COMMENTS FOR THE RESERVE BANK OF INDIA ON DISCUSSION PAPER ON GUIDELINES FOR PAYMENT GATEWAYS AND PAYMENT AGGREGATORS

Consumer Unity & Trust Society (CUTS) expresses its gratitude to the Reserve Bank of India (RBI), Department of Payment and Settlement Systems, for inviting comments and suggestions on the discussion paper on guidelines for payment gateways and payment aggregators.

At the outset, we commend RBI for summarily discussing concerns and gaps in the existing ecosystem and examining different options for regulating payment aggregators and gateways. This is an integral part of the cost-benefit analysis, which all financial regulators decided to adopt in their regulation making process, pursuant to the FSDC Resolution dated 24 October 2013.[1] We are confident that other steps in process will also be implemented to design appropriate regulation for payment aggregators and gateways.

Set out below are specific comments by CUTS, restricted to Regulatory Prescriptions / Specifications for Full and Direct Regulation detailed in Annex 1 of the discussion paper.

SUBMISSIONS

Clause No. of Full and Direct Regulation	Comments
1.4	E-commerce marketplaces would have to stop acting as payment gateways/ aggregators to other merchants within three months. Should they wish to pursue this activity, they will need to create a separate entity for conducting payment gateways/ aggregators business to comply with the regulations. Such entity centric regulatory approach may impose unwarranted burden and costs on market players and should be replaced with function centric approach to regulation. The regulator should desist from requiring market players to change their business architecture but alter its regulatory architecture instead. It could obtain self-certification from the relevant e-commerce entities confirming compliance with applicable regulations without necessarily prescribing break-up. If the intention is to address to conflict of interest concerns, creation of a virtual information barriers (Chinese Wall) between different departments of e-commerce player could be prescribed.
1.6	Little rationale appears behind restricting entities to incorporate themselves only under the Companies Act, 2013, to the exclusion of other innovative forms. Specifying a form of business with limited focus on functions and risks emanating therefrom is akin to missing woods for the trees and thus is not advisable.

[1] https://dea.gov.in/sites/default/files/Handbook_GovEnhanc_fslrc_2.pdf See Page 39

Clause No. of Full and Direct Regulation	Comments
1.8	Little rationale appears behind restricting Payment Gateways and Payment Aggregators to deal with merchants who do not have a physical presence in the country. Merchants are appropriately verified at the time of account opening and onboarding. Once onboarded, all merchants should be treated similarly irrespective of their physical presence.
2.1	The capital of minimum net-worth of INR 100 crore for payment gateways/ aggregators (as currently prescribed for BBPOUs) is a market barrier. A capital requirement is a pragmatic policy for various reasons such as ensuring viability of operations. However, instead of flooring the net-worth to a minimum INR 100 crores, a risk based graded approach linked with value of gross outstanding transactions, or a similar indicator, could have been adopted. Already, it has been reported that BBPOUS have found it difficult to comply with the desired criteria.[2] Moreover, it might not be prudent to treat all kinds of payment gateways and aggregators similarly. The discussion paper itself has noted that these entities have different business models and offer divergent services. Consequently, a customised risk-based approach would reduce restrictions for companies to enter the market, compete, innovate, and improve their quality of services, at the same time addressing concerns of risk, capital, and operations viability.
2.4	Entities which will not be able to comply with net-worth requirements will be required to wind-up payment aggregation business within one year. The time frame to comply with net-worth requirement is too short. In addition, given the present economic scenario in financial services industry, it would be difficult for entities with a net worth below INR 100 crores to comply with the requirement within a year. In summary, it will push out players from the market that has potential to grow and have better quality of services. Equally important, there is no clarity on what would happen to customer funds, if any, held by these entities who fail to comply and will be required to wind-up operations?
6.1 and 6.2	In addition to ensuring compliance with KYC/ AML requirements, the payment aggregators are required to undertake background and antecedent check of merchants, to ensure that merchants do not have any malafide intention of duping customers, do not sale fake/ counterfeit/ prohibited products etc.

[2] https://economictimes.indiatimes.com/industry/banking/finance/bill-payments-units-likely-to-find-it-tough-to-fit-the-bill/articleshow/53292700.cms and https://www.medianama.com/2016/09/223-citrus-pay-payu-wallet/

Clause No. of Full and Direct Regulation	Comments
	Such requirements may tantamount to over-regulation and go beyond the scope of RBI's mandate. Moreover, many payment aggregators may find it difficult to comply with such requirements and consider them onerous. Such requirements should thus be done away with.
Escrow with banks	Payment Gateways and Payment Aggregators shall, if required, maintain the funds received from customers in an escrow account with a scheduled commercial bank. Deposit of funds in escrow with banks may not be the optimal mechanism to protect customer funds. More efficient and secured mechanisms could be designed which may prove beneficial for customers as well. Moreover, banks themselves may be offering payment gateways and aggregator services. The prescription on their competitors to store funds with banks may distort competition.
7	The customer grievance redressal and dispute management framework should be in alignment with the RBI's notification on Turn Around Time and the Ombudsman Scheme for Digital Transactions, 2019 compliance with which should be reviewed from time to time.
7.5	The requirement to have recourse clause in case of non-delivery of goods and services to customers is a business decision for payment gateways and aggregators and need not find mention in the regulations.
10.1	The payment gateways and payment aggregators are required to ensure that neither the merchants on-boarded by them pass on MDR (Merchant Discount Rate) charges to customers while accepting payments through debit cards nor will they separately charge customers in lieu of MDR on debit cards. Passing of MDR to customers is a business decision of payments aggregators/ gateways and merchants. Regulatory prescription prohibiting the same may not be appropriate. Ensuring compliance may also require investment of significant efforts and resources on the part of payment aggregators and gateways. Consequently, such requirements should be avoided.

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