

How does this affect dealings with competitors?

Part IV of the Trade Practices Act prohibits anti-competitive arrangements between competitors such as price fixing, market sharing and boycotts.

This means that businesses must make their own **independent** decision on whether to impose a credit card fee and about the amount of any fee.

Businesses must not engage in anti-competitive conduct

Businesses must not enter into agreements or understandings with other businesses, such as:

- whether or not to impose a credit card fee
- the amount of the credit card fee that you will charge.

Such agreements or understandings are contrary to the competition provisions of the Trade Practices Act and significant penalties may apply.

Businesses seeking further information about anti-competitive conduct should contact the Australian Competition and Consumer Commission on 1300 302 502 or at <<http://www.accc.gov.au>>.



Further information

for business and consumer inquiries

ASIC Infoline

Infoline: **1300 300 630**

Website: <http://www.asic.gov.au>



ACCC Infocentre

Infoline: **1300 302 502**

Website: <http://www.accc.gov.au>



News for Business

Merchant pricing for credit card payments

The Reserve Bank of Australia released *Reform of Credit Card Schemes in Australia IV: Final Reforms and Regulation Impact Statement* in August 2002, introducing a range of credit card reforms.

One of these reforms will provide greater freedom to merchants when making their pricing decisions.

This publication explains the merchant pricing reforms. It also discusses some of the competition and consumer protection issues that may arise for businesses.



Background

The credit card reforms announced by the Reserve Bank in its August 2002 report are aimed at promoting greater efficiency, transparency and competition within the credit card network for the benefit of all Australians.

The Reserve Bank concluded that existing arrangements subsidise credit card use and that this subsidy is paid for by all consumers, including those consumers who do not use credit cards.

This is because merchants are charged a percentage service fee, known as a 'merchant service fee', by their financial institution on all credit card payments they receive. Rules imposed by credit and charge card companies currently prevent merchants from recovering the cost of card acceptance directly from consumers who pay by way of credit card.

Merchants therefore include the cost and/or absorb the cost of accepting credit cards in the prices they charge **all** consumers for goods and services, irrespective of the customer's method of payment.

The important parts of the Reserve Bank's reforms are:

- From 31 October 2003, reductions in the interchange fees the card holder's financial institution can charge the merchant's financial institution. These fees are passed on to merchants through merchant service fees.
- The removal of the prohibition on merchants recovering from cardholders the costs of accepting credit cards. The restriction will be lifted from 1 January 2003.
- The removal of restrictions, which limited the entry of new competition into the credit card market.

Businesses can obtain general information regarding the Reserve Bank's credit card and other payment system reforms at <http://www.rba.gov.au>.



Merchant pricing reforms

The Reserve Bank's intention in abolishing the 'no-surcharge' rule, that restricted the freedom of merchants in pricing their goods and services, is to reduce the cost to the Australian community of the credit card network.

The reform is intended to allow:

- merchants to choose whether or not to pass on the cost of accepting credit card payments directly or indirectly to consumers
- consumers to make an informed decision about the means of payment that represents best value for them.

This means that from 1 January 2003 merchants will have the freedom to recover the cost of card acceptance directly from those customers who choose to pay for goods or services by credit card.

How does this affect dealings with customers?

Not all businesses will wish to charge their customers a fee for paying by credit card and there is no obligation for them to do so.

If a business does decide to impose a fee for paying by credit card it will need to have regard to its duty not to act in a misleading or deceptive way. It should ensure that its customers are aware:

- that the credit card fee will apply
- and**
- of the amount of the credit card fee (expressed in \$ or as a percentage), **before** they enter into the transaction.

Businesses will need to form their own view, and may need to take their own advice about how to avoid misleading or deceptive conduct. If in doubt, the sensible thing to do is to err on the side of stronger disclosure.

Options for informing consumers may include clear and prominent messages on bills and ensuring that there is clear and prominent in-store and/or point-of-sale signage informing customers of the credit card fee and the amount of the credit card fee.

Where businesses supply services they should provide this information before the contract to supply is entered into or, if there is an existing contract, once any fee for credit card payment is introduced.



The need to inform customers of fees for paying by credit card before the customer enters into the transaction also applies to Internet, telephone and mail order sales.

Where goods or services are ones commonly paid for by credit card, and advertisements or promotions for them deal with pricing issues, it would be advisable to also include information on any credit card fees that will apply.

Remember that it is not only regulators that can bring actions for misleading and deceptive pricing information, your competitors and customers may be able to as well.

Businesses must not mislead or deceive consumers or make misleading representations

Businesses should also ensure that their customers are not led to believe that:

- the business is required to charge a fee for paying by credit card
- the credit card fee only recoups the cost of the credit card merchant service fee if the credit card fee charged exceeds that cost.

Businesses are responsible for the representations their sales staff make.

Businesses should seek their own legal advice if they have particular concerns about their situation.

The website for the Australian Securities and Investments Commission is <http://www.asic.gov.au>. ASIC can also be contacted on 1300 300 630.