

from credit cards, leading to an overall decrease in the cost of the Australian retail payments system.

- 6.94 It is the Applicants' view that the price signals which are relevant to the Commission's consideration of the proposed Agreement are those provided by card issuers to cardholders and those provided by merchant acquirers to merchants. The Applicants note while card issuer generated price signals are complex, they submit that this complexity is a consequence of a market of differentiated products and that it is a mistake to emphasise only price competition in such markets.
- 6.95 The Applicants consider that, as a result of effective competition in retailing, merchants are likely to recover the increased cost of EFTPOS merchant service fee charges through higher prices for goods and services rather than through surcharges for the use of EFTPOS. The Applicants submit that, if merchants were to impose an EFTPOS surcharge, then this would offset the reduction in the cost of card use (lower transaction costs or higher levels of service) and would reduce a consumer's incentive to move towards debit cards as a lower cost means of payment. The Applicants consider that the absence of a merchant generated price signal at the point of sale (in other words no EFTPOS surcharge) is an important part of the generation of net benefits through improved efficiency of the payment system.
- 6.96 The Applicants have also submitted that increased transparency in retail pricing (for example through EFTPOS surcharging) runs the risk of being ineffective if transparency is interpreted to mean being reflective of all the cost elements of inputs. The Applicants consider that all that is necessary for efficient outcomes is that consumers know what they have to pay for what they will get. The Applicants further consider that there is no basis in economics or commerce for a view that a failure by merchants to surcharge for EFTPOS transactions would constitute a pricing distortion.
- 6.97 A number of submissions were provided by interested parties in relation to card issuer generated price signals. For example, the ASIC submitted that the Applicants should be required to provide cardholders with a clear explanation of the rationale of the reforms and the implications for the fees payable by cardholders, including disclosure of whether or not the standard fees for EFTPOS transactions are reduced and by how much.
- 6.98 Submissions provided merchants have agreed with the Applicants' general proposition that it is highly unlikely that merchants would recoup the merchant service fee increase via an EFTPOS surcharge and that in their view it is more likely that merchants would recover EFTPOS cost increases by raising prices for goods and services generally.
- 6.99 Woolworths has however submitted that under such arrangements merchant costs would not be transparent as it would mean that the prices of goods and services would increase for all consumers for all payment methods and the correct price signals would not be sent to consumers. Woolworths consider that this will mean those consumers who purchase goods and services by way of

cash will effectively subsidise those consumers who purchase goods and services by credit or debit card, a situation which was deemed to be undesirable by both the Financial System Inquiry and the Joint Study.³⁵ Similar concerns were raised by the ARA, Caltex, the AIP and NARGA.

- 6.100 It is the Commission's view that, while price competition is not the only factor that will be considered by consumers in selecting a product or service from a range of closely related or substitutable products and services, it is nonetheless an important and influential element to be considered by consumer in exercising choice. In this context a price signal evidencing the pass through of card issuer savings is likely to be easier for a consumer to identify and therefore act upon than an alternate pass through signal such as a general enhancement in services. In this respect the Commission notes that the Applicants submit that they consider enhanced disclosure and information campaigns as proposed by the ASIC would be useful and appropriate to help smooth the adjustment to new levels of cardholder fees and merchant service charges. The Commission considers that this commitment will improve traditional price signals and expects that the information campaign to be undertaken by the Applicants will be conducted in a timely manner.
- 6.101 The Commission also considers that, although merchants are able to surcharge in relation to debit card use, a likely consequence of the increase in merchant services fees will be an overall increase in the general level of prices. While a merchant surcharge may have the effect of offsetting some of the savings accruing to card-holders, the Commission does not agree with the Applicants that the absence of an EFTPOS surcharge is an important part of the generation of net benefits through improved efficiency of the payments system. The Commission notes that the Joint Study considered that where merchant service fees were passed on to consumers through higher prices for goods and services, the discipline a merchant can exert on fees such as interchange fees is weakened. The Commission considers however that access reform and the enhancement of competition between merchant acquirers may strengthen the bargaining power of merchants such that the subsidy contributed by non-EFTPOS consumers will be lessened.

Introducing greater flexibility into the setting of EFTPOS interchange fees

- 6.102 The Applicants have submitted that the proposed Agreement will introduce greater flexibility into the setting of interchange fees which will facilitate system-wide initiatives, for example network improvements. In particular the Applicants have submitted that such changes could be negotiated far more easily through an appropriately set non-zero interchange fee than if all existing bilateral agreements had to be renegotiated.

³⁵ Woolworths submission, 31 March 2003, at page 18.

- 6.103 The Applicants note that, in the short term, the proposed conduct will result in a standardised fee but consider that the issue to be considered is whether changes in market circumstances are more likely to be reflected in changes in the interchange fee under the proposal than they were in the past. In particular the Applicants note that under the proposed conduct, EFTPOS interchange fees could be multilaterally reset if there were a case for it. The Applicants submit that the process for resetting interchange fees would exist where it did not before, and the costs of revising interchange fees would be less than they were before. Accordingly the Applicants consider that the proposed Agreement will introduce a greater degree of flexibility in the setting of interchange fees 'over time'. The Applicants note however that the central rationale for the proposal is to set the interchange fee to zero and that it is not intended that the interchange fee level will be subsequently changed at will, but rather that such change would only occur after review by the Commission.
- 6.104 The Applicants further consider that the observed inertia of EFTPOS interchange fees is a result not only of the market structure, but also of the institutional setting and past experience. In particular the Applicants submit that bilateral agreements are too difficult to change when compared with the benefits of doing so. The Applicants contend that while it may be true that the market structure also influenced the inertia, a different interchange fee-setting arrangement may have made a significant difference.
- 6.105 However, Woolworths has submitted that as the bilateral interchange fee arrangements are based upon separate negotiations it is currently possible for interchange fees set by these arrangements to be modified between the two parties without the need for agreement of all other issuers and acquirers. The ARA considers that the mechanism proposed by the interchange fee agreement (clause 3) is an unwieldy, time consuming and less flexible review process.
- 6.106 The Commission notes that the Joint Study expressed concern that interchange fees for debit card transactions had hardly changed since they were introduced in the early 1990's and that newer interchange fee agreements appeared to have been based upon earlier agreements, without regard to changes in costs that may have warranted a revision to interchange fees.
- 6.107 The Commission considers that the historical inertia of EFTPOS interchange fees is likely to be the result of the structure of the EFTPOS network and the competitive disincentives that it has created. The Commission considers that the proposed Agreement, by essentially resetting EFTPOS interchange fees (albeit at zero), is unlikely to generally improve flexibility and notes that it is also likely to lead to the continuation of 'standardised' interchange fees. Although the Commission accepts there is some benefit in allowing interchange fees to be initially reset at zero as a means to overcoming this inertia while the current access reform is being developed and implemented.
- 6.108 The Commission further considers that any transaction cost savings likely to result from the multilateral setting or resetting of interchange fees are likely to be small as the other costs associated with negotiating the bilateral

arrangements, including the flow on agreements with merchants, remain significant.

Making new entry to the EFTPOS network easier by simplifying the negotiation of bilateral interchange agreements

- 6.109 The Applicants have submitted that the proposed Agreement would ameliorate the extent of natural barriers to direct entry into the EFTPOS market and that bilateral agreements should therefore be easier to negotiate. In particular, it is the Applicants' view that the proposed Agreement is likely to narrow the scope, and therefore the cost, of bilateral negotiations. The Applicants also consider that the proposed Agreement is likely to have a flow on effect and reduce the cost of indirect access (via gateway arrangements) to the EFTPOS system by potentially lowering the level of current gateway fees.
- 6.110 The Applicants note that the applications for authorisation are confined to the reform of EFTPOS interchange fees and, in particular, that the applications do not include access reform for an entity to enter as a new card issuer or merchant acquirer of EFTPOS transactions. The Applicants submit that the only aspect of access that is potentially relevant to these applications is the extent to which a reduction in interchange fees makes access any more or less difficult than it currently is. It is the Applicants' view that the removal of an ability to offer a higher interchange fee (if entering as a card issuer) or to accept a lower interchange fee (if entering as a merchant acquirer) will not be significant having regard to the other arrangements that are required to be negotiated as part of a bilateral agreement. In particular the Applicants consider that any reduction in flexibility due to the removal of interchange fees as an element for negotiation will be more than offset by the benefit to the new entrant card issuer of knowing that it cannot be required to pay more for interchange than its competitors in order to enter the market.
- 6.111 The Commission notes that it has been submitted that the uncertainty as to the cost of interconnection for new entrant issuers and acquirers is of itself a barrier to entry. As such the Applicants consider that the proposed Agreement, by providing a greater indication as to the cost of interconnection to new entrant card issuers, may have the effect of lessening the barriers to entry for new entrant card issuers to some degree. As has been discussed at paragraphs 6.36 to 6.74 the Commission is concerned that, in the absence of suitable access reform, the proposed Agreement may have the effect of increasing existing barriers to entry and may act to further entrench the high level of card issuer and merchant acquirer concentration. Accordingly the Commission does not accept this claimed public benefit. The Commission considers however that, in light of the commitments provided by the APCA and the RBA, access reform is now considered to be sufficiently certain such that these concerns regarding the possible effect of the proposed Agreement have been alleviated.

Conclusion on public benefit

- 6.112 The Commission considers that there is a clear benefit to the public through improved payment system efficiency and that the promotion of the increased

usage of EFTPOS as a less costly payment alternative relative to other payment instruments is likely to contribute to the attainment of this benefit. The Commission considers that the pass through of card issuer savings to cardholders and improving the transparency of pricing signals are relevant in assessing the extent to which the proposed Agreement facilitates this.

- 6.113 In the draft determination the Commission was concerned that, while some competitive influence may be exerted by net card issuers, this may not be sufficient to ensure a lasting benefit enjoyed by the public. The Commission was also concerned that current barriers to entry may inhibit the competitive pressures that may otherwise be exercised by potential new entrants (which would thereby increase the extent and likelihood of that benefit being passed through to the general community). However, in light of submissions provided by the RBA and the APCA following the draft determination, the Commission is satisfied that access reform will occur in the short to medium term and that accordingly the competitive pressures that may be exercised by potential new entrants will be improved. As such the Commission considers that it is able to be more certain that a benefit to the public from the pass through of cost savings will occur on an ongoing basis.
- 6.114 The Commission considers that the complexity of the current pricing structures for retail transaction accounts is likely to result in card issuer generated price signals that may not be transparent and may therefore be difficult for consumers to act upon. The Commission considers however that the commitment provided by the Applicants to enhance disclosure and to undertake an information campaign will improve traditional price signals.
- 6.115 The Commission considers that the proposed Agreement, by establishing an industry price fixing arrangement and providing for the potential exclusion of parties who wish to adopt non-zero interchange fees, is unlikely to improve flexibility in the setting of interchange fees and is considered more likely to result in the continuation of 'standardised' interchange fees. Although the Commission accepts there is some benefit in allowing interchange fees to be initially reset at zero as a means to overcoming the current inertia while the current access reform proposal is being developed and implemented. The Commission considers that any transaction cost savings likely to result from the multilateral setting or resetting of interchange fees are likely to be small and that the other costs associated with the bilateral arrangements, including the flow on agreements with merchants, remain significant.
- 6.116 The Commission does not accept that the proposed Agreement would reduce barriers to direct entry into the EFTPOS market by making bilateral agreements easier to negotiate. The Commission considers that while agreement on the interchange fee is one important element in the successful negotiation of a bilateral agreement, other commercial and technical aspects must still be negotiated and remain a significant barrier to new entry. Furthermore, to the extent that the proposed Agreement reduces incentives for new entry and/or increases upfront costs for entry it may have the effect of increasing existing barriers to entry which may act to further entrench the high level of card issuer and merchant acquirer concentration.

Conclusion Commission evaluation – weighing up of the competitive detriments and public benefits

- 6.117 In order to grant authorisation the Commission must be satisfied that the proposed Agreement results in a benefit to the public that outweighs any detriment to the public constituted by any lessening of competition arising from the proposed Agreement.
- 6.118 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.
- 6.119 The Commission considers that the cost savings resulting from the proposed Agreement may strengthen the competitive position of those institutions that are net card issuers vis-a-vis those institutions that are net merchant acquirers. The Commission considers however that this is unlikely to significantly improve competition in card issuing because of the difficulties in getting consumers to switch institutions (as price is only one aspect of a consumer's decision).
- 6.120 The Commission also considers that to the extent the proposed Agreement results in the introduction of higher upfront payments or hinders the negotiation of bilateral agreements it may have the effect of increasing (the already high) barriers to entry, thereby sustaining the potential for anti-competitive detriment in the longer term. The Commission is also concerned that the cost increases to merchants that are likely to result from the proposed Agreement are unlikely to be significantly constrained by competitive forces. However, in light of submissions provided by the RBA and the APCA following the draft determination, the Commission is satisfied that access reform will occur in the short to medium term and the Commission is able to attach a lesser weight to the anti-competitive detriments that may otherwise have arisen as a result of the proposed Agreement.
- 6.121 The Commission is of the view that there is a clear benefit to the public through improved payment system efficiency and that the promotion of an increased usage of EFTPOS as a less costly payment alternative relative to other payment instruments is likely to contribute to the attainment of this benefit. In particular the Commission considers that the pass through of card issuer savings to cardholders and improving the transparency of pricing signals are relevant in assessing the extent to which the proposed Agreement facilitates this. In light of the increased certainty that appropriate access reform will be introduced, the Commission considers that the competitive pressures that may be exercised by potential new entrants will be improved and accordingly the weight to be attached to the pass through of card issuer cost savings is now more certain. The Commission also considers that, in light of the commitment provided by the Applicants to enhance disclosure and to undertake an information campaign, traditional price signals will be improved. The Commission also considers that

there is some benefit in allowing interchange fees to be initially reset at zero as a means to overcoming the traditional inertia of these fees while the current access reform is being developed and implemented.

- 6.122 Consequently, following consideration of the submissions by the Applicants and interested parties, and the information before it, the Commission concludes that the public benefits likely to result from the proposed Agreement will outweigh the anti-competitive detriment. Accordingly the Commission grants authorisation to applications A30224 and A30225.

Time limit

- 6.123 The Applicants have sought authorisation for a period of not less than four years. The Commission considers however that, in the circumstances, a three year period is appropriate. The Commission therefore grants authorisation to applications A30224 and A30225 until 31 December 2006 pursuant to section 88 (1) of the Act.

Determination

Applications A30224 and A30225

- 7.1 On 21 February 2003 Australia and New Zealand Banking Group, Australian Settlements Ltd, Bank of Queensland, Bank of Western Australia Ltd, Bendigo Bank, Cashcard Australia Ltd, Commonwealth Bank of Australia, Credit Union Services Corporation (Australia) Ltd, National Australia Bank, St. George Bank Ltd, Suncorp Metway Limited, Westpac Banking Corporation (the Applicants) lodged applications for authorisation A30224 and A30225.
- 7.2 The applications relate to an Interchange Fee Agreement (**Attachment A**) that broadly provides for the introduction of a collective electronic funds transfer at point of sale ('EFTPOS') interchange fee of zero and for the review of the zero interchange fee approximately every three years or at any other time if there is a material change in circumstances with the consent of the parties.
- 7.3 In lodging the applications authorisation has been sought:
- to make and give effect to a contract, arrangement, or understanding a provision of which would be or might be an exclusionary provision within the meaning of section 45 of the *Trade Practices Act 1974* (A30224); and
 - to make and give effect to a contract, arrangement, or understanding a provision of which would have the purpose or would have or might have the effect of substantially lessening competition within the meaning of section 45 of the *Trade Practices Act 1974* (A30225).
- 7.4 The Applicants have identified three aspects of the Interchange Fee Agreement for which authorisation has been sought, being provisions concerning:
- the setting of EFTPOS interchange fees;
 - the response to inconsistency with contractual obligations; and
 - the process for review and monitoring of the interchange fee arrangements.
- 7.5 The applications were also expressed as applying to any other person who subsequently becomes a party to the proposed Agreement pursuant to section 88(10) of the Act.

Statutory test

- 7.6 For the reasons outlined in chapter 6 of this determination, the Commission is satisfied that, in all the circumstances, the conduct for which authorisation is sought under subsection 88 (1) of the Act in respect of provisions which would be or might be exclusionary provisions would be likely to result in such a benefit to the public that it should be allowed to be made and given effect to (A30224).
- 7.7 For the reasons outlined in chapter 6 of this determination, the Commission is satisfied that, in all the circumstances, the conduct for which authorisation is

sought under subsection 88 (1) of the Act in respect of provisions which would have the purpose or would have or might have the effect of substantially lessening competition within the meaning of section 45 Act would be likely to result in a benefit to the public and that this benefit would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result from the contract, arrangement or understanding (A30225).

The Commission therefore grants authorisation to applications A30224 and A30225 to Australia and New Zealand Banking Group, Australian Settlements Ltd, Bank of Queensland, Bank of Western Australia Ltd, Bendigo Bank, Cashcard Australia Ltd, Commonwealth Bank of Australia, Credit Union Services Corporation (Australia) Ltd, National Australia Bank, St. George Bank Ltd, Suncorp Metway Limited, Westpac Banking Corporation until 31 December 2006.

Conduct authorised

- 7.8 This authorisation extends only to provide immunity from section 45 of the Act, being exclusionary provisions and substantial lessening of competition, for the provisions of the arrangements for which authorisation is sought, being the Interchange Fee Agreement (Attachment A).
- 7.9 The immunity gained from this authorisation does not extend to the application of the other competition provisions of the Act.
- 7.10 Pursuant to s 88(10) of the Act, this authorisation applies to those parties who become parties to the Interchange Fee Agreement at a time after this authorisation comes into effect.
- 7.11 This determination is made on 11 December 2003. If no application for a review is made to the Australian Competition Tribunal, it will come into effect on 3 January 2004. If an application for review is made to the Tribunal, the determination will come into effect:
- where the application is not withdrawn – on the day on which the Tribunal makes a determination on the review; or
 - where the application is withdrawn – on the day on which the application is withdrawn.

Interchange Fee Agreement

Dated

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 Westpac Banking Corporation

Mallesons Stephen Jaques
Level 60
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney

Interchange Fee Agreement

Contents

1	Commencement and Term	1
1.1	Condition precedent	1
1.2	Commencement date	1
1.3	Commencement date and concurrency	1
1.4	Term	1
2	Fees	1
2.1	EFTPOS Interchange Fees	1
2.2	Inconsistency with existing contractual obligations	2
3	Review and monitoring	2
3.1	Monitoring	2
3.2	Review	2
3.3	Amendment pursuant to a review	2
4	Deed Poll	3
5	Withdrawal of a Party	3
6	Termination	3
7	Consideration	3
8	Notices	3
8.1	Form	3
8.2	When effective	3
8.3	Receipt - post	3
8.4	Receipt - fax	3
9	Severability	4
10	Entire agreement	4
11	No representations or warranties	4
12	Counterparts	4
13	Governing law	4
14	Definitions	4
	Signing page	7

Interchange Fee Agreement

Details

Interpretation – definitions are at the end of the General terms

Parties	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, Westpac Banking Corporation
----------------	---

Recitals	<p>A The parties to this agreement have developed a proposal to reform EFTPOS Interchange Fees.</p> <p>B The proposal was developed out of a process of consultation, debate and discussion by a special purpose industry group convened by the Reserve Bank of Australia.</p> <p>C Each of the parties to this agreement is a member of Australian Payments Clearing Association Limited's Consumer Electronic Clearing System ("CECS").</p>
-----------------	--

Date of agreement	20 February 2003
--------------------------	------------------

Interchange Fee Agreement

General terms

1 Commencement and Term

1.1 Condition precedent

This agreement is conditional upon an authorisation being granted under the *Trade Practices Act 1974* in respect of clauses 2 and 3. The parties will lodge an application for authorisation with the Australian Competition and Consumer Commission within 14 days of signing this agreement.

1.2 Commencement date

Subject to clause 1.1, this agreement will commence on 31 October 2003. If no authorisation pursuant to clause 1.1 has been granted by 31 July 2003, then this agreement will commence on a date to be agreed by the parties within 90 days of such authorisation being granted.

1.3 Commencement date and concurrency

It is intended by the parties that this agreement will commence concurrently with the date of implementation of Standard No. 1 imposed by the Reserve Bank of Australia pursuant to section 18 of the *Payment Systems (Regulation) Act 1998* (Cth) in respect of the setting of wholesale ("interchange") fees in the credit card system. If the implementation of this standard is delayed, the parties will consider delaying the commencement of this agreement.

1.4 Term

Unless terminated earlier, this agreement will continue for the term of any authorisation granted in respect of it.

2 Fees

2.1 EFTPOS Interchange Fees

Subject to clause 2.2, the parties agree to charge and to receive the following interchange fees for any EFTPOS Transaction in Australia in which at least one of the parties is an EFTPOS Issuer or an EFTPOS Acquirer:

Transaction Type	EFTPOS Interchange Fee (cents)
(a) EFTPOS Withdrawal Transaction (including sales, sales/cash-out and cash out only)	Zero

- | | | |
|-----|-----------------------------|------|
| (b) | EFTPOS Declined Transaction | Zero |
| (c) | EFTPOS Reversal Transaction | Zero |

2.2 Inconsistency with existing contractual obligations

- (a) Each party agrees that any provision of an existing contract, to which the only parties are any two or more of the parties to this agreement, and which sets an interchange fee for EFTPOS Transactions in Australia at any level other than as set out in clause 2.1, is hereby amended so that the EFTPOS interchange fee between parties to this Agreement is governed by clause 2.1 of this Agreement. For the avoidance of any doubt, each party intends that if an inconsistency should arise between:
- (i) this agreement; and
 - (ii) any other agreement entered into between two or more of the parties to this agreement (and no other persons),
- this agreement should prevail to the extent of the inconsistency.
- (b) If clause 2.1 of this agreement is inconsistent with a provision of any existing contract, the parties to which include one or more parties to this agreement and one or more parties who are not parties to this agreement, those parties to this agreement who are also parties to the existing inconsistent contract will use their reasonable endeavours to amend that contract as soon as practicable to remove the inconsistency.

3 Review and monitoring

3.1 Monitoring

The parties agree that they will monitor the EFTPOS Interchange Fees and the impact of the changes on an on-going basis and meet at least annually.

3.2 Review

The parties agree that they will conduct a review of the EFTPOS Interchange Fees set out in clause 2.1:

- (a) every 3 years (approximately) from the date of commencement (unless a review under (b) has been conducted within the prior 2 years); and
- (b) at any time, if there is a material change in circumstances and at least 25% of the parties in number request such a review.

3.3 Amendment pursuant to a review

This agreement may be amended pursuant to a review under clause 3.2, if no less than 75% of the parties in number agree to the amendment. Where such an

amendment is not agreed to unanimously, the amendment will not come into force for at least 120 days.

4 Deed Poll

Any person who is, or wishes to become an EFTPOS Issuer or EFTPOS Acquirer, may become a party to this agreement by entering into a Deed Poll in the form of the Deed Poll in Schedule 1.

5 Withdrawal of a Party

Any party has the right to withdraw from this agreement by giving at least 90 days' notice in writing to the other parties, and any such withdrawal will not affect the continued operation of this agreement between the remaining parties.

6 Termination

This agreement may be terminated:

- (a) by unanimous agreement of all the parties who are parties to the agreement at the time; or
- (b) upon the withdrawal of a party from the agreement pursuant to clause 5 which would leave only one remaining party.

7 Consideration

This agreement is entered into in consideration of the parties incurring obligations and giving rights under this agreement and for other valuable consideration.

8 Notices

8.1 Form

Notices in connection with this agreement must be in writing and delivered by post or by fax.

8.2 When effective

They take effect from the time they are received unless a later time is specified.

8.3 Receipt - post

If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

8.4 Receipt - fax

If sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

9 Severability

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

10 Entire agreement

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

11 No representations or warranties

Each party acknowledges that in entering into this agreement it has not relied on any representations or warranties about its subject matter except as expressly provided by the written terms of this agreement.

12 Counterparts

This agreement may consist of a number of copies, each signed by one or more parties to the agreement. If so, the signed copies are treated as making up the one document and the date on which the last counterpart is executed will be the date of the agreement.

13 Governing law

This agreement is governed by the law in force in the state of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that state.

14 Definitions

These meanings apply unless the contrary intention appears:

Deed Poll means a deed poll in the form of Schedule 1.

EFTPOS means electronic funds transfer at point of sale.

EFTPOS Acquirer means a body corporate which, in connection with an EFTPOS Transaction:

- (a) under arrangement with and on behalf of an EFTPOS Issuer, discharges the obligations owed by that EFTPOS Issuer to the relevant EFTPOS Cardholder; and
- (b) engages as a result in EFTPOS Interchange Activities with that EFTPOS Issuer.

EFTPOS Card means any card issued by an EFTPOS Issuer to its customer, enabling that customer, as an EFTPOS Cardholder, to effect EFTPOS Transactions.

EFTPOS Cardholder means a customer of an EFTPOS Issuer who is issued with an EFTPOS Card and a PIN for use with that card.

EFTPOS Declined Transaction means a transaction by use of an EFTPOS Card where messages switched between an EFTPOS Terminal and the EFTPOS Issuer do not result in an EFTPOS Withdrawal Transaction because of:

- (a) PIN errors, account errors or insufficient funds;
- (b) unavailability of the computer systems of the EFTPOS Issuer or EFTPOS Acquirer; or
- (c) any other reason not under the control of either the EFTPOS Issuer or EFTPOS Acquirer.

EFTPOS Interchange Activities means the exchange of Items for value between EFTPOS Acquirers and EFTPOS Issuers arising out of EFTPOS Transactions

EFTPOS Interchange Fees means EFTPOS proprietary debit card transaction interchange fees and includes fees paid between the EFTPOS Issuer and the EFTPOS Acquirer for the EFTPOS Issuer's Cardholders' use of the EFTPOS Acquirer's facilities.

EFTPOS Issuer means a body corporate which issues an EFTPOS Card and, in connection with any EFTPOS Transaction effected using that card:

- (a) assumes obligations to the relevant EFTPOS Cardholder; and
- (b) engages as a result in EFTPOS Interchange Activities with that EFTPOS Acquirer.

EFTPOS Reversal Transaction means a transaction that has the effect of reversing an EFTPOS Withdrawal Transaction through the EFTPOS Terminal (including refunds).

EFTPOS Terminal means an electronic device used by an EFTPOS Acquirer to put into effect an EFTPOS Transaction.

EFTPOS Transaction means an electronic funds transfer initiated by an EFTPOS Cardholder's use at point of sale of an EFTPOS Card, and, in the normal course, related PIN, at an EFTPOS Terminal, and without limitation, includes any cash withdrawal, refund and reversal of any such transfer.

EFTPOS Withdrawal Transaction means an electronic transmission of data involving:

- (a) instructions being entered into an EFTPOS Terminal by an EFTPOS Cardholder for the withdrawal of funds;

- (b) response to such instructions by the EFTPOS Issuer conveyed by the EFTPOS Acquirer to the merchant's EFTPOS Terminal; and
- (c) a corresponding credit of the amount to the merchant's account.

Items means all credit payment instructions and all debit payment instructions, usually electronically transmitted, which give rise to EFTPOS Interchange Activities.

PIN means a personal identification number which is either issued by an EFTPOS Issuer or selected by an EFTPOS Cardholder for the purposes of authenticating the EFTPOS Cardholder by the EFTPOS Issuer of the EFTPOS Card.

EXECUTED as an agreement

Interchange Fee Agreement

Signing page

SIGNED by)
as attorney for AUSTRALIA)
AND NEW ZEALAND)
BANKING GROUP)
LIMITED under power of)
attorney dated)
in the presence of:)
.....)
Signature of witness) By executing this agreement
.....) the attorney states that the
Name of witness (block letters)) attorney has received no notice
.....) of revocation of the power of
.....) attorney

EXECUTED by)
AUSTRALIAN)
SETTLEMENTS LIMITED in)
accordance with section 127(1) of)
the Corporations Act 2001)
(Cwlth) by authority of its)
directors:)
.....)
Signature of director) Name of director/company
.....) secretary*
.....) *delete whichever is not applicable
.....)
Name of director (block letters)) Name of director/company
.....) secretary* (block letters)
.....) *delete whichever is not applicable

Interchange Fee Agreement

**EXECUTED by BANK OF
QUEENSLAND LIMITED
ABN 32 009656 740 by its
Attorneys**

General Manager -

and

General Manager -

under Registered Power of
Attorney No. 705593287 before
me:

.....
Witness

**EXECUTED by BANK OF
WESTERN AUSTRALIA
LTD ABN 22 050 494 545 by
its attorney:**
its duly constituted Attorney under
Power of Attorney No. H994310
(WA) dated 22/01/2002 who at
the date hereof had no notice of
revocation of such Power of
Attorney in the presence of:

.....
An Officer of the Bank

.....
Name of witness (block letters)

Interchange Fee Agreement

**EXECUTED by BENDIGO
BANK LIMITED (ACN 068
049 178) by being signed by its
Attorneys:**

who certify that they are the

.....
Attorney

.....
Attorney

respectively for the time being of
the Bank under the Power of
Attorney dated 10/11/98 a
certified copy of which is filed in
Permanent Order Attorney Book
277 Page 13 in the presence of

.....
Signature of witness

.....
Name of witness (block letters)

**SIGNED by
as attorney for CASHCARD
AUSTRALIA LIMITED under
power of attorney dated
in the presence of:**

.....
Signature of witness

.....
Name of witness (block letters)

.....
By executing this agreement
the attorney states that the
attorney has received no notice
of revocation of the power of
attorney

.....
Signature of witness

.....
Name of witness (block letters)

.....
By executing this agreement
the attorney states that the
attorney has received no notice
of revocation of the power of
attorney

Interchange Fee Agreement

**SIGNED SEALED and
DELIVERED for and on behalf
of COMMONWEALTH
BANK OF AUSTRALIA by**

its Attorney under Power of
Attorney dated

who declares that he is

of Commonwealth Bank of
Australia

in the presence of:

.....
(signature)

.....
Witness

.....
(print name)

**SIGNED for and on behalf of
CREDIT UNION SERVICES
CORPORATION
(AUSTRALIA) LIMITED
ABN 95 087 822 455 by its
Attorneys**

and

under Power of Attorney dated
28 May 2001, registered as Book
4311 No. 101

Interchange Fee Agreement

EXECUTED as an agreement)
by)
SUNCORP-METWAY)
LIMITED by its duly authorised)
attorneys :)

.....)
and)
.....)

pursuant to a Power of Attorney
dated 15 November 1991:

.....
Witness

(print name)

SIGNED for and on behalf of)
WESTPAC BANKING)
CORPORATION by its)
attorneys who state that at the)
time of their executing this)
instrument they have no notice of)
the revocation of the Power of)
Attorney dated 17 January 2001,)
registered in the office of the)
Registrar General of New South)
Wales Book 4299 Number 332,)
under the authority of which they)
have executed this instrument in)
the presence of:

(signature)

.....
Witness

(print name)

.....
Witness

.....
(Full name of attorney), Tier
One Attorney

.....
(Full name of attorney), Tier
One Attorney

Attachment B

Submission received from:

Aboriginal Co-ordinating Council
Australian Bankers' Association
Australian Consumers Association
Australian eCommerce Network
Australian Institute of Petroleum
Australian Retailers' Association
Bankcard Association of Australia
Caltex Australia
The Hon. David Campbell MP Minister for Regional Development, the Illawarra, and for Small Business – New South Wales Government
Coles Myer Limited
Commonwealth Department of the Treasury
Consumer Credit Legal Services (WA)
Consumer Law Centre of Victoria
Consumers' Federation of Australia
Cosmos
CUSCAL – public submission
Department of Fair Trading New South Wales
Financial and Consumer Rights Council
First Data
Hon Jon Stanhope
Hon Merri Rose MP – Minister for Fair Trading
Hon Michael Atkinson, Minister for Consumer Affairs, South Australia
Mastercard International
Macquarie Corporate Telecommunications Pty Ltd
McDonalds Australia Limited
Metcash Trading Limited
Money Switch Limited
Motor Trades Association
National Association of Retail Grocers of Australia
Office of Consumer and Business Affairs, South Australia
Post Office Agents Association Limited
Queensland Retail Traders and Shopkeepers Association
Reserve Bank of Australia
SingTel Optus Pty Limited
Woolworths Limited

Attachment C

Submission received from:

Australian Bankers' Association
Australian Consumers Association
Australian Payments Clearing Association
Australian Retailers Association
Bracey's (Lithgow)
Caltex
Coles Myer Limited
Collins Booksellers
Commonwealth Bank of Australia
Department of Justice, Consumer Affairs Victoria
Ed Harry Menswear
Fashion Fair
Financial Services Consumer Policy Centre
Hon Dr David Crean, Treasurer, Tasmania
Hon John Kobelke, Minister for Consumer and Employment Protection,
Western Australia
Hon Merri Rose, Minister for Tourism and Racing and Minister for Fair
Trading, Queensland
Hon Ted Quinlan, Treasurer, Australian Capital Territory
Kibblers Pty Ltd
McDonalds Australia
Michael Brennan, Brennan's Mitre 10
MoneySwitch
Noni B Limited
Office of Fair Trading, Queensland
Peter Mair
Reserve Bank of Australia
Suzanne Grae
Transaction Resources
Woolworths Limited

