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19 January 2023

Dear Tom

**Re: PSR MR22/2.4 Market review of cross-border interchange fees; working paper**

We welcome the opportunity to provide feedback on the PSR's working paper which sets out a discussion of the impact of the UK-EEA cross-border interchange fee increases, as part of the PSR's cross-border interchange fee market review.

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document. The EMA has been operating for over 20 years and has a wealth of experience regarding the regulatory framework for electronic money and payments. A list of current EMA members is provided at the end of this document at ANNEX II.

We would be grateful for your consideration of our comments to the matters set out in the working paper, which are set out below at ANNEX I.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Thomas Sabin', with a long horizontal flourish extending to the right.



Dr Thaer Sabri  
Chief Executive Officer  
Electronic Money Association

## ANNEX I

### *Impact on Merchants - Merchant relocation*

The PSR's working paper (WP) considers whether merchants may be able to take mitigating actions to reduce the impact of the interchange fee ("IF") increases on their business. The first of such mitigating actions could be merchant relocation, i.e. where a merchant located on either side of the UK/EEA could relocate (part of) their operations and online sales to the other side, so that online card transactions which were classed as cross-border (and subject to a higher IF) would now be classed as a domestic UK or domestic EEA transactions (subject to UK or the EU Interchange Fee Regulation ("IFR") caps), as the case may be. [WP 3.14]

The EMA agrees that, generally speaking, IF increases are unlikely to be the sole reason for merchant relocation. Merchant decision to relocate some of its operations would be influenced by a myriad of factors, including the additional costs of setting up operations elsewhere, tax implications, supply issues and the size of the merchant's non-domestic customer (target) market.

The EMA also agrees that the largest, well-resourced merchants are more capable to carry out relocation in practice. For relocation to make commercial sense, the merchant's non-domestic market share/sales would have to be sufficiently large to justify the additional costs arising from relocation. Largest merchants are also more likely to have the resources to invest in setting up relocated operations.

### *2. Impact on Merchants/Consumers - Pass-through to consumers and price differentiation*

The PSR's working paper considers the merchants' ability to pass on higher card acceptance costs to customers through higher prices, including on a targeted basis (i.e. with respect to transactions where IF rate is higher) though price differentiation. [WP 3.21-3.26]

The PSR considers two possibilities for price differentiation by merchants. Firstly, merchant's ability to charge a different price depending on where the cardholder's card is issued. Another possibility would be for merchants to differentiate on the basis of different versions of their website depending on the customer's language/country where the customer is located (territorial pricing). Where merchants cannot price differentiate, they may pass-through higher IF costs through charging higher prices overall.

#### Impact of surcharging rules on merchant price differentiation

The surcharging rules do not, in principle, prevent merchant from price differentiating, in the form of charging additional charges with respect to UK-EEA cross-border card transactions to recover the costs associated with such payments.

As regards EEA-based merchants, the ban on surcharging imposed under Article 62(4) of The Second Payment Services Directive (EU) 2015/2366 (“**PSD2**”) requires Member States to ensure that “*payee shall not request charges for the payment instruments for which interchange fees are regulated under Chapter II of Regulation (EU) 2015/715 [i.e. IFR] ...*” As UK-EEA cross-border card transactions no longer fall within the scope of the IFR, EEA merchants could, in principle, impose a charge for payment by a UK-issued card.

PSD2 Art 62(3) imposes a further prohibition on excessive surcharges, whereby “*any charges applied shall not exceed the direct costs borne by the payee for the use of a specific instrument.*” A similar prohibition exists under Article 19 of the Consumer Rights Directive 2011/83/EU, which prevents traders from charging consumers “*fees that exceed the costs borne by the trader for the use of*” any particular means of payment. These excessive surcharge restrictions limit the charges that EEA merchants can charge for the use of UK-issued cards, but do not prohibit the recovery of costs associated with such transactions, such as the merchant service charge the merchant pays to their acquirer (including the IF).

It should be noted that some differences in Member State implementation of PSD2 surcharging prohibitions may exist, which could prohibit surcharging beyond the intra-EEA transactions. This may warrant further exploration.

The position concerning Outbound IF, i.e. transactions involving the use of EEA-issued cards at UK merchants, is similar to that set out above. The ban on surcharging for card-based payments set out in Regulation 6A(1) of the Consumer Rights (Payment Surcharges) Regulations 2012,<sup>1</sup> only applies where the payment service providers of both the payer and the payee are located in the UK<sup>2</sup>. UK merchants could, therefore, impose a charge where the card used for payment is issued in the EU. Such charges would be limited by the rules prohibiting excessive surcharges, i.e. Regulation 6A(2) which prohibits charges which exceed the costs borne by the payee (merchant) for the use of that specific payment instrument.<sup>3</sup> This excessive surcharge prohibition covers situations where only one of the PSPs (e.g. merchant’s acquirer) is located in the UK.<sup>4</sup> BEIS Guidance on the Consumer Rights (Payment

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<sup>1</sup> As amended by the Consumer Protection (Amendment etc.) (EU Exit) Regulations 2018/1326

<sup>2</sup> Regulation 6B(2) of the Consumer Rights (Payment Surcharges) Regulations 2012

<sup>3</sup> Similar prohibition, derived from the Consumer Rights Directive, exists under Regulation 4 of the Consumer Rights (Payment Surcharges) Regulations 2012

<sup>4</sup> Regulation 6B(3) of the Consumer Rights (Payment Surcharges) Regulations 2012

Surcharges) Regulations 2012<sup>5</sup> confirms that merchant service charges, including interchange fees, are recoverable under the charges merchants are permitted to charge in such cases.

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<sup>5</sup> Paragraph 9.2, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/718812/payment-surcharges-guidance-update.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718812/payment-surcharges-guidance-update.pdf)

## ANNEX II: List of EMA members as of January 2023:

[AAVE LIMITED](#)  
[Account Technologies](#)  
[Airbnb Inc](#)  
[Airwallex \(UK\) Limited](#)  
[Allegro Group](#)  
[Amazon](#)  
[American Express](#)  
[ArcaPay Ltd](#)  
[Banked](#)  
[Bitstamp](#)  
[BlaBla Connect UK Ltd](#)  
[Blackhawk Network EMEA Limited](#)  
[Boku Inc](#)  
[Booking Holdings Financial Services International Limited](#)  
[BVNK](#)  
[CashFlows](#)  
[Checkout Ltd](#)  
[Circle](#)  
[Citadel Commerce UK Ltd](#)  
[Contis](#)  
[Corner Banca SA](#)  
[Crypto.com](#)  
[Curve](#)  
[eBay Sarl](#)  
[ECOMMPAY Limited](#)  
[Em@ney Plc](#)  
[emerchantpay Group Ltd](#)  
[Etsy Ireland UC](#)  
[Euronet Worldwide Inc](#)  
[Facebook Payments International Ltd](#)  
[Financial House Limited](#)  
[First Rate Exchange Services](#)  
[FIS](#)  
[Flex-e-card](#)  
[Flywire](#)  
[Gemini](#)  
[Global Currency Exchange Network Limited](#)  
[Globepay Limited](#)  
[GoCardless Ltd](#)  
[Google Payment Ltd](#)  
[HUBUC](#)  
[IDT Financial Services Limited](#)  
[Imagor SA](#)  
[Ixaris Systems Ltd](#)  
[MANGOPAY](#)  
[Modulr FS Europe Limited](#)  
[MONAVATE](#)  
[Moneyhub Financial Technology Ltd](#)  
[Moorwand](#)  
[MuchBetter](#)  
[myPOS Payments Ltd](#)  
[NOELSE PAY](#)  
[NoFrixion Ltd](#)  
[Nuvei Financial Services Ltd](#)  
[OFX](#)  
[OKTO](#)  
[One Money Mail Ltd](#)  
[OpenPayd](#)  
[Own.Solutions](#)  
[Papaya Global Ltd](#)  
[Park Card Services Limited](#)  
[Paymentsense Limited](#)  
[Paynt](#)  
[Payoneer Europe Limited](#)  
[PayPal Europe Ltd](#)  
[Paysafe Group](#)  
[Paysend EU DAC](#)  
[Plaid](#)  
[PPRO Financial Ltd](#)  
[PPS](#)  
[Ramp Swaps Ltd](#)  
[Remitly](#)  
[Revolut](#)  
[Ripple](#)  
[Sable International FX Limited](#)  
[Securiclick Limited](#)  
[Skrill Limited](#)  
[Soldo Financial Services Ireland DAC](#)  
[Square](#)  
[Stripe](#)  
[SumUp Limited](#)  
[Swile Payment](#)  
[Syspay Ltd](#)  
[Transact Payments Limited](#)  
[TransferMate Global Payments](#)  
[TrueLayer Limited](#)  
[Trustly Group AB](#)  
[Uber BV](#)  
[VallettaPay](#)  
[Vitesse PSP Ltd](#)  
[Viva Payments SA](#)  
[Weavr Limited](#)  
[WEX Europe UK Limited](#)  
[Wirex Limited](#)  
[Wise](#)  
[WorldFirst](#)  
[WorldRemit LTD](#)  
[Yapily Ltd](#)