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

FILE No:
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Dear Sir

**Applications for Authorisation Nos A30224 and A30225 in relation to EFTPOS Interchange Fees**

I refer to the recent draft determination by the Australian Competition and Consumer Commission (**ACCC**) in respect of the above applications. The ACCC has sought submissions in response to this draft determination.

The Commonwealth Bank of Australia (**Bank**) appreciates the opportunity to provide its views on the applications for authorisation in relation to EFTPOS interchange fees.

**1. THE APPLICATIONS**

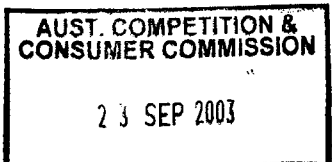
The Bank is a party to Applications for Authorisation Nos A30224 and A30225 in relation to EFTPOS Interchange Fees (**Applications**) and remains fully supportive of a move to zero EFTPOS Interchange Fees. The Bank also supports the separate submission being lodged by the Applicants, urging the ACCC to approve these Applications. The Bank re-affirms the view that a net public benefit will arise from such approval.

Further, the Bank supports the view that the complex questions surrounding EFTPOS access should be examined independently of the Applications. The Bank's position in relation to access is set out below.

**2. ACCESS TO EFTPOS NETWORKS**

**2.1 ACCC draft determination**

The Bank understands and is supportive of reform to EFTPOS access and considers it is important to explore the different ways in which this could be achieved. In this context the Bank is concerned that the Reserve Bank of Australia's (**RBA**) basic principles for EFTPOS access reform as set out in the ACCC's draft determination, fail to take into account considerations critical to the



successful implementation of EFTPOS access reform. These considerations include:

- the proprietary nature of the EFTPOS networks; and
- precedents for the implementation of access regimes in other industries.

These issues are discussed below.

## **2.2 Proprietary EFTPOS networks infrastructure**

The proprietary nature of the EFTPOS networks is a fundamental issue in the consideration of EFTPOS access. The Bank strongly believes that ownership structure should determine the structure of EFTPOS access reform. The RBA has stated at the Pre-Determination conference on 1 September 2003 in relation to the Applications that it is important to recognize the EFTPOS system as a whole. The Bank strongly disagrees with this statement and submits that it will not be possible to implement effective EFTPOS access reform if the proprietary nature of the EFTPOS networks and the commercial arrangements facilitating interconnection are ignored.

The current structure of the EFTPOS networks developed over time. Initially, each participant in EFTPOS had their own proprietary network so that EFTPOS terminals were connected to one financial institution only, and could accept only cards issued by that financial institution. The movement towards the current EFTPOS arrangement began when financial institutions developed bilateral arrangements that facilitated the exchange of payment messages and the reciprocal acceptance of cards issued by the other financial institution. The proliferation of these bilateral commercial and technical arrangements between financial institutions lead to the current proprietary EFTPOS networks forming a series of linked networks. However, the fact that networks are linked to each other does not mean that the networks have "merged". From a technical, commercial and functional point of view, each network remains as a separate entity and should be treated as such.

The infrastructure supporting the proprietary EFTPOS networks broadly comprises:

- several networks of terminals provided to Merchants to facilitate obtaining a Cardholder's card and PIN information; and
- telecommunications switching infrastructure to facilitate communications links between the Acquiring and Issuing participants in each transaction.

The majority of this infrastructure is, separately, owned and operated by six Network Principals (including the Bank, amongst others). Other significant network infrastructure operators include Merchant Principals that operate Private EFTPOS Terminal Networks. This group includes large Merchants such as Coles Myer Limited (CML) that have sufficient scale to invest in their own terminal networks but still rely on Acquirers to provide telecommunications switching services and settlement services.

There are two ways in which prospective entrants can participate in EFTPOS, directly and indirectly. Individual organisations that connect directly with the proprietary EFTPOS networks are referred to as Network Principals. In order to directly connect with these private networks, a prospective entrant would need to enter into bilateral agreements with each of the incumbent Network Principals. Organisations that do not operate their own network infrastructure are able to connect to the proprietary EFTPOS networks indirectly through a 'gateway'. A gateway arrangement involves an entrant connecting with one or more participants that have access to the all proprietary EFTPOS networks through bilateral agreements. As such, gateway access to the proprietary EFTPOS networks allows smaller participants that do not have a sufficient volume of transactions to justify investment in network infrastructure, to provide Issuing and Acquiring services without having to negotiate bilateral agreements with each Network Principal.

### **3. ACCESS PRECEDENTS**

The Bank is also concerned that the regulatory attention being given to the proprietary EFTPOS networks has not taken into account access regimes in other industries. The ACCC has considered the issue of access in other industries, establishing a body of precedent that provides useful guidance when considering options for EFTPOS access reform.

The most relevant examples for the purposes of EFTPOS access arise in the context of the ACCC's inquiries into Internet interconnection or peering, gas networks, electricity grids and Pay TV. Aspects of the access arrangements in these industries that are relevant for the purposes of EFTPOS access include:

- the need to consider the unique physical, commercial and logical arrangements in place between the participants;
- the importance of aligning the interests of network owners with the investment of intellectual and physical capital and that any access regime does not act as a disincentive to investment;
- the role of bilateral negotiations;
- alternatives for the recovery of the costs arising from interconnection;
- alternatives for the determination of access fees; and
- that any mandated initiatives in relation to access should be only those necessary to satisfy regulatory requirements in response to instances of demonstrated market failure.

We also note that the Bank believes that the access regime adopted recently by the RBA in relation to credit card schemes should not be considered as a precedent for the purposes of EFTPOS access because the four party multilateral credit card schemes are fundamentally different to the non scheme based series of proprietary EFTPOS networks that are subject to bilateral arrangements.


#### **4. THE BANK'S POSITION**

Against this background, the Bank's guiding position in relation to EFTPOS access can be summarised as follows:

- any mandated initiatives in relation to access should be only those necessary to satisfy regulatory requirements in response to instances of demonstrated market failure;
- the current EFTPOS structure is one of a series of proprietary networks linked by bi-laterally negotiated commercial and physical links - there is no singular EFTPOS network. The issue of EFTPOS access is one of access to proprietary networks, with their attendant ownership rights and responsibilities. This has significant ramifications for most aspects of the current debate;
- a range of precedents should be considered in framing consideration of Access – the regime imposed in respect of credit card access should not be the only source of guidance to apply to EFTPOS; and
- the legitimate business interests of the Bank as the owner of it's EFTPOS network and the Bank's interest in it's investment in that network should be recognised in an EFTPOS access regime. An imposed access regime should not allow other parties to free ride on this investment.

The Bank thanks you again for the opportunity to contribute to consideration of these important issues.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Bruce Munro', with a stylized, flowing script.

**Bruce Munro**