Australian Government

Australian Small Business and Family Enterprise Ombudsman

24 December 2020

Secretariat
Payment Systems Review
The Treasury
Langton Cres
Parkes ACT 2600

By email: *PaymentsReview@treasury.gov.au*

Dear Sir/Madam

Payments System Review

As Australian businesses adopt electronic payments over cash, it is important to ensure all users are sufficiently protected in our electronic payments systems. To address some of the shortfalls in our current system, we offer the following comments:

1. **The ePayments Code should be mandatory and extended to include merchants.** The ePayments Code (the Code) plays an important role in the regulation of electronic payments. However, financial institutions that are not signatories do not have to comply with the Code. The Code should be made mandatory to ensure that it is effective.

   The Code should also be extended to acknowledge the role of merchants in electronic payments. Clause 11 of the Code provides exemptions for when the cardholder or the subscriber are liable for loss, however there are no protections for merchants. In the case of fraud, neither the subscriber nor cardholder are liable, shifting the liability unfairly to the merchant.

2. **Banks should have more robust authentication for chargeback-susceptible payment methods.** Some payment methods offered by financial institutions have an increased risk of attracting chargebacks due to the lack of authentication (i.e. card not present transactions). When chargebacks are raised on these payment methods, the merchant is liable for loss as outlined in the merchant agreement.

   My Office has been advised of a case where a small business was told they had no recourse to dispute a chargeback as a result of a phone or email advice to charge, where the cardholder cited fraud as the chargeback reason. Banks should be required to have stronger authentication for payment methods that are susceptible to chargebacks.

3. **Mandated protections for all legal businesses against denial of banking services ('debanking').** A transactional bank account and the ability to receive and make payments is an essential banking service and devastates a small business's ability to operate when denied or revoked. We have seen various cases where legal and regulated businesses have been debanked. Financial institutions often debank small business due to a reduction in 'risk appetite' and when challenged make vague reference to compliance with AML/CTF legislation as a primary reason for account closure. The very act of debanking contributes to the risk of businesses operating in the informal economy.[1]

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[1] "Understanding Bank De-Risking and its Effects on Financial Inclusion", Global Center on Cooperative Security, Nov 2015

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If a financial institution deems a small business to be in breach of AML/CTF legislation or determines that the business is involved in criminal activities, the financial institution should refer the matter to a relevant law enforcement agency rather than making an arbitrary decision to debank the small business where it has no ability to dispute.

4. **Regulatory architecture around Fintech lending to small business.** Fintech companies that lend only to business are unregulated, are not required to offer dispute resolution, and are not prevented from using predatory lending practices. Lending to small business should be regulated to include a dispute framework and provide sufficient protections for small business from predatory practices.

5. **Buy now pay later (BNPL) to remove unfair 'no surcharge' rules.** Agreements with BNPL providers contain unfair rules that prevent small businesses from passing transaction fees on to consumers. Small businesses who use BNPL providers are required to pay for the fee out of their margins often by raising the price of all of their goods or services. As BNPL payment providers grow in market share, it is important for small business to be protected from unfair rules.

6. **Least cost routing (LCR) should be available for all small business on all payment methods.** Whilst most of the large banking institutions offer least cost routing (LCR) for card payments, it is still not widely adopted as standard. For online or 'device-present' transactions, there is no clear direction as to how LCR will be implemented. LCR for card payments is being considered by the RBA's review of Retail Payments Regulation. However, for all payment methods, small business should be able to choose the routing path that is best suited for them and financial institutions should offer all payment paths that they have access to.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Paul Buckingham on 02 6243 7821 or at Paul.Buckingham@asbfeo.gov.au.

Yours sincerely

Kate Carnell

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Australian Small Business and Family Enterprise Ombudsman