations and Financial Services

ANSWERS TO QUESTIONS ON NOTICE

Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation No. 1 of the 46th Parliament

Agency: Australian Small Business and Family Enterprise Ombudsman

Question No:

Topic: Buy Now Pay Later

Reference: Spoken p.14 (18 June 2021)

Member: Julian Hill

Question:

Mr HILL: Just while you're here, has any of the complaints or mediation or that kind of work that you do related to BNPL providers?

Mr Billson: That's interesting—

Mr HILL: People, unfairly I think at times, use the word 'Afterpay' as a proxy for BNPL, so I'm trying to avoid doing that. But people or companies of that category—

Mr Billson: It's come up more as an industry issue in our discussions with industry associations. That product often sees, again, the small business merchant taking a haircut to make the service available. Contrast that with other financing options—for example, credit cards—where some choose to recover the cost of using that financing product for a customer. That's been the primary feedback: 'Why are we obliged to absorb these products and incur the costs and not able to recover any of it?' to which the BNPL say, 'We're not just a financier; we offer a marketing platform.' There's some disquiet around whether that's a reasonable argument or not. We've raised that with the Reserve Bank as well.

Dr Latham: The general position here for retailers is that, often, if you're not part of that, you're going to lose business as well. You can see this sort of practice in some of the food delivery businesses and stuff as well. It's just another instance of that which we are keen to be on the front foot about as well.

Mr HILL: I know the chair is mindful of the time. Could you take on notice if you could give us any supplementary information, a precis or a summary of industry feedback, and also advise whether there's been any specific complaints or mediation matters between, say, a small business and one of the providers about incidents or transactions or the nature of their relationship.

Mr Billson: Yes, will do.

Mr HILL: Thank you.

Answer:

We have received one complaint regarding BNPL, concerning a retailer not being accepted by the provider to use the BNPL service.

Industry feedback regarding BNPL is focused around two main issues:

- The BNPL merchant fees range from 3% to 6%¹, far in excess of most other payment systems, for example credit card (VISA and MasterCard) fees generally fall between 0.5% and 1.5%.
- Regulated card schemes are prohibited from using 'no-surcharge' clauses, allowing merchants to pass costs on to consumers, however BNPL contracts typically apply a

¹ Reserve Bank of Australia, *Review of Retail Payments Regulation: Issues Paper*, p30.

‘no-surcharge’ clause, meaning that merchants have to pay the full cost of the service without any contribution from the consumer.

- As the use of BNPL increases in Australia, and it becomes a ‘must take’ payment system, these fees present a significant new cost to small business.

Attached is a recent submission we made to the RBA, regarding the Payment Systems Review, which speaks directly to the issue of BNPL.

9 July 2021

Payments System Board
Reserve Bank of Australia
GPO Box 3947
Sydney NSW 2001

via email: rbainfo@rba.gov.au

Dear Sir/Madam

Review of Retail Payments Regulation

This Office supports a safe and robust retail payments system that provides access to affordable and efficient means for merchants accepting payment. As the Australian economy continues to navigate the effects of COVID-19, consumers and merchants are discovering the benefits of the adaptability and flexibility they demonstrated throughout 2020. The use of cash for transactions has been substantially impacted, particularly through the move to contactless payments for low value transactions and the increase in online shopping.

1. Least Cost Routing

Least cost routing should be the default option for all small businesses on all payment methods. The continued and accelerated move away from cash transactions makes a strong public policy case for this change. While LCR is asserted as the current default, there is a clear need to ensure proper and reliable implementation and enforcement of this commitment, and to incorporate an option to route transactions based on the total value of charges, in instances where a flat fee is more cost effective to the percentage fee. This will increase competition between payment systems and place downward pressure on card transaction fees as they become an increasing share of low value transactions. The review should also turn its attention to the use of smart devices as touchless payment tools and how these technologies are configured to support enhanced less cost routing.

2. 'No surcharge' rule

Unlike credit card surcharges, small businesses are currently required to absorb the cost of BNPL offerings. Many retail businesses have slim margins and absorbing these charges places additional pressure on the business' bottom line. The BNPL industry has experienced rapid growth over the last 12 months, with millennials currently representing only 10 per cent of the credit card market, while controlling 53 per cent of the growing BNPL system.¹ This trend is likely to continue as younger Australians enter adulthood. Consequently, offering BNPL solutions will cease to be an 'optional extra' and instead become a requirement for many small businesses who will be significantly disadvantaged unless they are able to pass on the surcharges. Further, the inability to pass on surcharges provides little incentive for the more popular BNPL providers to deliver competitive pricing models as their 'end customer' has no visibility of the costs involved. We recommend a stepped approach to address the 'no surcharge' rule by initially allowing merchants to pass on up to 50% of the surcharge to consumers.

¹ https://www.illion.com.au/wp-content/uploads/2020/05/Credit_Card_Nation.pdf

3. Dual Network Debit Card Issuance (DNDC)

We support mandating DNDC issuance, including for smart devices, for the major banks and medium-sized issuers. Small business do not always have access to strategic rates and should have the option of routing the payment through the most affordable payment network. We further encourage the adoption of a threshold to ensure ADI's of a specific size continue to issue DNDCs. A threshold for ADI's that have a market share of more than 1% of total household deposits would be an appropriate balance to cover a significant portion of the debit market (covering large and medium issuers) while enabling smaller issuers and new entrants to compete with incumbents. Aligning DNDC issuance to the percentage of household deposits held by an ADI will ensure that those smaller entrants who may gain greater market share in the future will continue to promote DNDC issuance and stimulate efficiency and competition in the payment system.

4. Improving transparency of payment costs for merchants

Transparency is key to promote competition and efficiency in the payment system ecosystem. We suggest further measures be taken to promote transparency of payment costs to merchants in the payment system. We recommend a regtech solution be implemented to create comparable information for smaller merchants to truly understand the implication of interchange fees, scheme fees and acquiring fees on their cost to accept card payments.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Miss Kit O'George on [REDACTED]

Yours sincerely [REDACTED]

The Hon. Bruce Billson
Australian Small Business and Family Enterprise Ombudsman