



Confidential communication

24 May 2019

To Jonathan Roberts
Transport Division
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000
By email: transport@esc.vic.gov.au

Dear Jonathan

Essential Services Commission Taxi Non-Cash Payment Surcharge Review (the Review)

Thank you for your email of 24 April 2019.

A2B is pleased to provide its response to question 10 in this letter.

A2B also understands from the information sought by the Essential Services Commission (**Commission**) (and in particular, question 10) that the Commission is considering an option that would involve making a price determination comprising differentiated maximum service fees for the various non-cash payment instruments and methods (**Differentiated Service Fees**), instead of a maximum service fee that would apply to all non-cash payment instruments and methods equally (**Single Service Fee**) as is the current practice in the Taxi industry.

A2B would like to take the opportunity to also make a submission in support of a Single Service Fee in this letter.

1. Single Service Fee

The ESC's statutory objectives

If the Commission were to adopt Differentiated Service Fees, this would unfairly and unnecessarily disadvantage Taxi Drivers and cause confusion and inefficiencies for Passengers for the reasons we discuss below.

Ultimately, we believe it is likely to result in the Commission making a determination contrary to subsection 33(4) of the *Essential Services Commission Act 2001* (Vic) (**ESC Act**) because the expected costs of the determination would not exceed the expected benefits, and the determination would not sufficiently take into account any trade-offs between cost and service standards. In short, the determination would result in inefficient discrimination against Victoria's Taxi industry and it would not, therefore, promote the long term interests of Victorian consumers.

A2B submits that a Single Service Fee best accords with the Commission's mandatory statutory objectives, including those in section 33 of the ESC Act and the Commission's foremost objective, to protect the long term interest of Victorian consumers with regard to the price, quality and reliability of essential services¹ as well as each of the ESC's other statutory objectives, including the financial viability of the industry, efficiency and incentives for long-term investments in the industry, the degree and scope for competition as well as the benefits and costs of regulation for low income and vulnerable consumers.

¹ *Essential Services Commission Act 2001* (Vic), s 8

Differentiated Service Fees would lead to unfair and unnecessary disadvantages and inefficiencies

As the Commission recognises in its Consultation Paper, a Single Service Fee is easy to understand and to implement.²

A2B also agrees with the Commission's observation that having a large number of different maximums would make it difficult for Passengers to understand prices and limit Passengers' awareness of price differences.³

Having a Single Service Fee that is simple and easy for Passengers and Drivers to understand is essential to a healthy, efficient and competitive Taxi industry in Victoria.

Our key concerns with Differentiated Service Fees are rooted in safety and kerbside efficiency. Taxi payments are typically processed at the kerbside. If Differentiated Service Fees were implemented, Taxi Drivers would be required to explain to a Passenger at the kerbside prior to the Passenger leaving the Taxi why the service fee payable is different to the one used for a different instrument or the one paid earlier that day.

The vast majority of Taxi Drivers come from non-English speaking backgrounds. Approximately 90% of Taxi Drivers in Melbourne were born outside of Australia. For these Drivers, explaining the intricacies of Differentiated Service Fees could be particularly challenging. At present, when Drivers are currently asked by Passengers to explain service fees, a simple explanation often suffices as both Passengers and Drivers are accustomed to a Single Service Fee that is applicable to all payment methods. The complexity of Differentiated Service Fees would be inefficient as it would substantially add to the time Drivers and Passengers will need to spend at the kerbside in order for the Driver to communicate which maximum service fee will apply and why.

Aside from the substantial inefficiency this would cause for what is only an everyday transaction, the need to make the extended explanation is particularly problematic in certain circumstances, for example where Passengers are attempting to exit the Taxi in heavy traffic or the Passenger is inebriated, which could compromise Taxi Driver safety. A Single Service Fee avoids these unsafe and inefficient scenarios that would be commonplace if Differentiated Service Fees were implemented.

Dissatisfaction is likely to arise because the Passenger has already taken the Taxi trip and may feel that they are being forced to pay a fee they did not agree to. This is because it is impractical for Taxi Drivers to explain the costs associated with the use of different payment methods and terminals prior to a journey commencing and it would be exceedingly time consuming to require a Passenger to consult a list of Differentiated Service Fees. If a passenger is unhappy with the Driver's explanation or the Differentiated Service Fees presented to them, the Passenger has limited options, all of which lead to frustration, angst and dissatisfaction. In most cases, the Passenger is in a rush to get to their destination. Having to get out of the Taxi to find an alternate transport method adds additional time to their journey and in cases where time is important, this major inconvenience adds significant stress and dissatisfaction. This would invariably lead to the Passenger choosing rideshare over Taxis for their subsequent journeys. In addition to unfairly favouring rideshare, the income of Taxi Drivers will also be reduced as they will be increasingly turned away due to Passenger confusion and dissatisfaction.

For these reasons, A2B envisages that Differentiated Service Fees would result in a substantial number of complaints from Passengers, especially vulnerable and disadvantaged Passengers, as well as from Taxi Drivers. This is likely to unfairly and unnecessarily disadvantage the Victorian Taxi industry as well as diminish the value proposition and competitiveness of Taxis relative to

² Consultation Paper, page 14

³ Consultation Paper, page 14

other competitors, including ridesharing providers. This would also substantially compromise the financial viability of the taxi industry.

A Single Service Fee is more efficient and more likely to promote competition

A2B submits that a Single Service Fee would be substantially more efficient than Differentiated Service Fees.

A Single Service Fee would be substantially easier for Taxi Drivers to communicate to Passengers, and for Passengers to understand. It will also substantially reduce the risk that the wrong maximum service fee would be applied (whether deliberately or accidentally) to the Taxi fare.

As explained in A2B's submission responding to the Commission's Consultation Paper, the high level of competition in the industry and recent structural changes to the market have created strong incentives to operate efficiently under the current Single Service Fee regime. No material efficiency, competitive or consumer benefits will arise from introducing Differentiated Service Fees. Instead, the costs of regulation through Differentiated Service Fees would substantially outweigh any benefits conferred.

The RBA previously observed in relation to card payment regulation, that while "a comprehensive definition that encompassed a wider range of costs faced by diverse merchants might be conceptually appealing,"⁴ erring on the side of simplicity is likely to lead to an approach that is more verifiable and enforceable in practice. In particular, costs that are internal to the merchant are not readily observable to a third party and are likely to be difficult to verify in an enforcement context (and are therefore excluded).⁵ A2B considers the RBA's observations in that regard would apply equally to Differentiated Service Fees.

The cost of acceptance methodology adopted by the RBA which resulted in differentiated pricing is not an appropriate model to use in the context of in-Taxi electronic payments because Differentiated Service Fees will lead to excessive complexity, risk and inefficiency.

If the Commission were to adopt the RBA's methodology, it will have failed to recognise the fundamental difference between the electronic payment surcharge regulated by the RBA and the maximum service fee for the service provided by payment processors for accepting and processing non-cash payments in Taxis. The distinction is fundamental. The service fee is separate to the supply of the Taxi ride and is charged to the Passenger directly whereas a surcharge is a fee that is charged to the seller of the good or service and then passed through to a customer whether it is over and above or incorporated in the price of the good or service.

It would not be consistent with the Commission's statutory objectives to limit its approach to that adopted by the RBA and adopt Differentiated Service Fees.

The Commission's role does not extend to determining which out of a range of legitimate business models a service provider must adopt, or how a service provider must deliver non-cash payment processing services. Rather, the Commission's role is to determine the maximum price for accepting and processing non-cash in-Taxi payment services and, consistent with its statutory objectives, to allow service providers to recover their reasonable costs of doing so (and to earn a sufficient margin to remain viable and continue to invest in the industry). It is ultimately the market, which is currently characterised by intense competition that will determine how such services are provided.

Any final determination based on the RBA's reasonable costs of accepting and processing the transaction or one which proposed Differentiated Prices will not give proper weight to the significant changes occurring in the industry as a result of regulatory reform and new entrants and business models which have and continue to increase competition significantly in Victoria.

⁴ Section 5.2.2 of the RBA Review of Card Payment Regulation May 2016

⁵ Section 5.2.2 of the RBA Review of Card Payment Regulation May 2016

2. Response to question 10 of 24 April request for further information

The table below sets out the percentage share of total payments processed by Cabcharge Payments in Victoria for 1H19.

Table 1: percentage share of total payments processed by Cabcharge Payments in Victoria for 1H19

Card Type	1H19
MasterCredit	
MasterDebit	
Visa Credit	
Visa Debit	
EFTPOS	
International	
Amex	
Diners	
Motorpass	
Other (Unionpay, JCB, Alipay)	
Total	100.0%

Payment processors for in-Taxi electronic payments pay comparatively higher merchant fees than the general retail industry. Taxis are considered by most acquiring banks and schemes as more expensive to service compared to general retail. As a result, schemes and acquirers typically charge Taxi merchants more to compensate for the higher costs associated with addressing more taxi-related queries and to cover the costs of servicing their cardholders. In addition, merchant service fees constantly change. [For example, [REDACTED]

[REDACTED] Unlike competitors to Taxi (for example uber who have no price regulation) Cabcharge Payments cannot recover increases in merchant service fees.

The fees on international cards are not regulated by the Australian RBA interchange regime in the same way as local cards and are therefore typically higher. The heavy reliance on Taxis by Victoria's tourist industry (as international tourists often use international cards to pay for Taxis from the airport) means the use of international cards is highly represented in the Taxi industry compared to other sectors (such as retail where it represents less than 1% of purchases). As a result, payment processors for in-Taxi electronic payments pay well above typical costs in relation to merchant fees.

In-Taxi payment processing has also traditionally been a "Card Present" business i.e. physical cards are used to make payments in Taxis. The Card Present business is lower risk than our new but rapidly growing "Card Not Present" (CNP) business due to the lower exposure to fraud given the presence of a physical card. CNP business is derived from Passengers paying via phone apps or providing their card number when booking a taxi through a contact centre. The higher risk of the growing CNP business is reflected in the higher fees paid to schemes, acquiring banks and higher chargeback rates.

The typical difference in cost between a Card Present transaction and a CNP transaction is up to 1% per transaction. In our experience, CNP transactions have an annualised growth rate of greater than 60% and are rapidly becoming a larger and larger proportion of all electronic payments.

Conclusion

As stated in A2B's submission responding to the Commission's consultation paper, the consequences of the recent and ongoing intensification of competition and disruption in the Taxi industry (as a result of regulatory reform, new entrants and new, vertically integrated business models) have not been fully realised at this point in time.

The full effects of these developments will not be properly understood for two or more years once competition has continued to develop.

Just as maintaining or decreasing the current maximum service fee against this backdrop would be premature, converting the Single Service Fee into Differentiated Service Fees at this point in time would likewise have unintended consequences. As outlined above, at the very least it would lead to unfair and unnecessary disadvantages and inefficiencies for Passengers and Taxi Drivers.

For these reasons, A2B considers a Single Service Fee to be most consistent with the Commission's statutory objectives.

Claim for confidentiality

Table 1 and the sentence in square brackets on page 4 of this letter is confidential and commercially sensitive to A2B (**Confidential Information**) and A2B would suffer a detriment if the Commission were to release the Confidential Information.

A2B is of the view that the Confidential Information contains commercially and competitively sensitive information which discloses, amongst other things, A2B's business operations, and costs. The Confidential Information is not in the public domain and is presented at a level of granularity that is not available publicly.

Disclosure of the Confidential Information would provide A2B's competitors and key customers access to information they would not otherwise have and allow them to adjust their own competitive position in a way they would ordinarily be unable to do. In addition to causing detriment to A2B's competitive position, this will likely have the undesirable effect of dampening competition.

Further, A2B is a publicly listed company and disclosure of the Confidential Information may have a detrimental effect on A2B's share price.

In accordance with section 61 of the *Essential Services Commission Act 2001* (**ESC Act**) and consistent with the Commission's submissions policy⁶ and Consultation Paper,⁷ A2B asks the Commission to treat as confidential the Confidential Information.

Should the Commission decide to disclose any part of the Confidential Information, A2B asks the Commission to provide it with adequate opportunity (and not less than 10 business days) before disclosing any part of the Confidential Information to provide reasons why A2B considers the information is of a confidential or commercially sensitive nature and why the public benefit in disclosing the information does not outweigh the detriment caused to A2B.⁸

Yours sincerely



Adrian Lucchese

General Counsel & Company Secretary

⁶ Available at: <https://www.esc.vic.gov.au/about-us/our-policies/our-submission-policy>

⁷ Consultation Paper (p. 4), "We treat all submissions as public information unless the submitter has asked us to treat some or all of a submission as confidential or commercially sensitive."

⁸ A2B understands that information provided in response to the Information Request will be treated as if it is covered by section 38 of the ESC Act, according to the page 4 of the Information Request.