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Vastaanottaja: OM Oikeusministeriö
Aihe: Regarding implementation of PSD2 - OM 1/479/2016 - American Express

Dear Sirs,

American Express welcomes the opportunity to respond to the Government's consultation on the Implementation of the Revised Payment Services Directive ("PSD2") (OM 1/479/2016).

We set out below our views on one specific issue in the consultation – surcharging (Article 62.4). American Express notes that the Finnish Government is proposing not to take up the option provided to it under the legislation to prohibit surcharging entirely. We believe that not prohibiting surcharging is a missed opportunity and strongly urge the Government to revisit this topic.

Given the importance of the issue for competition and consumer policy, we would also like to ask for a meeting to discuss this further.

American Express believes surcharging should be entirely prohibited in Finland because it is:

1. **Restrictive of competition**

Article 62.4 of PSD2 states that Member States shall ensure merchants do not request charges for the use of payment instruments for which interchange fees are regulated under Chapter II of the Interchange Fee Regulation. In practice this will mean surcharging is prohibited on well over 90% of credit and debit card transactions.

Allowing a small number of non price-regulated card transactions to be surcharged would severely handicap smaller networks, such as American Express, from acting as effective counterweights to the two dominant networks, Visa and MasterCard. This is because these additional charges understandably will deter cardholders of brands such as American Express from using their cards.

The PSD2 seeks to increase competition, and as Article 62.5 says, Member States may prohibit surcharging given "the need to encourage competition". Yet perversely the proposed surcharging rules in Finland will have the opposite effect and drive more transactions on to the larger networks. This will undermine our relevance in the sector and therefore mean American Express is less able to compete with the dominant players, which ultimately would distort competition and choice in the sector.

American Express is a smaller player in Finland and is a choice for merchants. Indeed, across the E.U. we have a sector share of just 1.6%. Combined with this, American Express negotiates simple and transparent pricing with its merchants, regardless of the card type. When a merchant chooses to accept American Express, the price we negotiate is based on the value we provide, relative to competing cards. It is clear merchants have a choice over whether to accept American Express, especially as the majority of our cardholders also carry Visa and MasterCard products.

A merchant that displays the "American Express Cards Welcome" logo should not be able to "free ride" on the strength and value of the American Express brand and attract our cardholders into its place of business, only then to penalise them through surcharging. The benefits and the value we deliver will ultimately not be sustainable to provide if fewer transactions are taking place on American Express cards due to merchant surcharging practices.

Large merchants in particular are able to surcharge at the expense of credit/charge cardholders and evidence indicates that surcharging mostly takes place in those sectors where there is little competition, helping to entrench the position of dominant market players.

In general, surcharging also discriminates against electronic payments in favour of cash and cheques, which have a higher risk of money laundering and tax evasion and are more expensive than electronic payments. Clearly, these are important considerations for any government focused on growing the economy.

2. **Fundamentally anti-consumer**

As well as discriminating against customers' preferred payment method by forcing them to 'pay for paying', surcharging also misleads consumers about the true price of goods and services. Indeed, this is acknowledged in PSD2 (Recital 66), which states that surcharging has: *"become a source of confusion for consumers, in particular in the e-commerce and cross-border context. There are also many examples of merchants surcharging consumers at levels much higher than the cost borne by the merchant."*

That is why BEUC, the European consumer group, has called for surcharging to be "definitively banned in Europe" arguing that surcharging "is not an optimal policy tool to improve competition in the payments services sector."

We share the view of BEUC and many other consumer advocates that surcharging in any form is never in the best interests of consumers, who should be able to use the payment method of their choice without financial penalty.

3. **Very difficult to implement**

Operationally, the selective surcharging rules under PSD2 would be near-impossible to implement and not clear for merchants or consumers to understand. There would be a substantial lack of transparency as to whether a card could be surcharged or not, as merchants will not be able to differentiate at the point-of-sale between price-regulated and non price-regulated card transactions. The inevitable consequence will be that merchants inadvertently fall foul of the law, leading to greater confusion and frustration for consumers.

The same applies when trying to distinguish between domestic transactions (the majority of which may not be surcharged) versus inbound non-EU/EEA transactions (which can be surcharged). Permitting surcharging on inbound cards would therefore be extremely discriminatory to tourists.

In Spain, where selective surcharging was introduced in 2014, these concerns have been widely borne out, as in practice the requirements have proved impossible to implement and police. Indeed, leading Spanish consumer groups such as OCU and Facua have stated that these rules have been completely ineffective, leaving consumers at a severe disadvantage.

Given the factors as set out above, a number of member states (such as, Austria, Croatia, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Romania, Slovakia and Sweden) already completely ban the practice of surcharging.

We would welcome the opportunity to explain our business model and discuss these issues in more detail.

I will contact your office to see when you might be available for a meeting.

Yours sincerely,

Christoffer Thibblin

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American Express made the following annotations

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American Express a ajouté le commentaire suivant le

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