

**CALTEX**

Caltex Australia

15 August 2003

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Joanne Palisi
Director - Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
Dickson
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Dear Ms Palisi

Draft Determination A30224 and A30225

I refer to my email of 11 August 2003 in relation to the Commission's invitation for submissions on the RBA's proposed '*series of basic principles for reform*' which have been included, in dot point form, in paragraph 5.151 of the draft determination, and your email in response of 13 August, attaching a copy of the RBA submission filed in relation to applications A30228 and A30229 by APCA for revocation and substitution.

I am writing to seek further clarification of the Commission's position in relation to this issue.

Firstly I note that the draft determination deals with an application for authorisation in relation to EFTPOS interchange fees. The applicants specifically recorded in their February 2003 application that '*broad reform to improve the ability of potential entrants to join the EFTPOS network is beyond the scope of the current applications for authorisation*'. They foreshadowed that access would be included in a forthcoming application by APCA for renewal of the authorisation of the CECS regulations and procedures. The APCA applications (A30228 and 30229) which were made on 29 April 2003 did not in fact deal with access issues, and suggested a 12 month interim authorisation of the CECS rules to September 2004 to '*allow sufficient time for APCA to conclude it's investigation into EFTPOS access*'.

In paragraph 5.7 of the draft determination, the Commission explains its role in determining whether or not an authorisation should be granted, and in particular makes reference to the observation of the Australian Competition Tribunal that '*the Commission's role is not to design for others business arrangements that can be authorised, nor insist on optimum arrangements before granting authorisation, but rather to access formally whether some proposed conduct that might breach the provisions of the Act yields a net public benefit, and therefore can be authorised*'.

The submissions the Commission is referring to in paragraph 5.151 were not submissions in relation to the application which was the subject of the draft determination, but relate to APCA's applications in relation to CECS. It accordingly seems to Caltex that the Commission, in seeking submissions on the RBA's access principles, is going far beyond its role in determining

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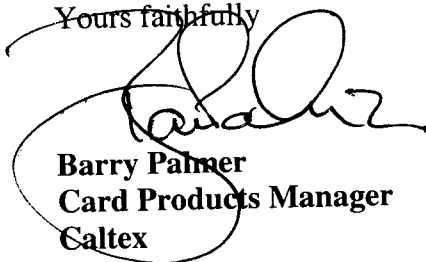
applications A30224 and A30225, and is indeed embarking on an exercise which the Tribunal warned against in the authority referred to in paragraph 5.7 of the draft determination.

Caltex has definite views on access. It will make their views known at the appropriate time and in the appropriate forum. A response to the Commission's draft determination on the interchange fee authorisation application is not the appropriate time nor the appropriate place. While Caltex will make some reference to access in its submissions on the APCA CECS application (although access is not specifically at issue in that authorisation application as currently drafted), the issue of access can in Caltex's view be properly dealt with only in a consultation process involving all interested parties, including merchants and the RBA, and not in a process controlled by APCA.

Under these circumstances, Caltex would like to understand how a submission by the RBA as to *'the basic principles for developing a framework for fair and open access to new and existing participants'* as set out in paragraph 5.151 of the draft determination can have any relevance at all to the authorisation application which specifically and intentionally did not deal with access issues.

Caltex would also like to understand the legal basis upon which the Commission can, as part of the process of dealing with applications A30224 and A30225, now seek submissions on a submission made in relation to a different authorisation application.

Yours faithfully



Barry Palmer
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Caltex