

December 16, 2022

Hon. Bronwyn Eyre
Minister of Justice and Attorney General
Room 355, 2405 Legislative Drive
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Dear Minister Eyre,

I am writing to thank you for taking the time to meet with representatives from the Canadian Prepaid Providers Organization (CPPO) in November. We greatly appreciate your time and attention, and value your consideration of our industry's proposal to modernize Saskatchewan's consumer protection regulations for open loop prepaid products.

Open loop prepaid payments products serve as a catalyst for financial services innovation and represent one of the biggest growth segments in the industry. The Canadian open loop prepaid card market continues to grow at a rapid pace with total loads on all Canadian open loop prepaid card accounts amounting to about CA\$8.5 billion in 2021, up 76 per cent since 2019. This growth is expected to continue and to exceed CA\$17 billion in annual loads by 2025. It is being driven by many new innovative financial products such as real-time wage access and familiar technologies like e-commerce delivery applications, both of which are being directly fueled by open loop prepaid products.

Given the growth of the sector, the CPPO would like to address the regulatory framework governing open loop prepaid products, and why the evolution of open loop products means they should be designated as a unique platform that is critical to the expansion of digital payments and financial services in Saskatchewan. Because open loop cards and closed loop cards are different products with different functionalities that are supplied and distributed under different business models, we believe the regulation of these products, and in particular the fee restrictions imposed on these products, should recognize these differences, as the legislation now does in provinces such as Manitoba and Alberta.

Saskatchewan Regulation of Prepaid

In Saskatchewan, all prepaid products are regulated under Part VI of *The Consumer Protection and Business Practices Act* (**Act**) and Part IV of the *Prepaid Purchase Cards Regulations* (**Regulations**). The Act broadly defines a "prepaid purchase card" and does not distinguish between open loop and closed loop products. This regime was entirely appropriate at the time that it was established, when the bulk of cards were closed loop, to ensure consumer protection measures were in place.

However, since these provisions came into force in 2013, open loop technology has been used as a platform for extensive innovation. Today, open loop prepaid products have little to nothing in common with closed loop gift cards and everything in common with the financial tools that are helping consumers and businesses better manage their finances, access the digital economy and promote financial inclusion.

The impact of the regulations on our sector is significant. The limited fees that are permitted to be charged under the Act and Regulations means that it is difficult for an issuer of open loop products to run a profitable program in the province. Accordingly, it is discouraging open loop providers from carrying on business and launching new products in Saskatchewan. Due to a patchwork of contradictory regulations, the CPPO has seen this first-hand as several issuers have withdrawn from the market in recent years, while others have been deterred from entering.

Distinction Between Open Loop and Closed Loop Functionality

“Open loop” refers to network-branded prepaid payment products (e.g. Mastercard or Visa) that entitle the holder of the product to apply it towards purchasing goods or services from multiple unaffiliated sellers (i.e., anywhere Mastercard or Visa is accepted, as applicable). “Closed loop” means traditional gift cards that entitle the holder of the card to use the card to make purchases at one merchant or brand (e.g., an Indigo, Tim Horton’s, or mall gift card).

In addition to the ability to use the card at a single merchant vs. multiple merchants, open loop products are further distinguishable from closed loop cards in that they can function in a similar way to a bank account. A cardholder can use an open loop product:

- like any debit or credit card at point of sale, including using contactless point-of-sale technology, which has been particularly advantageous during the pandemic;
- for online purchases, enabling access to the benefits of e-commerce, which has proven to be a critical channel for the purchase of goods when access to retail stores has been reduced or discouraged;
- if enabled, to access funds at ATMs, thereby avoiding the need to cash cheques through alternative money services businesses; and
- as a contactless method of payment embedded in a mobile wallet.

Open loop products offer the cardholder ubiquitous acceptance worldwide wherever the relevant payment card network is accepted. Like other network-branded products, open loop prepaid cards are subject to extensive card network rules and benefit from fraud and loss protections.

Distinction Between Open Loop and Closed Loop Business Model

Closed loop cards (traditional store-branded gift cards) function like cash and it is appropriate for closed loop card regulations to protect a consumer’s rights to use the full card value in perpetuity, without paying any fees to use those funds. Closed loop card programs are beneficial for retailers despite not being able to charge card fees because they generate front-end velocity on sales and increase spend on high-margin consumer good/services.

Open loop card programs run on an entirely different business model. The functionality that open loop cards provide comes at a cost to the card issuer, including fraud protection, cyber security, card network expenses, expenses related to the back-end processing and account functionality, customer service, compliance, distribution and sales commissions. Unlike the retail issuer of a closed loop card, an open loop issuer cannot offset its program costs by driving increased sales of goods and services. An issuer can only recover these costs, and make a margin, by charging the cardholder for the use and functionality of the card.

As the functionality of open loop products has continued to expand, the costs of providing open loop programs have continued to increase. As noted, open loop products can offer similar functionality to a traditional bank account. While there is no restriction or regulation around the account and service fees that a financial institution can charge to its account holders (as long as such fees are disclosed), prepaid card issuers are significantly restricted by the provincial gift card regulation in the fees they can charge in relation to open loop prepaid products. This discourages prepaid providers from carrying on business, thus stifling the innovation and competition that are needed to empower consumers with modern banking services that improve their financial experiences.

Benefits of Open Loop Products for Financial Inclusion

Open loop prepaid payment products are providing access to financial services for an under-served segment of the population. An estimated 10 to 20 per cent of Canadians are either unbanked or underbanked, meaning they don't have access to a wide range of everyday banking services including access to consumer credit. People who don't have access to banking services are also likely to be people who are already disadvantaged. These include Canadians living in low-income areas, and remote or Indigenous communities where banking services are difficult or impossible to access. For these vulnerable groups prepaid products offer a preferable alternative by delivering some of the features of a conventional bank account. This can include avoiding costly cheque cashing services.

Access to e-commerce and online delivery options has also become more important than ever and open loop products can help certain populations realize digital opportunities that would otherwise not be available to them. Although open loop products carry the Visa or Mastercard logo, prepaid cards function differently than credit cards in that, rather than access to a credit limit, prepaid cardholders can spend only the amount loaded onto their card. Each transaction reduces the cash balance. The provision of credit is not involved, meaning prepaid functionality is a particularly attractive alternative to those who lack access to credit, including new Canadians. This again provides an important entry point for e-commerce and the digital economy and allows citizens who lack access to credit with a payment mechanism that can be accepted anywhere that a traditional credit card can be used.

Open loop prepaid payment products are also helping workers get paid more quickly. Gig economy workers like Uber and Lyft drivers are utilizing innovative new prepaid platforms to access their earnings at the end of each shift. Open loop prepaid can also help small and medium enterprises increase payroll efficiency while removing the risk of fraud. All employees get their funds instantly, and it saves unbanked employees the stress of having to deal with cheque payments. The number one advantage for unbanked employees is that there is no need to have a bank account. This gives them access to their wages without the worry of how they are going to access the funds.

Addressing Consumer Protection

Modernizing Saskatchewan's Gift Card Regulation would require minimal legislative changes and achieves the goal of ensuring that open loop cards issued are appropriately regulated in a manner that is harmonious. Because most open loop prepaid payment products are issued by federally regulated financial institutions, Saskatchewan consumers would continue to benefit from the consumer protection provisions contained in [the Federal Prepaid Payment Product Regulations](#). The federal regulations have robust disclosure requirements, prohibit the expiry of funds, and contain certain fee restrictions. They are overseen by the Financial Consumer Agency of Canada (FCAC) which ensures compliance with the regulations. This is consistent with the regulation of other financial products, which achieve a balance of allowing the provider to charge reasonable fees while ensuring proper disclosure and other appropriate protective measures. Accordingly, amending Saskatchewan's Gift Card Regulation would not undermine consumer protection as consumers would continue to be afforded robust protection under the federal regime, while seeing the benefits of new and innovative products designed to help Canadians better manage their finances.

Conclusion

As Saskatchewan continues to meet the needs of its citizens for innovative banking and payments solutions that put consumer needs first, it is critical to recognize the role of open loop prepaid as a safe and effective tool to rapidly expand access to digital payments and financial services for Canadians. As the functionality of open loop products has continued to expand, the costs of providing open loop programs have continued to increase. This increases the imperative for how open loop products are regulated from a fee restriction perspective.



The CPPO would like to thank you for your time in considering this critical issue in the Canadian prepaid payments industry. We would be pleased to provide any information which you or your staff may require to harmonize Saskatchewan's approach to the regulation of open loop prepaid products with other provinces.

Sincerely,

Jennifer Tramontana

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