



Response to Treasury consultation on Licensing of payment service providers

Google welcomes the Government's progress in pursuing its reform agenda to establish a fit-for-purpose payments regulatory framework. With respect to the proposed changes to the Licensing framework for payments bodies, we broadly support the proposed changes and have provided below specific recommendations.

For our part, we continue to constructively engage with the Government on topics related to payments and digital wallets. In addition to appearing at the Parliamentary Enquiry in July 2021 into mobile payments and digital wallets, we have provided submissions to the Farrell Review and given our views on various stages of the development of the Government's Strategic Plan.

We look forward to continued engagement to support this important policy development.

Google and its role in Payments in Australia

Google offers a variety of technologies in Australia that may be utilised by a consumer payments journey. These range from operating systems level infrastructure, such as Android, to form filling of card details in the Chrome Browser and even a Digital Wallet which enables payment card numbers to be shared with in-store terminals or online for e-commerce (Google Pay).

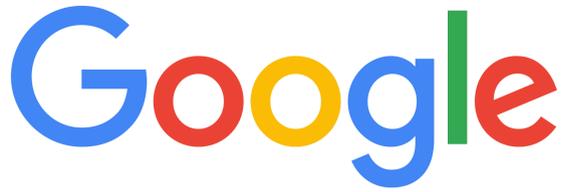
Google's approach is fundamentally different to many in the payment ecosystem with respect to the open architecture of the technologies and the terms on which third parties use the technologies. In addition, we provide third parties with highly detailed documentation that outlines the architecture and logic of the relevant technologies to enable third parties that are regulated to satisfy any reporting requirements they may have.

Across all of the various payment relevant technologies, Google is not in the money flow, nor is it making decisions related to payment authorisation or execution. Issuers, merchants, card networks and payment service providers retain full control. With respect to retail and general e-commerce payments, we are not aware of any scenarios where Google enabled payment technologies are the exclusive mode of payment. In fact, in most cases Google enabled payment technologies represent a small subset of all the total payment options available.

Defining Payments Functions - Payment Facilitation Services (PFS).

The definition of Payment Facilitation Service (PFS) captures a very broad range of services and products with very different functions and risk profiles. In particular, services that "*facilitate the transfer of payment instructions*" could potentially capture *any* service or technology that is involved in some way in the transmission of payment instructions.

Due to the increasingly complex nature of digital payments, it is increasingly challenging to determine which elements of payment transactions constitute a payment service, and which elements are underlying technologies. While we understand the intent is to at least capture "pass-through digital wallets" as a facilitation service (even where those pass-through wallets do not



store value and existing retail entities bear full responsibility for authorising transactions) the proposed definition potentially captures a much broader range of technologies, including:

- Android (Google’s open source operating system) which allows banks and third party digital wallets to access the device’s NFC Controller to create their own proprietary payment solution. While it is our understanding that Android is not intended to be in scope, the definition of “facilitate” is potentially broad enough so as to capture this technology.
- Chrome Autofill functionality that allows for the pre-filling of forms on websites to improve the payment experience for both consumers and merchants. Google stores the card numbers in a PCI compliant manner and adds additional layers of security, however the card numbers themselves are the same as if they were manually entered by the customer. Again, it is not clear whether this limited type of functionality is intended to be caught by the definition of “facilitate”.

To achieve Government’s aim of providing clarity and transparency as to the payment functions that are intended to be caught by the revised and expanded licensing scope, it will be important for Government to provide very clear guidance as to what type of “facilitation” services are intended to be caught by function, and those that are not. This will ensure that the legislation is clear, not over-inclusive and does not unnecessarily add to costs or impede innovation in new technology within the payment space.

Second, Google agrees with the Government’s approach that any subsequent regulation should be risk-based and proportionate to the risk posed by the service or function, and that any proposed payment licensing frameworks should only look to regulate or mitigate risks that, for PSPs, are not already addressed under various other regulatory frameworks. Google also broadly agrees that the risks posed by payment facilitation are predominately operational risks caused by potential technical malfunctions, operational mistakes or cyber risks that could exacerbate the risk that non-cash payments are not completed. However in Google’s view, such risks are not necessarily payment specific, and may be better addressed under other existing or proposed regulatory regimes, including for example:

- **Proposed amendments to the *Payment System (Regulation) Act*.** The proposed reforms to the PSRA will enable both the RBA and the Minister to designate a broader range of “payment functions” or “services” if it is in the public or national interest to do so. This will include consideration of matters such as national security, cyber-security and potential operational impact on the payment system.
- ***Security of Critical Infrastructure Act*.** This legislation imposes obligations on entities in certain critical areas, including financial services, to meet certain obligations that are designed to enhance cyber-security.
- ***Privacy Act* and *Australian Consumer Laws*.**

Google would strongly encourage the Government to ensure that when considering what “facilitation services” are to be included as a licenced entity, and any regulation which is to be imposed, it adopts a risk based approach and carefully considers the actual risk posed and the



extent to which such risks are already mitigated against. Any regulation should be limited only to the extent necessary to address actual risks.

Finally, while Google is supportive of the Government's approach to ensuring that any regulation is targeted and risk based to appropriately address the differing levels of risk posed by different aspects of payment services, it is not clear from the consultation paper whether a graduated or risk-based approach to regulatory obligations is currently contemplated for Payment Facilitation Services. The consultation paper indicates that, regardless of size, PFS would be subject to at least the following regulatory requirements:

- obtaining a licence and complying with general AFSL obligations
- complying with technical standards set by industry bodies authorised by the RBA; and
- complying with legislatively mandated and revised ePayments Code (where relevant).

As noted above, Payment Facilitation Services capture a very broad range of services, each of which pose very different risks to the payment system and the customer. General AFSL Obligations or obligations set out in the ePayments Code may have very little application or relevance to a facilitation service that does not store value or process or authenticate payments, and instead operates in partnership with other entities or services that are licensed or regulated for such functions.

We note feedback is sought as to whether PSPs that are not customer facing and do not store value, such as certain payment facilitation, authentication, authorisation and processing service providers, ought not to hold a licence, or whether these services should only have to comply with relevant industry standards. Google is supportive of not requiring all PFS to hold a licence where to do so is not proportionate to the actual risk that is sought to be mitigated against, but would add that it should not necessarily be limited only to those services which are not strictly speaking customer focused - rather it should extend also those facilitation services which do not store value, authenticate or are otherwise involved in the "money flow".

Conclusion

We thank the Treasury for the opportunity to review and comment on the proposed changes to the Licensing framework for payment service providers and look forward to continuing to work with the Government to achieve its stated policy objectives.

ENDS