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The Electronic Transactions Association (**ETA**) submits these comments in response to the Bank of Canada's consultation paper on Key Retail Payment Supervision Concepts. We hope that these comments assist the government in understanding how the key concepts in the paper will affect the implementation of the *Retail Payment Activities Act* (RPAA).

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA's members include financial institutions, mobile payment service providers, mobile wallet providers and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, and rewarding payment solutions and lending alternatives.

In our view, the concept paper offers a good starting point in crystallizing the industry and government's understanding of key concepts critical to the operationalization of the RPAA. However, its relevancy and application could be strengthened with the inclusion of more details on the three key concepts, specifically when it comes to geographic scope and payment intermediaries which could be considered as an end user.

Additionally, ETA feels that it would also be worth discussing other payment terms such as 'account', 'authorization', 'clearing and settlement', but these concepts were not included in the current paper. Having such a discussion would enable the payments industry to better understand what is included and what is not and facilitate their compliance with the RPAA.

These concerns are addressed in greater detail in the comments below.

Definition of End User

ETA appreciates the Bank of Canada's efforts to impart greater clarity on the conditions which define an end user. However, we believe that more precision is required on geographic scope, given its direct relation to what constitutes an end user.

As outlined in our previous submissions, ETA is concerned about the potential extraterritorial application of the RPAA. This has been alluded to in a consultation conducted by the Retail Payments Advisory Committee on the matter of registration scope in September 2021, where it was stated that "PSPs will be subject to the requirements, even if they are not physically present in Canada... PSPs with a physical presence in Canada will be subject to the requirements with respect to their end users both inside and outside Canada."

We would like to reiterate that such requirements do not have any regulatory precedent globally. If this matter is not clarified immediately, it could lead to market distortion where a PSP would

disallow Canadians from engaging in transactions outside of Canada, instead of reprogramming its systems globally to recognize transaction with a Canadian connection.

A lack of clarity on geographic scope is also evident in the RPAA's definition of an entity – “a corporation, trust, partnership, fund, an unincorporated association or organization, the government of a foreign country or of a political subdivision of a foreign country, or an agency of a foreign country or of a subdivision of a foreign country.” Based on the above, it is unclear whether entities such as a corporation, trust, partnership, or fund are to be domiciled in Canada or overseas to fall under the RPAA, in addition to a lack of clarity on the geographical application for individuals making a funds transfer.

As a suggestion, when it comes to defining an end user from a geographic scope perspective, ETA is of the view that any application of the RPAA should be limited to situations where an end user's source of funds is exclusively held in Canada. For example, someone visiting Canada from the United States, with funds held in the United States should not be captured under the current definition.

In terms of what constitutes an end user in broader terms, ETA feels that the current definition is problematic and believes that an end user should be the person that a PSP has a contractual obligation with. For example, in the context of an international remittance transfer originating in British Columbia by a Canadian citizen being sent to a recipient in Mexico, the end-user would be the sender in British Columbia. The PSP has a contractual obligation to the sender. In this instance, the question of geographic scope reemerges again, and this needs to be clarified before PSPs can fully consider the understanding of the term “end-user.” If this is not done, the Bank's current interpretation of who is an end-user will also result in individuals whom the PSP does not have a contractual obligation with being inappropriately captured by the RPAA.

Second, ETA is concerned that the current definition of an end-user does not address the myriad of payment activities that often take place to facilitate one transaction. As a result, the following questions are raised and deserve your consideration:

- When an individual chooses to use a credit card to make a payment, who is the actual person/entity making an order for an EFT and therefore qualifies as an end user? Is this the merchant, card acquirer, payment network, or bank?
- When it comes to the matter of source of funds, are we supposed to consider the source of the funds as coming from the individual or is it provided by the bank?
- What happens when an international student/foreign worker in Canada makes a purchase with their overseas credit card in Canada?
- What about a transaction where a person enters a transaction that is funded by a third-party? Would this mean they do not qualify as a payer?
- What is the status of directing services?

Most of the concerns outlined above would require further clarification from the Bank, while others such as the concept of source of funds could be easily modified to be geographically confined to Canada.

If the RPAA is to be operationalized in an effective manner that is sensitive to the complexities of the payments industry, getting the geographical scope aspect right is of utmost importance. Otherwise, an imprecise approach on geographic scope mixed with vague definitions of end users

could create issues such as confusion with respect to reporting of volume and values like “the average value of end-user funds that the applicant held at the end of each day...” – which essentially means double counting the same transaction if both payee and payer are counted. This results in a regulatory scope which is unwieldy and unlike other reporting requirements in other jurisdictions.

Definition of Electronic Funds Transfer

ETA broadly agrees with the Bank’s definition of an EFT but believes that the mobile uploading of a physical cheque has been inappropriately captured by the Bank’s interpretation. A mobile deposit only represents the cashing of a cheque, with no funds being transferred. Furthermore, the uploading of physical cheques is also currently covered by the rules set in place by Payments Canada. Therefore, we seek your consideration in excluding this activity from the scope of the RPAA.

Definition of Incidental Activities

Given the closely intertwined nature of the payment ecosystem, ETA understands that there could be challenges in determining whether a payment function is incidental to another service or business activity. Hence, it is imperative that more detailed guidance is provided to account for more complicated payment models that we note are absent from the concept paper. Additionally, the specific examples that the Bank has provided in its guidance document are a bit simplistic and members would benefit from examples that are more representative of the complexity of payment models in Canada in these guidance documents.

For example, there was no guidance offered on whether other payment activities performed by marketplaces, payroll service providers, or lenders (‘buy now pay later’, payday loans, merchant cash advances) are considered incidental. We urge the Bank to provide more clarity on these payment functions, to enable the industry to better determine whether their activities are incidental. For lenders in particular, we would go so far as to request that the Bank consider the following as a specific carve-out to clarify that “incidental” payment activities include “any retail payment activities carried out by a credit grantor or lender whose primary business is the extension of credit, in the context of the funding or disbursement of the proceeds of all or a part of a loan to any person (including, for greater certainty, the initiation, ordering, funding or disbursements of any payments made in connection with retail financing plans or retail credit services)”.

Additionally, ETA finds that some of the indicators used to classify whether a payment function is incidental, problematic. Overall, the thinking on what payment function is incidental or not appears to be predicated on a mutually exclusive relationship between the payment function and type of business activity. Consequently, this will lead to a misclassification of payment functions.

As an example, just because an activity generates revenue or provides a commercial advantage does not mean it is not incidental. Moreover, whether an end user can “reasonably be expected to receive payment services” is not an appropriate test of whether a payment function is incidental or not. The appropriate test has already been laid out in the RPAA – whether a payment function being performed is “incidental” to another service or business activity, will depend on how it best supports the business activity. However, as previously noted earlier in this section, there is a need

to rethink the guidance on whether an activity that generates revenue is incidental or not, to ensure that all kinds of payment models are appropriately captured.

Conclusion

ETA thanks you for the opportunity to submit these comments and looks forward to providing more information to help the Bank refine its guidance at the upcoming roundtable in Ottawa on July 6, 2023.

Yours respectfully,



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