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26 July 2023

Director
Payments Licensing Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By Email Only: paymentslicensingconsultation@treasury.gov.au

Dear Director

RE: Payments System Modernisation (Licensing: Defining Payment Functions) Consultation Paper

Background

Prezzee welcomes the opportunity to provide its response to the Treasury's *Payments System Modernisation (Licensing: Defining Payment Functions)* consultation paper (**Paper**).

Prezzee is a leading global eGift Card platform. As well as providing a platform for the distribution of retailer-issued gift cards, Prezzee also issues its own gift cards. A current core offering of Prezzee is the Prezzee Smart eGift Card which provides the holder with flexibility, as it can be 'swapped' for one or more gift cards from any of the hundreds of brands available through the Prezzee website.

Prezzee recognises the importance of ensuring consistent and appropriate regulation of payment functions and service providers. The Paper states that, as part of ensuring consistent regulation, Treasury proposes to move the existing licensing relief for gift cards (contained in *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211* and replicated for purchased payment facilities (**PPFs**) in *RBA Declaration No 1, 2006 Regarding Purchased Payment Facilities* (together, the **Gift Card Exemption**)) to the primary legislation or regulations. The Paper also states that changes may be made to the conditions of the Gift Card Exemption.

Regarding questions 11 and 13 of the Paper, Prezzee has the following responses. Prezzee has also included some data in support of these submissions at Attachment A. Prezzee asks that Attachment A be kept confidential and not made publicly available given it contains information based on Prezzee's product and sales data.

Gift cards should continue to benefit from an exemption

A licensing (and PPF) exemption for gift cards is appropriate and reflects the low level of risk experienced by holders of gift cards. Accordingly, we consider it is appropriate for an exemption to be maintained under any updated licensing framework and that it is unnecessary for the exemption to be limited to gift cards accepted at a single retailer only.

As acknowledged in ASIC Regulatory Guide 185, gift cards are simple, easy-to-use and well understood by customers and the costs associated with obtaining and complying with licensing obligations is likely to be disproportionate to any risks to customers connected with the use of gift cards. We consider these

statements remain true, when considered in the context of the current conditions of the Gift Card Exemption (in particular, that the amount stored is not redeemable for cash (other than nominal amounts) and is not reloadable).

With a limit to value, limited functionality and inability to be redeemed for cash the potential for misuse, customer loss or systemic risk in connection with gift card products that comply with the exemption is very low.

This is consistent with Prezsee's experience that:

1. Customers do not load significant value onto gift cards (see Attachment A). This means there is limited financial risk connected with the acquisition and use of the card.
2. Customers appreciate flexibility in being able to choose where to spend a gift card product (rather than being limited to one retailer only).
3. Historically, there has been low levels of customer complaints in connection with gift card products (see Attachment A).

This supports that there continues to be very little evidence of information asymmetry or misalignment in relation to consumer needs.

On this basis, and given the fundamentally simple nature of gift card products, Prezsee considers it is unnecessary for these products to be subject to requirements such as Product Disclosure Statement and design and distribution obligations. There is no evidence that the intended use and purpose of gift card products is not easily understood by consumers.

Additionally, gift cards (whether accepted at a single retailer or multiple retailers) are subject to other general and specific protections that guard against customer detriment. This includes the following consumer protection provisions under the Australian Consumer Law (**ACL**):

1. general prohibitions on misleading and deceptive conduct, unconscionable conduct and unfair contract terms;
2. statutory consumer guarantees; and
3. specific gift card requirements, including that gift cards must be redeemable for three years, that the expiry date must be prominently displayed and restrictions on post-purchase fees.

We consider this framework is appropriate and ensures consumers are protected in connection with the acquisition and use of gift cards and businesses are held accountable for any breaches of consumer protection provisions. If gift cards became subject to financial services regulatory requirements, this would introduce dual regulation which we consider would create unnecessary regulatory burden, complexity and compliance cost for a low-risk product.

Accordingly, maintaining the Gift Card Exemption is consistent with a balanced and proportionate approach to regulation.

Conditions of Gift Card Exemption

Prezsee considers the current conditions of the Gift Card Exemption are appropriate. In particular, the conditions that require that exempt cards are not redeemable for cash or reloadable are reflective of the features that make traditional gift card products low risk.

In our view, whether the issuance of gift cards is an incidental part of the issuer's business is not relevant to the risk associated with these products. The reason gift card products are low risk is, as stated earlier, because of their limited value, limited functionality and inability to be redeemed for cash and because

they are simple and easily understood by consumers. These factors are not impacted by the proportion of the issuer's business that is related to issuing gift cards.

Similarly, these factors that make gift card products that comply with the current exemption low risk apply regardless of whether the gift card can be redeemed at one or more retailers. In our view, there is no significant additional risk simply because the value stored on the gift card can be used to purchase goods or services from a person other than the issuer. Given the conditions of the exemption, the only real difference between an exempt single retailer gift card and an exempt multiple retailer gift card is that the latter gives the customer additional flexibility and potentially requires slightly more detailed information to be given to the customer upfront regarding how the card can be used.

However, if Treasury continues to have concerns about the risks to customers in connection with gift card products, we consider that the following additional conditions to the Gift Card Exemption could usefully further limit the potential for customer loss:

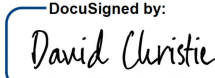
1. A condition that the maximum value that can be loaded on an individual gift card is less than \$5,000. While another amount could be substituted, \$5,000 is consistent with the AML/CTF regulation for gift cards where the value cannot be withdrawn in cash, and so ensures consistency across the regulatory regimes.
2. A condition that requires the issuer to provide the customer with certain information that is consistent with the most relevant content requirements of Product Disclosure Statements and Financial Services Guides. For example, information about cost, how the issuer is remunerated, complaints handling information and information about the terms and conditions attaching to the product presented in a 'clear, concise and effective' manner.

Conclusion

The current conditions associated with the Gift Card Exemption ensure these products present a low risk to consumers. Further, the ACL provides a thorough set of protections for users of gift card products. We consider that preserving the Gift Card Exemption (in connection with the regulation of payment facilitation services and stored value facilities) would ensure that gift facilities continue to serve their intended purpose without undue burdens on providers, benefitting both consumers and businesses.

We appreciate your consideration of our submission and would be happy to discuss any aspect of this letter.

Yours sincerely
Prezzee Pty Ltd

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