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FORM A

Regulation 7

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 — subsection 88(1)**EXCLUSIONARY PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88(1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

* to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.

* to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

1. (a) *Name of Applicants:*

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.

(b) *Short description of business carried on by Applicants:*

Banking and financial services, including, relevantly, the provision of debit card/EFTPOS transaction processing services.

(c) *Address in Australia for service of documents on the Applicants:*

Roger Featherston
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
SYDNEY NSW 2000
Telephone (61 2) 9296 2143
Fax (61 2) 9296 3999
E-mail: roger.featherston@mallesons.com

2. (a) *Brief description of contract, arrangement or understanding and, where already made, its date:*

Interchange Fee Agreement between the Applicants dated 20 February 2003 setting interchange fees at zero cents per transaction for EFTPOS transactions; and providing for a review of the level of the interchange fees approximately

every 3 years or at any other time if there is a material change in circumstances with the consent of the parties. A copy of the Interchange Fee Agreement is annexed as Annexure 1.

- (b) *Brief description of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions:*

Clauses 2 and 3

- (c) *Names and addresses of other parties or proposed parties to contract, arrangement or understanding:*

N/A

3. *Names and addresses (where known) of parties and other persons on whose behalf application is made:*

The application is made on behalf of the parties to the Interchange Fee Agreement (being the Applicants) together with any other person who becomes a party to the Agreement in the future by signing a deed poll in the form of Schedule 1 of the Interchange Fee Agreement annexed as Annexure 1.

4. (a) *Grounds for grant of authorisation:*

See the attached submission.

- (b) *Facts and contentions relied upon in support of those grounds:*

See the attached submission.

5. *This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above-mentioned contract, arrangement or understanding.*

- (a) *Is this application to be so expressed?*

The application applies to deed polls by which any other issuer or acquirer of EFTPOS transactions agrees to become a party to the Agreement.

- (b) *If so, the following information is to be furnished:*

- (i) *the names of the parties to each other contract, arrangement or understanding:*

N/A

- (ii) *the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application:*

Not known.

6. (a) *Does this application deal with a matter relating to a joint venture (See section 4J of the Trade Practices Act 1974)?*

No

(b) *If so, are any other applications being made simultaneously with this application in relation to that joint venture?*

N/A

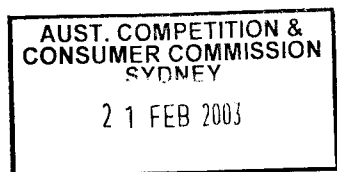
(c) *If so, by whom or on whose behalf are those other applications being made?*

N/A

7. *Name and address of person authorised by the applicant to provide additional information in relation to this application:*

Roger Featherston
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
SYDNEY NSW 2000
Telephone (61 2) 9296 2143
Fax (61 2) 9296 3999
E-mail: roger.featherston@mallesons.com

Dated 21 February 2003



Signed on behalf of the Applicants:

.....

(Signature)

Roger Graeme Featherston
(Full Name)

Partner
Mallesons Stephen Jaques
(Description)

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished:
 - (a) in so far as the particulars or any of them have been reduced to writing — by lodging a true copy of the writing; and
 - (b) in so far as the particulars of any of them have not been reduced to writing — by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
5. Where the application is made also in respect of other contracts, arrangements or understandings which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangement or understanding referred to in item 2.

NOTICES

1. In relation to item 4, your attention is drawn to subsection 90(8) of the *Trade Practices Act 1974*, which provides as follows:

"(8) The Commission shall not:

 - (a) make a determination granting:
 - (i) an authorisation under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
 - (ii) an authorisation under subsection 88(7) or (7A) in respect of proposed conduct; or
 - (iii) an authorisation under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or

- (iv) an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies; unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or
 - (b) make a determination granting an authorisation under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to."
- 2. If an authorisation is granted in respect of a proposed contract, arrangement or understanding the names of the parties to which are not known at the date of application, the authorisation shall, by subsection 88(14) of the *Trades Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.

Interchange Fee Agreement

Dated 20 February 2008

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
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DX 113 Sydney

Interchange Fee Agreement

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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
) attorney has received no
) notice of revocation of the
Name of witness (block letters)) 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) Signature of
) director/company secretary*
) *delete whichever is not applicable
)
)
)
.....)
Signature of director) Name of director/company
) secretary* (block letters)
) *delete whichever is not applicable
Name of director (block letters)

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

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:)

.....
Attorney

.....
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

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

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

.....
Signature of witness

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

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

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

)
)
SIGNED for the **NATIONAL**)
AUSTRALIA BANK)
LIMITED by its attorney,)
Peter Robert James Kempster)
under power of attorney dated 28)
February 1991 (as amended on)
18)
June 1998), who certifies that no)
notice of revocation has been)
issued for the Power of Attorney.)

)
)
.....)
Signature of authorised person

.....
Signature of witness

General Manager,
Australian Payments

.....
Office held

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

PETER ROBERT JAMES
KEMPSTER

.....
Name of authorised person
(block letters)

SIGNED by)
as attorney for **ST GEORGE**)
BANK 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

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

Schedule 1

Deed Poll

Dated

Interchange Fee Agreement between 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 ("**Existing Parties**")

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

Deed Poll

Details

Party	Name	#insert full name#
	ABN/ACN/ARBN	#insert#
	Address	#insert#
	Telephone	#telephone number#
	Fax	#fax number#
	Attention	#insert#

Interchange Fee Agreement	Interchange Fee Agreement between 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, (“Existing Parties”) dated _____, together with any other parties, who have subsequently executed a deed poll.
----------------------------------	---

Governing law of this deed poll	The same as the Interchange Fee Agreement described above.
--	--

BY THIS DEED POLL the Party described above, for the benefit of the parties to the Interchange Fee Agreement described above:

- (a) agrees that from the date of this deed poll it is a party to the Interchange Fee Agreement;
- (b) agrees to comply with and be bound by all current and future obligations of the party under the Interchange Fee Agreement;
- (c) acknowledges having read a copy of the Interchange Fee Agreement before signing this deed poll; and
- (d) acknowledges receiving valuable consideration for this deed poll.

DATED

EXECUTED as a deed poll.

Submission by the Applicants to the
Australian Competition & Consumer Commission
in support of Applications for Authorisation of EFTPOS Reforms

February 2003

Submission to the ACCC in support of Application for
Authorisation of EFTPOS Reforms

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Submission to the ACCC in support of Application for
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