

**Sullivan Susan**

---

**From:** pmair [pmair@speedlink.com.au]  
**Sent:** Wednesday, 13 August 2003 9:47 AM  
**To:** Sullivan Susan  
**Cc:** lesley.reardon@accc.gov.au  
**Subject:** Re: Applications for authorisation A30224 and A30225

Susan,

Thank you for your letter of 8 August and the opportunity to comment on the draft determination of the banks application in respect of interchange fees for debit card purchase transactions.

As you may be aware I have contributed to the public debate of these issues for the past four years and the material widely circulated to ACCC management.

In broad terms I have been disappointed by the scope, force and speed of the regulatory response and said so clearly. A saving grace perhaps is my encouragement of the idea that this competition-policy responsibility should be concentrated in the ACCC (and removed from the Reserve Bank). I remain hopeful the response to the Dawson Report will do this in large measure (see my submission to the TPA review – No5).

On the matter at hand – access to the EFTPOS system and related network fees – I am encouraged by the ACCC rejecting the banks partial proposal. On the face of it I am also encouraged by the RBA proposals on access as set out today in the newsletter “The Sheet” (but the record of the RBA following through is so poor that I discount their input). I am particularly attracted to the implication of substituting a multilateral access agreement for the present cumbersome arrangement for a set of bilateral agreements.

In short I would like to see this policy debate simplified in at least two ways.

First, I believe the banks should be required to bring credit cards within the CECS managed by APCA – and within reach of the ACCC authorisation procedures. Restricting the CECS arrangement to ‘debit cards’ is entirely artificial. This step would also help to expose the redundancy of the credit card product – debit cards with a line of credit overdraft facility would substitute more safely, cheaply and efficiently for credit cards (a primitive product that is now conceptually redundant.).

Second, it would seem important for the business of acquiring and switching card transactions to be opened up to players that are not conventional banks -- it may be possible to structure this service to merchants in a way that manages the settlement obligations of card issuers but itself handles no money of

15/08/2003

any consequence. In this context I read in 'The Sheet' earlier this year of a company Money Switch planning to bring to Australia the system used in the US which relies little on banks and delivers a cheaper service than Australian banks do.

More importantly I am hopeful that changes to the TPA will enable the ACCC to put the onus of 'public interest' back on the banks and in that way force a wholesale restructure of their existing pricing agreements and access arrangements.

Peter Mair

13 August 2003

--  
Speedlink WebMail

----- Original Message -----

From: Sullivan Susan <susan.sullivan@ACCC.GOV.AU>  
To: "pmair@ezy.net.au" <pmair@ezy.net.au>  
Sent: Fri, 8 Aug 2003 12:47:06 +1000  
Subject: Applications for authorisation A30224 and A30225

> By e-mail: pmair@ezy.net.au  
> Dear Mr Mair

> Trade Practices Act 1974

> Applications for Authorisation Nos A30224 and A30225 in relation to  
> EFTPOS interchange fees

> The Australian Competition and Consumer Commission (the Commission) has issued a draft determination in respect of the above applications for authorisation which were lodged by the Australia and New Zealand Banking Group Limited, Australian Settlements Limited, Bank of Queensland Limited, Bank of Western Australia Limited, Bendigo Bank Limited, Cashcard Australia Limited, Commonwealth Bank of Australia, Credit Union Services Corporation (Australia) Limited, National Australia Bank Limited, St George Bank Limited, Suncorp Metway Limited and the Westpac Banking Corporation ('the Applicants') on 21 February 2003.

> The applications for authorisation relate to an Interchange Fee Agreement between the Applicants. This agreement provides for the collective reduction of current interchange or wholesale fees to zero cents per transaction for all EFTPOS processing transactions conducted between the Applicants.

> Having considered the submissions provided by the Applicants and interested parties the Commission is concerned that the proposed agreement is unlikely to result in a net public benefit.. Accordingly the Commission has proposed to deny authorisation to these arrangements. A copy of the Commission's draft determination setting out its reasons for this decision is attached and a brief summary is provided below.

> *Summary of Commission considerations*

> The Commission considers that reform of the EFTPOS network, including interchange fees, is necessary in order to encourage competition and efficiency in the operation of the network. In turn this will contribute to the overall efficiency of Australia's payments system. The Commission notes that reforms to achieve this aim have recently been implemented in relation to credit cards. In particular the reform process for credit cards has been considered and implemented by the Reserve Bank of Australia as a package that is intended to address access, interchange fees and pricing transparency. The Commission is concerned, however, that the current proposal that is the subject of these applications proposes only one element of reform - that is to EFTPOS interchange fees.

> The Commission considers that there are several factors that are likely to influence the effectiveness of competition between card issuing institutions and merchant acquiring institutions, including the high degree of market concentration; the dominance of a small number of large institutions; the cross representation between card issuers and merchant acquirers; and the high barriers to entry to both card issuing and merchant acquiring.

> The Commission considers that the proposed arrangement, by replacing a series of interchange fees negotiated on a commercial basis between two parties (a card issuer and merchant acquirer) with a single interchange fee agreed and implemented on a multilateral basis, is likely to lessen competition. The Commission is further concerned that the proposed arrangement may have the effect of increasing existing barriers to entry by removing an important bargaining tool and may act to further entrench the high level of card issuer and merchant acquirer concentration.

> While the Commission considers that the proposed arrangement has the potential to result in public benefits, in particular as it may contribute to improved payment system efficiency, the Commission is concerned that in the absence of suitable access reform to promote enhanced competition the weight to be attached to these potential benefits is uncertain.

15/08/2003

> It has however been submitted that access concerns may be addressed as part of the Australian Payments Clearing Association's (APCA) review of the Consumer Electronic Clearing System (CECS) arrangements. The Commission is concerned however that the outcome of the APCA review process is highly uncertain and that in the current circumstances it would be inappropriate to attach a lesser weight to its concerns. The Commission considers that, in the event that suitable access reform was to be introduced, the proposed arrangement would be more likely to be in the net public benefit.

> In light of these matters the Commission considers that the public benefits likely to flow from the proposed arrangement may not be sufficient to outweigh the likely detriment from the proposed arrangement. Accordingly the Commission has proposed to deny authorisation to the interchange fee arrangement.

**> Next steps**

> Once the Commission issues a draft determination, the Applicants or any interested party who may be dissatisfied with the Commission's draft determination may request that the Commission convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Under the *Trade Practices Act 1974*, the Commission must set a date within 14 days of which any pre-decision conference must be requested. Accordingly, if you wish the Commission to hold a pre-decision conference in relation to the draft determination, you must notify the Commission in writing by **cob Thursday 22 August 2003**. Conferences are conducted informally, without the participation of legal or other professional advisers.

> In the event of such a conference taking place it is likely that it would be held in Canberra on or around **Thursday 28 August 2003**.

> You are also invited to make a written submission in response to the Commission's draft determination. Written submissions should be lodged by **cob Friday 5 September 2003** at the following address:

> The General Manager  
 > Adjudication Branch  
 > Australian Competition & Consumer Commission  
 > PO Box 1199  
 > DICKSON ACT 2602

> Submissions can also be lodged by e-mail to [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au) or by facsimile on (02) 6243 1211.

> Any submission you make will be placed on the Commission's Public Register. You may request that information you provide in a submission to the Commission be treated as confidential and not placed on the Public Register. Information excluded from the Public Register for reasons of confidentiality will still be considered by the Commission when reaching its decision. Guidelines for seeking confidentiality are attached for your information.

> The Commission will consider any submissions it receives, including any oral submissions made should a pre-determination conference be called, and will then release a final determination in relation to these applications.

> The Commission considers that a commitment to suitable access reform that establishes an appropriate timeframe could go some way to addressing the uncertainty associated with the proposed interchange fee arrangements. In this respect the Commission notes that some interested parties have provided submissions in relation to the APCA application for reauthorisation of its CECS arrangements regarding the potential for access reform. In particular, the Reserve Bank has proposed a series of basic principles for developing a framework for fair and open access to the EFTPOS network. The Commission also invites submissions addressing the EFTPOS access reform principles and the prospects of a commitment to these principles in accordance with the Reserve Bank's proposed timetable.

> A copy of this letter will be placed on the Commission's Public Register.

> If you require further information, please contact Joanne Palisi (02 6243 1051) or Susan Sullivan (02 6243 1354).

> Yours sincerely

>  
 > Susan Sullivan

> for  
 > Tim Grimwade  
 > General Manager  
 > Adjudication

**> GUIDELINES FOR CONFIDENTIALITY CLAIMS**

> The process whereby the Commission assesses applications for authorisation is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation applications.

> Applicants and interested parties can request that a submission, or a part of a submission, be excluded from the public register.

> The Commission is required under the Act to exclude from the public register upon request details of:

- i. secret formulae or processes;
- ii. the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or

> (iii) the current manufacturing, producing or marketing costs of goods or services.

> The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

> Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

15/08/2003

- a. where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- b. where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

> However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

> If the Commission denies a confidentiality request, the requesting party may ask that the material be returned.. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

> If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

> Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act*.

>

> <<A30224 A30225 EFTPOS 8.08.03.pdf>> <<A30224 A30225 EFTPOS 8.08.03 Attachment A.pdf>> <<A30224 A30225 EFTPOS 8.08.03 Attachment B.pdf>>

>

>

> **IMPORTANT:** This email from the Australian Competition and Consumer Commission (ACCC), and any attachments to it, contain information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient, you must not review, copy, disseminate, disclose to others or take action in reliance of, any material contained within this email. If you have received this email in error, please let the ACCC know by reply email to the sender informing them of the mistake and delete all copies from your computer system.

>

>

----- End of Original Message -----