

21 July 2019

By email: transport@esc.vic.gov.au

Price Monitoring and Regulation
Essential Services Commission
Level 27, 2 Lonsdale Street
Melbourne VIC 3000

Dear Commissioners

TAXI NON-CASH PAYMENT SURCHARGE REVIEW 2019

Thank you for the opportunity to respond to the *Taxi Non-Cash Payment Surcharge review Draft Decision (Draft Decision)*.

This submission opposes the draft decisions that the non-cash payment surcharge for taxis be set at 4.5 percent and that implementation is delayed until 1 January 2010 for the reasons set out below.

Promoting efficiency and long-term interests of consumers

The primary objective of the Essential Services Commission (**Commission**) in setting taxi non-cash surcharges is to promote efficiency.¹ In performing its functions and exercising its powers, the Commission must also promote the long-term interests of Victorian consumers.²

We consider that the long-term interests of consumers are best served, in the context of price regulation, by providers being able to recover the efficient costs of providing regulated services. As such, we consider the Commission's role is to fix those efficient costs by reference to the proxy of the efficient costs of the competitive market.

For this reason, we consider a benchmarking approach should be preferred in setting prices. This is because a benchmarking approach, which assesses benchmarks for EFTPOS and mPOS terminals

¹ *Commercial Passenger Vehicle Industry Act 2017 (Vic)*, s 122.

² *Essential Services Commission Act 2001 (Vic)*, s 8.

available in the market more broadly, is the appropriate proxy to assess efficient costs. There is a clear competitive market that can be observed. The Commission's analysis confirms that taxis could process non-cash payments for a surcharge as low as 2.5 percent. This level is also more in line with community expectations, particularly given common surcharges for other regular card payments.

In using the bottom-up methodology, the Commission is not promoting efficiency. Instead, it builds in existing inefficiencies to the surcharge level. For example, it builds in the practice of taxis using multiple terminals. The use of multiple terminals appears to serve the interests of taxis and payment processors, not consumers.

Furthermore, even if the bottom-up approach could be said to promote efficiency, the Commission has proposed a surcharge which is above the range considered by the Commission to be reasonable. The Commission's bottom-up assessment showed that a reasonable range is between 2.3 percent and 4.3 percent. Yet, the Commission is proposing 4.5 percent. This appears again to prefer the interests of industry over the long-term interests of consumers.

One of the reasons proffered for setting the surcharge at 4.5 percent rather than the maximum of the range (4.3 percent) was that it is "easier to understand and administer". With respect, we do not see why this is the case, given 4.3 percent of a fare is just as difficult to calculate at 4.5 percent of a fare. The Commission also notes that 4.5 percent is a maximum. However, we note that it appears highly unlikely that any payment processor or driver will charge lesser than this amount.

Reasonable costs

We acknowledge that the Commission is limited by section 122(2) of the *Commercial Passenger Vehicle Industry Act* which requires it to ensure payment processors and drivers are "able to recover the reasonable cost of accepting and processing transactions".

We consider, however, that it does not align with community expectations for "reasonable costs" to be applied in a way that incorporates existing cost inefficiencies within a business. We consider the better approach would be to say that it is reasonable to only recover efficient costs.

If we are wrong, then we consider that the legislation is flawed and needs to be amended. We note that the RBA surcharging standard allows merchants to charge a surcharge that does not exceed the "cost of acceptance".³ This would be a construction preferable to "reasonable costs".

³ Standard No 3 of 2016: Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions, available at: <https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/pdf/standard-no-3-of-2016-scheme-rules-relating-to-merchant-pricing-2016-05-26.pdf>

Transition period

The Commission proposes to delay implementation of changes until 1 January 2020. The reason for this is to “minimise industry disruption”. It also notes that it received a number of late submissions and slow responses from some taxi payment processors to information requests.

This approach appears to prefer the interests of industry over consumers. It also appears to penalise consumers for delays caused by industry. We thus consider that the Commission should not allow for such a generous transition approach.

Please contact me at on 03 9670 5088 or at info@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Gerard Brody". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Gerard Brody | Chief Executive Officer