BANKING AMENDMENT (CREDIT CARD) REGULATION 2014 (OCTOBER 2014).

Payvision's views on the exposure draft

Monday, 27 October 2014

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2. PURPOSE

The purpose of this document is to provide the Australian Government (The Treasury) with Payvision B.V.'s feedback on the *Banking Amendment (Credit Card) Regulation 2014* published on 14 October[1] and which changes are supposed to take effect on 1 January 2015. The document also intends to be a follow up to the position paper that was sent by Payvision in July 2013 in response to the consultation document on the Review of Card System Access Regimes[2] that the Reserve Bank of Australia (RBA) issued in May 2013.

During the past decade, Payvision has developed a specialist Payment Service Provider suite of products in the card-not-present payment services industry and it is now expanding fast in the card-present environment through innovative mobile payments and innovative mPOS[3] solutions. As a result, acquiring banks and other financial and non-financial institutions have increasingly relied on outsourcing card-payment related services to Payvision. As a payment provider certified by the leading Card Schemes such as Visa, MasterCard, American Express, JCB, and China UnionPay, Payvision can offer secure payment processing solutions globally.

In 2011 Payvision was granted by the Dutch Central Bank (DNB) a Payment Institution ('PI') license[4] under the European Union (EU) *Payment Services Directive* ('PSD')[5]. The PSD provides a system of licenses under EU law for PIs, such as those organizations providing payment services which are not licensed banks. The PSD determines the European standard under which PIs have to operate as well as a framework for central banks to supervise such institutions. In Q1 2012, as a result of receiving the PI license, Payvision also became a principal acquiring member of Visa Europe and Mastercard Worldwide; and was then invited to sit and participate on a number of industry panels and working groups managed by the Card Schemes and other European stakeholders. In Q3 2014, Union Pay International has granted Payvision the UnionPay Online Payment Acquirer license ("UPOP"), which allows Payvision to operate in the European Union, the United States and Japan. The UPOP license could be further extended to Australia once Payvision gains access to serve as an acquirer there. Furthermore, on 1 October, 2014, Payvision officially became a member of the Japan Consumer Credit Association ("JCA"). This mirrors Payvision's commitment to be a sound player in the Japanese payments industry.

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[1]http://treasury.gov.au/ConsultationsandReviews/Consultations/2014/Banking-Amendment-Credit-Card-Regulation-2014.
[2] *Review of Card System Access Regimes: A Consultation Document*. RBA. May 2013.
[3] Mobile Point of Sales which enables a merchant to accept face-to-face payment through EMV (chip&PIN or chip&signature), magstripe&signature, and contactless technology.
[4]http://www.dnb.nl/en/binaries/The%20Register%20of%20Payment%20Institutions_tcm47-228691.pdf
[5] *Directive 2007/64/EC on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.*

Payvision operates globally with offices located in The Netherlands (HQ), Spain, France, Germany, the UK, the USA, Singapore, Hong Kong, Macau, Japan, and New Zealand.

3. PAYVISION'S VIEWS ON THE EXPOSURE DRAFT

Payvision welcomes the progress made to date by the Australian Government and regulatory bodies, in respect of opening up access to the approved Card Schemes (MasterCard and Visa) by removing the requirement (contained in Regulation 4 of the *Banking Regulations 1966 - the Regulations -*) that issuers and acquirers be required to be *Authorized Deposit-taking Institutions* (ADIs), in its sub-category of *Specialist Credit Card Institutions* (SCCIs).

Payvision has always been supportive of the idea that maintaining the current *statu quo* was not the way forward, as since the introduction of the SCCI licensing regime just two licenses were granted (one for acquiring and the other one for issuing). And this clearly indicates that this framework is not fostering competition. This is not positive for market development and growth and therefore does not pave the way for a competitive Australian payments arena. Conversely, the purpose to open up the market to non-bank participants is praiseworthy and aligned with similar steps taken by other regulatory regimes through different legal instruments, such as the PSD in the European Union.

On another note, the Amendment under analysis here establishes that approved Card Schemes will be responsible for determining which entities may become card issuers or acquirers under their Schemes subject to a risk management framework imposed by the RBA. And that, as a result, the SCCI framework is no longer required. We also notice that the exposure draft mentions that implementation of the new regulatory framework will require the Payments System Board of the RBA to vary the Credit Card Access Regimes to provide for reporting requirements and disclosure of eligibility and assessment criteria for Scheme membership. This is in line with option 2 from the three options exposed in the consultation document on the Review of Card System Access Regimes that RBA issued on May 2013[6] ("*Revoke the Access Regimes*"). In the position paper sent in response to that document, Payvision supported option 1 ("*Vary the Access Regimes to Widen Eligibility for Participation*") as it is our understanding that regulators involvement is more appropriate for guaranteeing a transparent access, as well as for preserving a level playing field and, thus, balancing the market.

[6] *Review of Card System Access Regimes: A Consultation Document*. RBA. May 2013.

However we fully understand that a compromise has to be reached, in order to achieve a solution that accommodates the potential framework to all the needs at stake. Moreover, as already stated, we acknowledge that it is already a progress to remove the current licensing regime, which was the main barrier to market entry. We also understand the fact that it is less onerous for APRA not to be involved in defining access criteria (so that the onus of doing that is left on the approved Schemes) as long as the eligibility criteria and the risk framework are transparent and strictly supervised by the Australian regulator.

Lack of proper supervision would be, in Payvision's opinion, a source of concern from a competition angle. Normally the biggest players have a relevant advantage to easily fulfill the requirements established by the Card Schemes. So in the end, the approved Schemes have quite a say in shaping the rules of the game and defining who the market participants are. For this not to happen, it would be helpful that the Australian regulator ensures that the eligibility criteria are established according to some considerations, as follows.

Regarding its format, any set of requirements should be completely transparent and subject to ongoing regulator's scrutiny, to prevent unintended consequences (such as creating an uneven playing field) from taking place.

Regarding its content, Payvision supports a risk-based approach and an open access, and it reckons that the requirements should neither be discriminatory (against specific types of institutions) nor excessive, in regards to the risk that the prospective participant might bring to the system. The potential eligibility thresholds and conditions should be established so as to cater for different classes of prospective members, and assessed as per the risks these potential players may objectively bring to the system. If a prospective participant, for instance, will mainly be rendering acquiring payment services and performing the settlement of the merchant funds through a domestic regulated settlement bank, then they should be subject to less stringent requirements than an ADI, or a banking company, which pose considerably higher systemic risks. An acquiring payment institution which does neither holds deposits nor directly touches merchants' funds has a minor if, indeed, no systemic risk. After all, the Card Schemes hold collateral on any participating member in relation to their processing volume specifically to be able to cover any potential financial loss or systemic risk.

A balance between ensuring stability and soundness, on the one hand, and promoting innovation and competition, on the other, should be the goal to pursue when shaping a consistent access framework. This regulatory approach is paramount when assessing the proportionality of certain access conditions such as, for instance, the minimum capital required to members. If unduly measured these requirements might excessively weaken the prospective members and thus prevent them from competing and bringing innovation and overall efficiencies to the Australian market.

Another significant aspect to bear in mind is the current status of the prospective participants. If the applicant is already a member of those Card Schemes in other regions (as is the case of Payvision, which is a Visa Europe and MasterCard principal member) this should as a minimum alleviate the administrative burden when applying for accessing those Card Schemes' network in Australia. If there is any particularity due to Australian regulation or its market conditions, it would be reasonable to expect a prospective participant to demonstrate that it can meet those specific requirements. Other than that, it would be inappropriate for a Card Scheme to impose different requirements to a prospective participant from the ones the existing members have to meet.

4. CONCLUSION

While Payvision deems as feasible that due to budgetary constraints certain regulatory duties can be 'outsourced' to the Schemes, on the other hand it expects the Australian regulatory authorities to properly ensure compliance and to promote a reasonable regime for accessing the market. A regime under which the Schemes should always follow the 'comply or explain' principle and the prospective participants are able to somehow appeal the Schemes' decisions, if those were not made on the grounds that can reasonably be understood from the published access criteria. This will help in prioritizing competition and widening access for smaller players, so that the industry as a whole may render more innovative services in a cost-effective and transparent manner. Innovative payment technologies (e.g. e-payments, m-payments, contactless) have proved to bring growth and sustainability to the payments sector through enabling small companies or even people to accept card payments.

With the above approach, a broader use of card payments will be fostered. And this will bring major benefits:

- ✓ for consumers, over other payment methods, primarily cash;
- ✓ for merchants, who can instantly accept secure payments and skip inefficiencies (red tape, manual handling of invoices) and security risks (carrying significant sums of cash);
- ✓ and finally, for the regulator and local tax authorities, since card payments weakens the shadow economy and money laundering risks through increasing traceability of transactions.