



William Sheedy  
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**Via Electronic Mail ([pysubmissions@rba.gov.au](mailto:pysubmissions@rba.gov.au))**

Ms. Michele Bullock  
Head of Payments Policy Department  
Reserve Bank of Australia  
60 Martin Place  
Sydney NSW 2000

Dear Ms. Bullock:

### **Review of Payment Systems Reforms**

Visa Inc. welcomes the opportunity to provide feedback on the preliminary conclusions of the Payments System Board of the Reserve Bank of Australia (RBA) regarding its report, *Reform Of Australia's Payments System: Preliminary Conclusions of The 2007/08 Review*. Attached, please find two submissions regarding the *Review*. The first responds to the RBA's assessment of the effects of payment regulation. The second document addresses the other policy issues identified in the *Review* and identifies a number of questions regarding ambiguities in the *Review's* discussion of options for future regulatory changes.

While Visa's responses to the RBA's prior consultation documents were provided in the name of Visa International Service Association, after Visa's recent restructuring all of Visa's global operations outside of Europe are now part of Visa Inc. We hope that you find Visa Inc.'s perspective useful.

Visa believes that the evidence demonstrates that the RBA's regulatory interventions have not served the interests of either consumers or competition.<sup>1</sup> Rather, retailers have reaped an enormous artificial economic benefit from the mandated reduction of interchange rates, with – as the *Review* recognizes – no evidence that any reductions in card acceptance costs have been passed on to consumers in the form of lower prices. Many retailers have increased the burden on consumers further by imposing surcharges on the use of payment cards – surcharges that often exceed the retailer's cost of card acceptance – without reducing their prices for cash consumers. Increased consumer costs for payment card usage without offsetting reductions in consumer prices are the clearest signal that the RBA's regulation has not achieved its stated goals. Indeed, as the United States Department of Justice noted in commenting upon proposed legislation

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<sup>1</sup> We provide citations for our factual assertions in the body of the attached submissions.

regulating interchange rates that was recently introduced in the U.S. Congress, such regulation “may actually harm consumers, not benefit them.” The Department of Justice letter continues:

[C]redit card networks forced by regulation to collect less from merchants may well respond by charging more to cardholders in card fees, or reducing card rewards programs and other features that are attractive to consumers. Indeed, a recent GAO Report, Credit and Debit Cards, GAO-08-558 (May 2008), suggests this may be what happened in Australia when Visa and Mastercard's interchange rates were capped. The GAO reported that "consumers have experienced a decline in the value of credit card reward points for most cards and an increase in annual and other consumer credit card fees." GAO Report at 35.

Visa also believes that the RBA has erred in applying its regulations to some, but not all, payment networks. There is no difference between an issuer's ability to receive “interchange” when issuing an American Express or Diners Club product, as compared to a Visa or MasterCard product, and yet these schemes remain unencumbered by the RBA's actions. As a result, the regulated credit card schemes have lost significant issuance decisions to American Express which in time will further impact market share for the unregulated schemes, resulting in greater issuance of cards that are more expensive for retailers to accept than the cards offered by Visa and MasterCard, while offering consumers lesser utility from acceptance and other perspectives. Particularly in light of Visa Inc.'s transformation from a membership association to a public company in which financial institutions have no say in interchange rates or other policies, there is no principled justification for treating American Express, Diners Club, or similar future competitors any differently than Visa.

We believe that the regulation of Visa Inc.'s payment network in Australia has also harmed payments competition by decreasing Visa's ability to shape and deliver issuer and acquirer incentives to invest further in maintaining a world class, innovative payment services industry. As a result of the RBA's regulation, there is less incentive for financial institutions to enter Australia as issuers or acquirers, as well as reduced resources for those already participating to continue to invest valuable and scarce capital in new products, faster processing capabilities, and increased system security. The evidence shows that the RBA's actions have led to a reduction in payments innovation that results in harm to both cardholders and retailers. It is impossible to anticipate precisely how these lower investment levels may forestall the benefits of expanded electronic payments or increase the risks associated with the system.

In summary, it is Visa Inc.'s view that whatever modest benefits are perceived by the “price signaling” that the *Review* mentions – transparency that has failed to work to the benefit of lower-priced payment systems – such benefits are plainly outweighed by harm to consumers and to competition, and risks from lower levels of participant investment, that flow from the RBA's regulation. Moreover, the RBA's goal of reducing interchange rates to a point where users of cash do not “subsidize” credit card users is

based on the erroneous premise that cash has lower costs than scheme credit and debit cards. In fact, the opposite is true; credit and debit cards have a lower societal cost net of benefits than cash. We do not believe that retailer costs of acceptance reflect the full costs to the economy of non-electronic payment forms. Thus, in our view, it is cash and cheque users that are being subsidized, not users of credit and debit cards.

The RBA's preliminary conclusions suggest that the interchange standard (though not the prohibition of no-surcharge rules) might be set aside in certain circumstances, though "close oversight" would in any event still be required. It is unclear to Visa what is meant by "close oversight" and the *Review* does not discuss how this oversight would be conducted by the RBA within the parameters of the *Payment Systems Regulation Act 1998* (or otherwise) and in the context of a publicly listed company with global operations. We believe this is a fundamental omission from the *Review* and seek clarification on this point. Absent clarification, Visa has no way of knowing whether "close oversight" will be better or worse than the status quo.

The RBA also appears to be asking "the industry" to render the local EFTPOS system more competitive. This is a troubling request both from a business perspective and from a competition law point of view. Visa provides retailers, cardholders, and the financial institutions that serve them a more robust payment network, largely due to the investments Visa and its financial institution customers have made in acceptance, processing capabilities, brand marketing, and systems integrity. These investments are funded, in part, by the interchange passing between acquirers and issuers. Given that the RBA has promoted its regulatory interventions as increasing competition, it also seems incongruous to require Visa to work with a yet-to-be-formed EFTPOS organization to enhance the EFTPOS system's standing in the Australian marketplace.

Finally, with no clear metric for success as to what constitutes "sufficient progress," it is unclear what standard the RBA will use when deciding whether to retract or extend its regulation. We believe that the evidence shows that the RBA's actions to date have already suppressed investment and innovation, and that by displacing market competition the payment system regulatory interventions have distorted competition and led to inefficient results. Additional moves against long-standing business practices that were designed to (and do) enhance retailer and cardholder value, and promote effective competition among financial institutions and payment networks, are not justified – and may be dangerous to the health and security of the payment system.

Visa believes that the best course of action – for consumers, retailers, Australian financial institutions, and the Australian economy – would be for the RBA to abandon its attempt to explicitly or implicitly regulate the pricing levels for the efficient, highly competitive, and dynamic retail payments industry.

Despite our disagreement regarding the RBA's actions to date, Visa shares the RBA's commitment to ensuring that Australia has a world-class payment system that responds

to the needs of all stakeholders – consumers, retailers, and financial institutions. To that end, we look forward to discussing this submission with you and Dr. Lowe.

Sincerely,

A handwritten signature in black ink, appearing to read "William Sheedy". The signature is fluid and cursive, with a large, stylized initial "W" and a long, sweeping tail.

William Sheedy

**Submission by Visa Inc. Regarding the Payment System Board of the Reserve Bank of Australia's Assessment in the *Preliminary Conclusions of The 2007/08 Review***

**Introduction**

Visa Inc. ("Visa") welcomes this opportunity to provide its comments to the Payments System Board of the Reserve Bank of Australia (RBA) regarding its report, *Reform Of Australia's Payments System: Preliminary Conclusions of The 2007/08 Review*. This paper addresses the RBA's assessment of the effects of the RBA's regulation of Australia's payments system.

Visa believes the regulatory scheme applied by the RBA has not only failed to achieve its stated objectives, but has increased consumer harm and system risk while doing little to increase competition. The approach, in our opinion, has several critical flaws, namely:

- Regulated interchange rates do not reflect the value of payments derived by retailers.
- The RBA's analysis of payments costs was incomplete, leading to flawed conclusions about the nature of the market and the impact of intervention.
- Payment regulation has created serious consumer harm in the Australian market.
- Payment regulation has reduced the interest and incentives of financial institutions to invest capital and make other investments for the long-term health and security of the payments industry.
- There is no justification for a regulatory scheme impacting only two of the four major competitors in the market.

While Visa recognizes that the RBA is evaluating the impact of its regulatory interventions solely on the Australian payments marketplace, Visa's concerns extend beyond the harm that these reforms have caused in Australia. Like other general purpose systems, Visa operates a worldwide payments network, and the RBA's almost unique regulatory approach limits Visa's flexibility in improving the global efficiency and security of that system. Visa's worldwide system is less valuable to all participants – including all Australian stakeholders – because the RBA's regulation has limited the tools at Visa's disposal to encourage innovation and other improvements that make the Visa payment system safer and more reliable.

Visa participates in a vibrantly competitive payments market that includes cash, cheques, PIN-debit cards, signature-debit cards, bill payment services, and prepaid/gift cards, among other payment forms. The payments market is an ever-evolving space characterized by shifting market shares and efficiency-

enhancing innovations in products and processing. To make itself a viable competitive alternative at the point-of-sale, Visa must present an attractive value proposition both to issuers, so that they will choose to provide Visa cards to consumers and encourage cardholders to pay with them, and to acquirers, so that they can negotiate with and sign retailers to accept Visa cards. This is the essence of a two-sided market: balancing the push and pull of demand between the system's two groups of customers, thereby making the system appealing to both.

The RBA's regulation of interchange rates has distorted this competitive process, resulting in harm to both competition and to consumers.

### **Discussion**

The RBA's assessment concludes that regulation of the Australian payment system has met key objectives. In fact, Visa believes that the evidence shows that regulation has harmed competition, harmed consumers, and reduced investment and innovation.

#### **A. Unregulated Interchange Rates Would Reflect the Value that the Visa Payment System Delivered to Retailers.**

While the RBA recognizes that "each merchant that accepts credit cards obviously judges the net benefit of doing so to be positive (otherwise it would not accept credit cards)," it nevertheless asserts that if interchange were left unregulated the aggregate cost to retailers of credit card acceptance would exceed the aggregate benefits to retailers of credit card acceptance.<sup>2</sup> It claims that this is so because "part of the benefit that an individual merchant perceives from accepting cards is that of 'stealing' business from other merchants."<sup>3</sup>

Visa believes that this analysis is incorrect. Retailers compete for the business of their customers along many dimensions, including payment card acceptance, and Visa sees no basis for regulation of payment systems simply because some of the benefit of card acceptance comes in the form of winning customers from other retailers. Indeed, every service that a retailer offers likely reflects competition to win customers from other retailers. For example, when a retailer offers consumers exceptional services via well-trained sales assistants, it does so because the benefits – including winning customers from competing retailers – exceed the costs. One would not suggest that competition for sales assistants

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<sup>2</sup> See Reserve Bank of Australia Payments System Board, *Reform of Australia's Payments System: Preliminary Conclusions of the 2007/08 Review* 15 ("RBA 2007/08 Review"), available at [http://www.rba.gov.au/PaymentsSystem/Reforms/RevCardPaySys/Pdf/preliminary\\_conclusions\\_2007\\_2008\\_review.pdf](http://www.rba.gov.au/PaymentsSystem/Reforms/RevCardPaySys/Pdf/preliminary_conclusions_2007_2008_review.pdf).

<sup>3</sup> *Id.*

has driven sales clerk wages “too high” or that their wages should be capped by regulation simply because part of the retailer’s benefit from well-trained sales assistants comes from “stealing” customers from other retailers. Competition for customers via well-trained sales assistants is no more or less a “zero sum game” than is competition for customers through payment card acceptance. We submit that it therefore makes no more sense to limit interchange rates on this basis than it would to regulate the salaries of sales assistants.

Indeed, even retailers that face little or no competition (and thus are less concerned with losing sales to competitors) choose to accept payment cards where Visa’s interchange rates are unregulated, just as Australian firms with large market shares accepted Visa’s payment cards before interchange regulation. Fuel retailers on remote roads, hotels and resorts in distant locations, and local restaurants in small towns with very consistent clientele all accepted Visa for reasons other than concern over loss of sales to competitors. These firms accepted Visa payment cards because their value exceeded their cost even without regard to “stealing” customers from competing retailers.

The RBA’s analysis does not recognize the many benefits that Visa acceptance brings to retailers. By accepting Visa cards, retailers can receive reliable, convenient, secure, and safe payment from any of hundreds of millions of cardholders throughout the world. Retailers without the resources to operate their own financing business can also attract consumers who wish to buy on credit. This can dramatically expand the markets available to such retailers. Retailers also gain access to new customers who either prefer to pay with a Visa card or who are not carrying cash or other payment methods accepted by the retailer. Other retailer benefits that Visa has seen across the world where its cards are accepted include:

- retailers can accept payments in new channels, including Internet, mail order/telephone order, and mobile payments;
- increasing the likelihood that a customer will make a purchase because Visa cards may not only offer rewards (which serve to reduce the effective cost of purchasing), they also provide chargeback protection (which increases consumer willingness to deal with an unfamiliar retailer), and may provide services that increase the value of the item being purchased;<sup>4</sup>
- increasing the retailer’s average ticket size;<sup>5</sup>

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<sup>4</sup> See, e.g., Dollar Tree Stores, Inc., *Q4 2007 Earnings Call*, Feb. 27, 2008, available at <http://seekingalpha.com/article/66335-dollar-tree-stores-inc-q4-2007-earnings-call-transcript?page=-1> (citing benefits to Dollar Tree of accepting Visa credit cards, including better customer service and ticket lift and stating that benefits of accepting Visa credit are “[a]bsolutely” worth the cost); see *also id.* (noting that Dollar Tree customers use Visa credit cards as a substitute for cash and checks rather than debit cards).

<sup>5</sup> A behavioral study by economists at the Sloan School of Business at the Massachusetts Institute of Technology found that customer willingness to pay may increase by as much as 100%

- reducing checkout time;<sup>6</sup>
- reducing personnel expense by allowing cardholders to “pay at the pump” with an automated fuel dispenser or pay for retail purchases at a self-service checkout lane;<sup>7</sup>
- reducing personnel expense by eliminating time the retailer would otherwise spend preparing cash deposits;<sup>8</sup>
- avoiding the risk of bad debt because payment is guaranteed by Visa issuers even if the Visa cardholder defaults;<sup>9</sup> and
- avoiding potential financial losses from theft or loss of cash.

To the extent that the RBA’s concerns are based upon the fact that a Visa transaction has a higher retailer cost than an EFTPOS transaction, that higher cost also reflects the superior value of a Visa transaction. The shortcomings in the EFTPOS system that the *Review* recognizes<sup>10</sup> – as well as other shortcomings (including, most prominently, the lack of international functionality) – are all addressed by the Visa system, making the Visa system far more valuable to all stakeholders than EFTPOS.

Visa also believes that any formula or attempt to link interchange rates with financial institution processing costs would be misguided because processing costs represent only a small subset of the costs an issuer incurs in operating a card business. The other such costs include, but are not limited to: (i) cardholder benefits; (ii) 24 hour customer service; (iii) other operating expenses, including the cost of processing payment transactions, information technology, marketing, and support; (iv) cost of funds; and (v) fraud and credit losses. It is appropriate to consider each of these costs. Indeed, managing card issuance (and the underwriting risk) is so complex, and these costs are so significant, that Visa has

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when consumers use credit cards instead of cash. See Drazen Prelec & Duncan Simester, *Always Leave Home Without It: A Further Investigation of the Credit-Card Effect on Willingness to Pay*, 12 *Marketing Letters* 5, 5-6 (2001). A Visa study of more than 100,000 transactions at quick service restaurants found that the average ticket size on payment card transactions was 30% higher than when customers paid with cash. See <http://merchants.visa.com/solutions/qsr.jsp>.

<sup>6</sup> See David S. Evans & Richard Schmalensee, *Paying with Plastic: The Digital Revolution in Buying and Borrowing* 93 (2005) [hereinafter *Paying with Plastic*]; Daniel D. Garcia-Swartz et al., *The Move Toward a Cashless Society: Calculating the Costs and Benefits*, 5 *Rev. of Network Econ.* 199, 201-02 (2006).

<sup>7</sup> See generally IHL Group, *Consumers on Track to Spend \$1.3 Trillion a Year at Self-Service Machines by 2011* (July 17, 2007) (analyst estimating that consumers were on pace to spend \$525 billion at self-service checkout lanes in 2007), available at [http://www.ihlservices.com/ihl/press\\_detail.cfm?PressReleaseID=55&filename=press.cfm](http://www.ihlservices.com/ihl/press_detail.cfm?PressReleaseID=55&filename=press.cfm).

<sup>8</sup> See Garcia-Swartz et al., *supra* note 6, at 201-02.

<sup>9</sup> Visa issuers lost \$114 billion (approximately 3% of total charges) to uncollectible charges between 1992 and 2001. See *Paying with Plastic*, *supra* note 6, at 118.

<sup>10</sup> See *RBA 2007/08 Review* at 32.

seen a clear trend toward retailers discontinuing their own operation of card portfolios and transferring those operations and the risks and costs attendant to that business to financial institution card issuers. When all of the costs required to operate a card program are considered, interchange revenue would defray only a small fraction of issuer financial institution expense.

### **B. The RBA's Analysis of Payment Costs Contains Errors.**

The RBA's regulation of Australia's payment system is predicated on the idea that the cost to retailers of accepting Visa cards is "too high" in comparison to the costs of other payments. Because the RBA's analysis of payment costs is inappropriately narrow, and therefore erroneous, and because Visa's credit and debit cards actually have lower societal costs net of societal benefits than competing payment systems, regulation of Visa's interchange rates and related policies cannot be justified.

As a preliminary matter, the *Review* compares only the cost of credit, debit, and EFTPOS transactions, and ignores the costs of cash and cheque transactions. Even the cost analysis on which the RBA relies recognizes that cheque transactions are more expensive than credit and debit card transactions.<sup>11</sup> However, more fundamentally, the analysis looks only to costs, not to benefits. As the report on which the RBA relies concedes, "costs are only one aspect of an assessment of the efficiency of the payments system; increased use of the lowest-cost payment system does not necessarily promote efficiency of the overall system. The benefits offered by various payment systems are also important to consider, as is the speed and degree of innovation over time."<sup>12</sup>

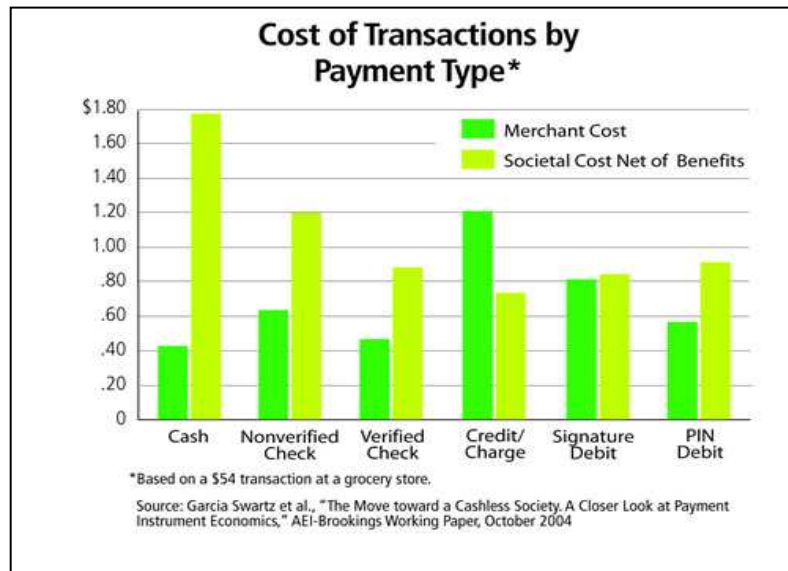
More comprehensive analyses that look to both costs and benefits have concluded that cash is no longer the cheapest instrument for the economy as a whole. While we are aware of no study based on Australian cost and benefit data, U.S. studies looking at societal costs net of benefits (i.e., the total of the costs and benefits faced by all participants in the payment system) show that credit card transactions actually have the lowest societal cost net of benefits for a typical supermarket transaction, closely followed by signature-debit transactions. PIN-debit transactions are more expensive, with nonverified cheque and cash payments the most expensive. The chart below, reproduced from a presentation

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<sup>11</sup> The RBA's report relies upon Schwarz et al, *Payment Costs in Australia* (2008), available at [http://www.rba.gov.au/PaymentsSystem/Publications/PaymentsInAustralia/PaymentsSystemReviewConference/2007/7\\_payment\\_costs.pdf](http://www.rba.gov.au/PaymentsSystem/Publications/PaymentsInAustralia/PaymentsSystemReviewConference/2007/7_payment_costs.pdf). See p. 117 (cheque cost is more than 6 times the cost of credit cards in point of sale environment); p. 119 (cheque cost is more than 4 times the cost of credit cards in non-point of sale environments).

<sup>12</sup> *Id.* at 128.

by a vice president of the Minneapolis Federal Reserve Bank in the United States, demonstrates these costs.<sup>13</sup>



Other reports reach similar conclusions.<sup>14</sup> Given that credit and debit cards have a lower societal cost net of benefits, the RBA's concern that credit card users are subsidized by other consumers is misplaced. Indeed, it is cash and cheque users that are being subsidized the most.

Most consumers have ready access to multiple credit cards of different brands, debit cards, personal checks, and cash and coins. This is not a case of one set of consumers subsidizing another; it is a case of individuals exercising an option to choose one payment method over another. From a consumer perspective, welfare is enhanced by the availability of these options. Retailers benefit as well when the consumer has the option to utilize a number of different methods of payment.

**C. Payments Regulation Has Not Been in the Public Interest.**

**1. Regulation of Interchange Rates Has Increased Costs to Australian Consumers.**

Financial institutions use interchange revenue to reduce cardholder costs and increase cardholder benefits. Given the highly competitive business of issuing credit cards, the benefits of increases in interchange revenue are passed along

<sup>13</sup> See James M. Lyon, First Vice President, Federal Reserve Bank of Minneapolis, *The Interchange Fee Debate: Issues and Economics* (June 2006), available at <http://www.minneapolisfed.org/pubs/region/06-06/interchange.cfm>.

<sup>14</sup> See, e.g., Garcia-Swartz et al., *supra* note 6.

to consumers, meaning that reduction of interchange revenue also comes at the expense primarily of consumers, not the financial institutions that issue Visa cards.

The *Review* recognizes that consumers have faced higher prices and reduced benefits for use of their Visa cards, noting that “[l]ower interchange fees in the MasterCard and Visa credit card systems have resulted in a reduction in the value of reward points and higher annual fees, increasing the effective price of credit card transactions facing many consumers.”<sup>15</sup> While the *Review* does not attempt to quantify the harm to consumers, the economic consulting firm CRA International has estimated that Australian cardholders have seen their costs increased and benefits reduced by as much as AU\$480 million per year.<sup>16</sup> Another analyst estimates that consumers have faced increases in card-related fees (annual fees, over-limit fees, cash advance fees) of about 40%.<sup>17</sup>

The RBA set out to increase the costs to credit card holders. When the RBA achieved its objective of increasing the costs to Visa and MasterCard cardholders, both American Express and Diners Club opportunistically took the opportunity to raise their annual fees on rewards-based charge cards at rates similar to the increases on rewards-based Visa and MasterCard cards.<sup>18</sup> It is thus not only Visa and MasterCard cardholders that have faced increased costs as a result of the Australia’s payments system regulation.

The RBA concedes that in the five years since the imposition of interchange regulation, “no concrete evidence has been presented to the Board regarding the pass-through of [retailers’ interchange] savings.”<sup>19</sup> Indeed, the vast majority of retailers that reported a reduction in the merchant discount applicable to their transactions did not reduce prices to consumers.<sup>20</sup> In short, the Australian experiment with interchange regulation has brought consumers higher prices with no demonstrable direct financial benefits.

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<sup>15</sup> See *RBA 2007/08 Review* at 17.

<sup>16</sup> Robert Stillman et al., *Regulatory Intervention in the Payment Card industry by the Reserve Bank of Australia: An Analysis of the Evidence* 13 (Apr. 28, 2008), available at [http://www.crai.com/ecp/assets/Regulatory\\_Intervention.pdf](http://www.crai.com/ecp/assets/Regulatory_Intervention.pdf).

<sup>17</sup> See Mercator Advisory Group, *Australian Interchange Regulation: Credit Card Issuer Effects* 17 (Dec. 2007).

<sup>18</sup> See Stillman et al., *supra* note 16, at 12.

<sup>19</sup> *RBA 2007/08 Review* at 23.

<sup>20</sup> David S. Evans, *Turbulent Times: Recent Developments in the Payment Card Business in the United States, European Community, and Japan*, Modern Bankers Bankcard Seminar, Beijing, China (June 29, 2006) (“No change in relevant prices at point of sale to consumer”); Howard Chang et al., *The Effect of Regulatory Intervention in Two-Sided Markets: An Assessment of Interchange-Fee Capping in Australia*, AEI-Brookings Joint Center for Regulatory Studies 18 (Dec. 2005).

## **2. Interchange Regulation Has Restricted the Ability of Visa to Compete with American Express, Diners Club, and Other Forms of Payment.**

Because interchange regulation has raised the costs of using a Visa card and decreased the benefits of its use, Visa has been disadvantaged in competing with American Express, Diners Club, and other forms of payment.

Visa must compete for the card issuance decisions of financial institutions in Australia, which also have the option of issuing American Express and Diners Club cards. When choosing between issuing an American Express card, a Diners Club card, or a Visa card, a financial institution will look to which card is more attractive to cardholders, because that is the card that will be used more often and thus generate greater returns to the issuer. Because regulation of Visa's interchange rates means that its cards cannot offer the same benefits as American Express or Diners Club cards and have a higher cost of usage than those cards, financial institutions in Australia have chosen to issue American Express and Diners Club cards.

Consumers typically carry multiple payment cards, and Visa must therefore also compete for cardholder usage. Interchange regulation has given American Express and Discover an unjustified regulatory advantage in this competition for the consumer.

The net effect of these two factors – an advantage in winning issuing decisions and an advantage in encouraging cardholder usage – has been a shift in payment share away from Visa's and MasterCard's regulated payment cards to the unregulated cards of American Express and Diners Club. By limiting Visa's ability to compete, payments regulation has artificially skewed the competitive dynamics of the Australian payments marketplace. In particular, by winning issuance decisions because it can offer issuers superior interchange, American Express is advantaged in the battle for cardholder usage in the future.

## **3. Interchange Regulation Has Reduced Innovation.**

Where interchange is unregulated, Visa has successfully used interchange to encourage innovation that makes the Visa payment system more efficient, safer, and more valuable to cardholders and retailers. As an example, by using interchange rates to create incentives for retailers to implement technologies that reduce fraud rates, Visa makes its network more attractive to issuers (who generally bear the cost of fraud), to retailers (who bear the cost of fraud in some circumstances), and to cardholders (for whom dealing with fraud is troubling and time-consuming, even if their direct financial exposure is limited).

The effects of these efforts can be seen in the results of Visa's initiatives to create incentives for electronic authorization of transactions in lieu of manually looking up card numbers in a book listing stolen or otherwise unauthorized cards.

Although implementing electronic authorization imposed costs on retailers (for card terminals and telecommunications), Visa nonetheless was able to create incentives for the rollout of these terminals by offering favorable interchange rates on electronically authorized transactions. The percentage of Visa transactions processed electronically rapidly increased after the introduction of favorable interchange rates for electronic transactions.

Transactions at retailers that have high chargeback rates (which reflect either high fraud rates or a large number of customers dissatisfied with the retailer's product or service performance) also incur higher interchange rates. When these higher interchange rates are reflected in higher merchant discounts, retailers have an incentive to improve their fraud performance and customer satisfaction. Visa has also offered preferred interchange rates on "high-quality" transactions that are submitted to cardholders quickly or require extra validation by the retailer. Cardholders benefit because faster clearing times reduce holds on their accounts and more quickly identify fraud.

Interchange regulation in Australia limits Visa's flexibility to create these incentives to implement new technologies and other improvements and thus risks making the Visa system less valuable to both retailers and consumers.

In the Asia Pacific region, consumers and retailers in Japan, Singapore, Hong Kong, Malaysia, Taiwan, Thailand, and Korea have embraced and enjoyed the convenience of contactless EMV chip-based Visa payWave since 2005. Contactless transactions have replaced cash for small payments efficiently and conveniently for both cardholders and retailers, while generally speeding up the payment process compared with cash. In addition, this product has almost eliminated counterfeit fraud in such transactions. Visa payWave is an ideal product for consumers in Australia as well, but neither it nor MasterCard's competing product has yet been introduced into Australia in any substantial manner due in good measure to the reduced economics forced upon card issuers by the interchange rate regime. In effect, innovation has been stifled in Australia. CRA International interviewed Australian issuers and reported:

Each of the banks in Australia we interviewed told us that the interventions have made it more difficult to develop a "business case" for investments related to four-party cards. Banks cited the introduction of EMV/Chip and PIN and the provision of prepaid cards to commercial clients as examples of projects that have been adversely affected by the RBA's interventions.<sup>21</sup>

While Visa payWave provides one clear example, other technologies and products are also lagging comparatively in Australia against expectations given its state of economic development. For example, uncertainty regarding the

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<sup>21</sup> Stillman et al., *supra* note 16, at 47.

regulation that will apply to prepaid cards has limited investment in that important new product area.

#### **4. Consumers Have Been Harmed by Elimination of Visa's No-Surcharge Rule.**

Australia's payment system regulatory interventions required Visa to eliminate the ban under its rules on retailer surcharging of Visa transactions. This change has harmed consumers without any offsetting competitive benefits.

Without a prohibition on surcharging, consumers are subject to a "bait and switch" at the point-of-sale. They shop at a store after viewing an advertisement or proceed to the checkout counter after making a purchase decision based on a price on a shelf tag only to be told that the actual price they will pay is higher. Consumers without a payment alternative also are subject to gouging by retailers. Visa has a strong interest in protecting its cardholders from being subjected to these kinds of tactics.

Our research and global experience suggest that where retailers do surcharge, it is most common among those retailers that are likely to have market power or otherwise have the ability to "hold up" unsuspecting consumers.<sup>22</sup> For example, as the *Review* recognizes, in Australia surcharging is far more common among the very largest retailers.<sup>23</sup>

The surcharge imposed by Australian retailers often exceeds the retailer's cost of accepting cards. According to the RBA the average surcharge for Visa and MasterCard transactions is about 1%, which is fifteen basis points higher than the average merchant discount paid by retailers.<sup>24</sup> In other words, retailers earn an average of a fifteen basis point *profit* on accepting Visa and MasterCard transactions as a result of surcharging (not factoring the negative impacts on shift in consumer behaviors, including downstream costs). Retailers that impose the same surcharge on Visa debit transactions receive an even larger profit spread. Data from shortly after surcharging was permitted in 2004 indicates that retailers may have been marking up their merchant discounts as much as eighty-one basis points.<sup>25</sup> This is clear evidence of retailer opportunism at the expense of

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<sup>22</sup> See Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Economics, Finance and Public Administration, *Review of the Reserve Bank of Australia and Payments System Board Annual Reports 2005*, at 63 (June 2006) ("Surcharging – and in particular excessive surcharging – occurs in markets not subject to high levels of competition."), *available at* <http://wopared.aph.gov.au/house/committee/efpa/rba2005/report/fullreport.pdf>.

<sup>23</sup> See Mercator Advisory Group, *supra* note 17, at 16.

<sup>24</sup> See Stillman et al., *supra* note 16, at 28.

<sup>25</sup> *Id.*

Australian consumers, with no offsetting benefit to competition or consumers.<sup>26</sup> And although the RBA suggests that the ability to impose disproportionate surcharges might give retailers leverage to negotiate a lower merchant service fee, in fact this assertion is entirely hypothetical, and Visa is aware of no retailer that has actually done this. Such hypothetical benefits plainly do not outweigh the concrete consumer harms from surcharging.

Where surcharging is imposed, it appears in most cases to have nothing to do with steering consumers to cash or payment methods with lower acceptance costs. For example, Qantas was the first major retailer to implement a surcharge after imposition of the payment regulatory interventions. When Qantas introduced the surcharge (a uniform surcharge on all credit and debit cards, regardless of the Qantas cost of acceptance), it did *not* cut prices for those few customers that paid for their airline tickets by cash or cheque.<sup>27</sup> In other words, Qantas used the right to surcharge as an excuse to raise prices on almost all tickets while trying to deflect “responsibility” for the price increase to credit card companies. No procompetitive purpose is served by allowing this type of surcharging, which is nothing more than a wealth transfer from consumers to retailers. (After negative customer reaction, Qantas introduced an unworkable cash payment option on its website and switched from a percentage surcharge to a flat dollar-based surcharge.<sup>28</sup>)

Permitting retailers to surcharge Visa transactions also interferes with Visa's ability to use interchange to create incentives for retailer behavior that benefits consumers or otherwise improves the operation, security, and effectiveness of the Visa system as described above. For example, because surcharging is permitted, if Visa raises interchange rates on transactions at retailers that refuse to implement technology designed to reduce fraud, retailers can simply pass those costs along to consumers, thus limiting the impact of Visa's efforts to encourage adoption of technology that protects consumers and makes the Visa system safer and more efficient. While passing increased costs along to cardholders might reduce the retailer's sales, that effect is mitigated by the fact that cardholders typically will not see the surcharge until they have committed to making a purchase, particularly at retailers with few repeat customers. Finally, Visa's efforts to drive additional cardholder usage by lowering interchange can be muted by retailers, whose focus on realising additional profits through surcharging may lead them to ignore any interchange reductions and preserve surcharges at the same level.

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<sup>26</sup> See Howard Chang et al., *supra* note 20, at 18-19.

<sup>27</sup> See *Qantas to Introduce Credit Card Surcharge*, The World Today, Feb. 10, 2003, available at <http://www.abc.net.au/worldtoday/stories/s780783.htm>.

<sup>28</sup> See Qantas, *Qantas Announces Online Cash, Introduces Flat Fee for Credit Card Payments*, Apr. 7, 2006, available at <http://www.qantas.com.au/regions/dyn/au/publicaffairs/details?ArticleID=2006/apr06/Q3417>; see also [http://qantas.custhelp.com/cgi-bin/qantas.cfg/php/enduser/std\\_adp.php?p\\_faqid=526](http://qantas.custhelp.com/cgi-bin/qantas.cfg/php/enduser/std_adp.php?p_faqid=526).

While elimination of Visa's no-surcharge rule has plainly harmed consumers in Australia, it has done nothing to alter the competitive dynamics of the Australian payments market. As discussed above, American Express and Diners Club have *gained* share at the expense of the far less expensive Visa and MasterCard systems. Nor has the elimination of Visa's and MasterCard's no-surcharge rules caused a shift to other ostensibly less-expensive payment forms, such as the EFTPOS system.

In sum, the evidence shows that the elimination of Visa's no-surcharge rule has led to consumer harm without leading to *any* increase in interbrand payment competition.

### **5. The RBA's Conclusion That Regulation Has Increased Efficiency is Unsupported.**

Given the clear evidence of harm to consumers, competition, and innovation as a result of payment system regulation, Visa does not believe that the RBA's conclusion that regulation has increased efficiency is justified.

On the issue of consumer harm, the *Review* notes only that while it has received various submissions arguing that its regulations have harmed consumers, it "does not accept this argument."<sup>29</sup> Visa believes, however, that the marketplace evidence does in fact establish demonstrable consumer harm with no off-setting competitive benefits.

Rather than base its claim that the payment regulations have increased consumer welfare, the RBA's conclusion seems to rest solely on its belief that: (a) its regulations have induced a significant number of consumers to use EFTPOS debit cards instead of credit cards; and (b) this shift from credit cards to EFTPOS has improved allocative efficiency because EFTPOS transactions have lower societal costs than credit card transactions. Specifically, the RBA asserts that payment card regulation has shifted 5% of total payment transactions from credit cards to EFTPOS debit cards, and that this substitution has reduced societal costs by about AU\$100 - AU\$150 million per year.<sup>30</sup>

Visa believes this conclusion is incorrect. Indeed, as demonstrated above, the share of the EFTPOS system has fallen substantially from its pre-regulation heights, and there is no evidence that absent reform its share would be even lower. Nor, as discussed above, is there any good evidence that debit systems deliver lower societal costs net of benefits than the use of credit card systems. Finally, even accepting the RBA's conclusion that the shift to EFTPOS has reduced societal costs by AU\$100-\$150 million per year, this purported benefit

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<sup>29</sup> *RBA 2007/2008 Review*, at 19.

<sup>30</sup> *Id.*

offsets *less than one third* of the estimated AU\$480 million increase in additional fees that cardholders are paying as a result of the regulation – a figure that does not even include the implicit costs to cardholders of reductions in cardholder benefits, let alone the harder-to-calculate costs of reduced innovation.

**D. There is no Justification for Regulation of Visa’s Interchange Rates While American Express and Diners Club Remain Unregulated.**

The *Review* continues to justify the differential treatment of Visa and MasterCard versus American Express and Diners Club on what it claims to be “differences in the structure of the [four party] schemes.”<sup>31</sup>

These differences no longer exist, and thus provide no basis for continued disparate treatment. With third party issuing, American Express and Diners Club now operate four-party schemes. Moreover, last year Visa undertook a global restructuring, and earlier this year Visa became a publicly-held company, with its financial institution members owning only a minority stake in the new Visa Inc. Interchange-setting in Australia and elsewhere is now in the hands of Visa’s management, and the financial institutions that issue Visa cards can no longer even be alleged to play any role in setting interchange rates. Rather, Visa’s management sets interchange rates to optimize total participation in its network, provide data quality and other processing incentives to strengthen network performance, and ultimately maximize over the near and long term the number of transactions processed securely through the Visa network. Because interchange is paid by acquirers to issuers and is not Visa revenue, Visa’s primary interest in interchange fees is setting them at a level that balances demand on both sides of the network and maximizes system output.

Visa is now a unitary enterprise, so there is no longer any basis for treating it differently than unitary enterprises like American Express and Diners Club. There is no difference between an issuer’s ability to receive “interchange” when issuing an American Express or Diners Club product, as compared to a Visa or MasterCard product, and yet these schemes remain unencumbered by the RBA’s actions. Indeed, the RBA has recommended “the introduction of a scheme to replace the existing bilateral contracts,” used by EFTPOS, “with the scheme able to make decisions about multilateral interchange fees.”<sup>32</sup> Because – as the RBA has recognized with respect to EFTPOS – it is *procompetitive* to establish default multilateral interchange fees, regulation of Visa’s default interchange fees should be abolished.

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<sup>31</sup> *RBA 2007/2008 Review*, at 20.

<sup>32</sup> *RBA 2007/2008 Review*, at 32.

## **Conclusion**

Imposing government price controls and related regulation on an efficient and highly competitive payments market was unjustified, and has harmed competition, consumers, and innovation. Without full control over interchange rates, Visa has had less ability to balance the two sides of its payments system and to create incentives for the implementation of technologies and practices that make Visa's payment network more useful and more valuable by reducing fraud, speeding transactions, and otherwise improving cardholder and retailer satisfaction.

In the end, Australia's payment regulation has led to higher costs, reduced output, and a payments network that is less attractive to issuers, to cardholders, and ultimately to the very retailers that sought price controls.

**Submission by Visa Inc. Regarding the Payment System Board of the Reserve Bank of Australia's Discussion of Major Policy Issues and Options Regarding Interchange Fees in the *Preliminary Conclusions of The 2007/08 Review***

Visa Inc. ("Visa") welcomes this opportunity to provide its comments to the Payments System Board of the Reserve Bank of Australia (RBA) regarding its report, *Reform Of Australia's Payments System: Preliminary Conclusions of The 2007/08 Review*. In the accompanying paper Visa addresses the effects of interchange regulation and abolition of Visa's no-surcharge rule. In this paper Visa addresses the policy issues identified in the review and identifies a number of questions regarding ambiguities in the *Review's* discussion of options for future regulatory changes.

**I. The RBA's Conclusions Regarding Major Policy Issues.**

The RBA has set forth a number of conclusions and recommendations regarding major policy issues surrounding the future operation of payment schemes in Australia. As discussed, Visa believes continued regulation is inappropriate given the failures of regulation to date. If the RBA continues with regulation, however, Visa believes the RBA's report leaves a number of essential questions and concerns about the nature of that regulation unanswered.

**A. The Honour All Cards Standard.**

Visa has consistently opposed any dismantling of its Honour All Cards rule. The rule is important to the VISA brand and crucial to cardholders – especially those consumers that choose not to carry both credit and debit cards – to know that their particular type of card will be accepted by all retailers displaying the VISA acceptance mark.

While the RBA argues that the existing bifurcation of the Honour All Cards rule (allowing a retailer to accept Visa debit cards or Visa credit cards) gives retailers more bargaining power when negotiating merchant service fees with acquirers, Visa's discussions with its acquiring members have revealed little or no anecdotal evidence of any such bargaining.

Expanding the present credit/debit bifurcation to also allow retailers to selectively refuse prepaid cards would result in greater harm to both consumers and to the integrity of Visa's brand. While consumers may be able to distinguish between credit and debit cards, any further fragmentation of the Visa brand is likely to result in consumer confusion, delays at the point of sale, and cardholder dissatisfaction with both the retailer and with Visa that harms retailers and the integrity and value of the Visa brand.

There are wider issues, in any event, in relation to acceptance of prepaid cards, an increasingly popular though relatively new innovation in Australia. The Federal Government, for example is seeking open-loop prepaid solutions to remedy problems associated with the control and dissemination of welfare payments. Those solutions – with their potential for significant cost savings versus distributing benefits by check – would be undermined by any regulation that decreased acceptance of prepaid cards.

Moreover, retailers are currently allowed to vary their acceptance policies at their whim, and even to inform cardholders that their card will not be accepted only after the cardholder has brought her purchase to the cashier point (or even after a cardholder has eaten her meal). The marketing and branding challenges for issuers are thus untenable.

Finally, if the RBA persists in further dismantling Visa's Honour All Cards policies, there is no basis for differential treatment of MasterCard or American Express.

## **B. Access Regimes.**

### **1. Visa Credit and Debit.**

Visa disagrees that the RBA's Visa Credit and Debit Access Regimes have delivered competitive benefits. The examples cited by the RBA are not, with one possible exception, a result of these regimes. Indeed, their terms have placed hurdles in front of participation in the Visa network in Australia that do not generally exist elsewhere in the Asia Pacific region.

In Visa's opinion, therefore, the access regimes should be set aside. If the RBA elects not to follow this path, the debit access regime certainly should not be amended so as to become *more* restrictive of potential competition.

### **2. EFTPOS.**

Subject to satisfactory resolution of any issues arising under the *Trade Practices Act 1974*, Visa would welcome discussing the possible use of VisaNet as the processing network for EFTPOS transactions. VisaNet does not suffer from the bilateral technical links identified as a limiting factor by the RBA and does not require separate connections to all participants. Indeed, it is already connected to most of them and therefore satisfies the most desirable element identified by the RBA.

## **C. Bypass Rules.**

The RBA concludes that "there would seem to be some benefit in the schemes making a clear statement on the criteria that alternative switches need to meet" so that such alternative switches could consider providing services to smaller

retailers similar to the switching services provided to two large retailers by their own switches.

Visa is more than a brand; it is the VisaNet processing system that delivers the benefits of a Visa transaction to cardholders and to retailers. Moving Visa transactions off VisaNet would not serve the interests of any participant in the Visa system.

#### **D. Retailer Choice of Scheme.**

Visa believes that the RBA has properly rejected the idea of allowing retailers to determine the network through which transactions will be processed. While the RBA based its view on the technological impediments to implementation of such a regulation, Visa believes that the most important reason for rejecting this idea is that it would seriously harm inter-system competition, and undermine consumer choice. Where consumers have no ability to control which system is used to process their transactions and which system's accompanying benefits to receive, payment systems would lose all incentive to differentiate their products for there would be no way for cardholders to ensure that they would actually receive the benefits of that differentiation.

#### **E. Transparency of Fees.**

##### **1. Transparency of Visa's Service Fees.**

Information regarding the service fees that Visa charges to the financial institutions that issue Visa cards and acquire Visa transactions is highly competitively sensitive. Disclosure of such information is obviously inappropriate, not least because it will become available to competitors. Obviously, Visa would see MasterCard's fees and vice versa; American Express would be in the particularly advantageous position of seeing both sets of fees without having to disclose any information about itself.

There are, in addition, difficulties in calculating meaningful averages of service fees. Of course, some artificial way of calculating them can be devised, but the usefulness of such information is highly questionable. Methods of calculation would need to be specified in considerable detail by the RBA, both to improve the chances of producing data that is comparative across the two regulated schemes and to achieve an outcome that does not stifle change in fee structures or lead to accusations that changing fee structures over time distort the aims of transparency.

The possibility of severe commercial detriment, weighed against any possible marginal benefit, renders the RBA proposals regarding service fee disclosure inappropriate.

## **2. Transparency of Interchange Rates.**

Visa already provides complete information regarding the interchange rates that are paid by Australian acquirers to Australian issuers for domestic Visa credit card and Visa debit card transactions on its website.<sup>33</sup> Providing weighted-average interchange is not necessary for transparency -- retailers readily understand the interchange rates that apply to their transactions -- but would disclose highly competitively sensitive information to Visa's competitors. Visa is happy to continue to discuss the competitive concerns it has with the RBA, as well as any perceived benefit the RBA believes would be achieved by this sort of disclosure.

### **II. The RBA's "Options" Regarding Interchange Fees.**

#### **A. Alignment of Scheme Debit Interchange Fees with EFTPOS Interchange Fees.**

Visa believes that the RBA's proposed alignment of scheme debit interchange fees and EFTPOS interchange fees is illogical given that scheme debit offers card-not-present functionality not available from EFTPOS. While we believe that all regulation of debit interchange fees disserves consumers and harms competition, if there is to be any alignment of fees across debit cards it should be limited to rates that are applied to card present transactions.

There are valid justifications for higher interchange fees applicable to card-not-present transactions within Visa Debit. As such, looking to weighted average rates under the existing Visa Debit Standards while ignoring that EFTPOS has no card-not-present volume to apply in calculating its weighted average would lead to undesirable consequences. Indeed, it might result in the setting of Visa Debit electronic transaction interchange fees at a rate lower than EFTPOS (lower than \$0.05) even though the RBA accepts that there is valid cause for an interchange fee of \$0.05 for such transactions.

#### **B. Clarification of the RBA's "Options."**

Visa notes that the following appear to be the RBA's conclusions regarding interchange regulation, but would appreciate either the RBA's confirmation that its understanding of these options is correct.

The RBA *Review* identifies three options that we discuss below.

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<sup>33</sup> See <http://www.visa-asia.com/ap/au/mediacenter/factsheets/interchange.shtml>.

## 1. Option 1.

The RBA refers to Option 1 as the “*status quo*,” though a number of technical amendments “would also be considered” with the aim of improving the function of the existing regulations. The *Review* does not, however, clearly describe the RBA’s contemplated process for deciding whether or not technical amendments would be made if Option 1 is adopted or its timeline for reaching a decision.

### a) Cost Studies – Adjusted Benchmarks.

Were the *status quo* to be maintained (without amendment), the next cost study would be required to be completed in mid 2009 so that the credit and debit interchange benchmarks would be reset with effect from 1 November 2009. One of the proposed technical amendments would set aside the need for regular cost studies, leaving the existing benchmarks in place on an ongoing basis if Option 1 is implemented. The RBA notes that if at some future point it decided to review the level of average interchange rates, a new cost study could be undertaken or the costs included in the standard could be amended.

While Visa generally considers the removal of the expense burden and managerial disruption of cost studies every three years to be a positive step, the caveats the RBA raises of possible re-introduction of cost studies (apparently on an *ad hoc* basis) or of changes in included costs raise countervailing concerns about uncertainty and process. It is also not clear whether the RBA intends to refer back to the 2006 cost study (perhaps with adjustments to the cost categories considered) rather than complete an up to date cost study. Nor is it clear whether the RBA intends to implement these changes only after the consultation and other requirements of the *Payments System Regulation Act 1998* had been fulfilled in the future specifically in relation to such proposal, or whether some other process would be adopted.

### b) Compliance Arrangements.

Visa is pleased to see that the RBA has acknowledged, albeit only in relation to premium cards and commercial cards, that Visa as a four-party card scheme competes against the three-party card schemes. As Visa has long discussed with the RBA – and as in the past the RBA has repeatedly rejected – Visa competes fiercely with American Express and its smaller rival, Diners Club, in Australia and in many other countries.

The RBA seeks feedback on the costs and benefits of requiring that weighted-average interchange fees be below the relevant benchmark once a year, rather than every three years (or when interchange is varied). Visa does not see the relevance of any such requirement.

The RBA also seeks feedback on the question of whether there are other schedules or options that would address concerns over the effect of the

compliance arrangement on scheme competition and average interchange fees. Here, the concern seems to be that Visa and MasterCard are using every tool available to them within the RBA's regulatory construct to compete intensely with each other for business. Visa is not, therefore, in a position to suggest changes in this regard.

Again, Visa requests clarification of the process and timeline the RBA would adopt if it were to make changes to the compliance arrangements.

### **c) Cash Out for EFTPOS.**

Visa has announced to its clients the introduction of cash-out as an available function in the Visa Debit system. This follows the industry implementation of PIN@POS in June 2008. The RBA's consideration of altering its rules raises uncertainty regarding the regulatory scheme that will be applied to this new product offering. While the present Visa Debit Standard applies to POS transactions and any related transaction activity, Visa believes that alignment of the applicable rules is necessary if the RBA specifies how EFTPOS cash-out is to be treated or excluded from an interchange management perspective.

### **2. Option 2.**

The RBA says that Option 2 would reduce interchange fees below existing levels, while eliminating differences between scheme debit and EFTPOS interchange rates and perhaps setting a benchmark of around five cents. The credit card interchange benchmark would be reduced to around 0.30%. The RBA would "also consider" making the technical changes discussed above.

Visa strongly believes that further reduction of interchange fees would harm consumers, competition, and innovation in the same way as the current interchange fee benchmark, but to a greater extent.

Regardless, as a procedural matter, Visa wishes to understand the decision-making process and time line if Option 2 were adopted, including the way in which the RBA envisages arriving at the proposed reduced interchange rates.

### **3. Option 3.**

The RBA says that it has ruled out the option of stepping back unconditionally from interchange regulation, but raises various possibilities – as a package – in Option 3. As previously stated, Visa interchange regulation should be discontinued as a positive step for consumers, retailers, and the payments industry in general. However, it is not at all clear that Option 3, even with the removal of explicit interchange rate regulations, would be a move toward such helpful deregulation. The threat of more severe rate regulation, in part conditioned on factors outside the control of market participants, and further

Honour all Cards restrictions would all detract from benefits of eliminating explicit interchange rate regulations. The net result is far from certain and Visa therefore has many questions regarding the detail of the RBA's thinking in relation to Option 3 before offering final comments.

The *Review* states that if its regulation of interchange were removed "close oversight" would in any event still be required. It is not clear, however, what is meant by "close oversight," or how would it be conducted by the RBA within the parameters of the *Payment Systems Regulation Act 1998* (or otherwise) and in the context of two publicly listed companies with global operations (i.e. Visa and MasterCard).

The RBA notes that it is contemplating merely the "possibility" of removing the interchange standard and that, if it were to do so and average credit card interchange fees were to "increase materially," it would consider re-imposition of interchange regulation. Any such re-imposition would probably involve a substantial reduction from existing levels of interchange and include the technical changes discussed under Option 1 (above).

Option 3 would involve Visa "voluntarily" agreeing to a number of changes (discussed below) relating to rules and other issues of fundamental concern to it. Any such agreement could only be reached within the very highest levels of Visa's global management. Consequently, Visa needs clarity as to the "ground rules" envisaged by the RBA in connection with this option.

- It is not clear what increase in interchange fees would constitute a "material increase" or what process the RBA would use in order to determine whether an increase were material. For example, the *Review* does not state whether materiality would be judged in terms of the absolute scale of interchange rate changes or the rate of interchange movement over time.
- The *Review* discusses credit card interchange fees in this context, but not debit card interchange fees. It is not clear whether this omission was intentional.
- If only MasterCard's interchange rates increased "materially," would the RBA envisage re-imposing its interchange standard on both schemes or only on MasterCard? In any such re-imposition, would the RBA follow the consultation and other processes required by the *Payment Systems Regulation Act 1998* or does the RBA see itself as having the power to proceed immediately if it identified a material increase?

The RBA has also said that it would not remove the interchange standard unless Visa and MasterCard voluntarily changed their respective Honour All Cards rules so that, in transactions at point of sale (POS) in Australia, retailers could make independent acceptance decisions for each type of card or transaction for which

a separate interchange fee applies. Visa also seeks clarification from the RBA regarding a number of issues relating to this point.

- As in the case of only MasterCard increasing interchange “materially,” if Visa voluntarily adjusted its Honour All Cards rule but MasterCard did not, would the RBA move to regulate both schemes or only MasterCard? In either case, is Visa correct to assume that the RBA would follow the process required by the *Payment Systems Regulation Act 1998* in amending the existing Honour all Cards Standard (or in introducing a new/replacement Honour all Cards Standard)?
- Some cards issued by Visa issuers specify their card type on the face of the card, while others do not. Is the RBA considering mandating all cards being re-issued with product identifiers? If so, would such a mandate extend only to cards issued in Australia or would the RBA seek to impose the same requirements on issuers of cards outside Australia?
- Must foreign-issued cards be included in the dismantling of the Honour All Cards rule? If so, what rights would the RBA require retailers receive with respect to cards issued outside Australia?
- American Express and Diners Club issue commercial cards, as well as “platinum” and other premium cards. These cards compete directly with Visa’s commercial and premium products. Visa understands that American Express and Diners Club maintain their own Honour All Cards rules that are enforced against retailers. If Visa’s Honour All Cards rule is further dismantled by the RBA, then in order to maintain a level playing field, any such American Express and/or Diners Club rule should be similarly dismantled.