

**Australian
Competition &
Consumer
Commission**

Determination

Applications for Authorisation

Australian Payments Clearing Association Limited

**in relation to its proposed Regulations and Procedures for the Consumer
Electronic Clearing System**

Date: 16 August 2000

Application nos:
A30176
A30177
A90620

File nos:
CA96/17
CA96/18
CA97/12

Commissioners
Fels, Cousins
Bhojani, Shogren
Martin, Jones

Summary

The Commission has considered applications for authorisation lodged by the Australian Payments Clearing Association Limited (APCA) in respect of its proposed Regulations and Procedures for the Consumer Electronic Clearing System (CECS). The applications relate to payment arrangements for debit card transactions generated with the ATM and EFTPOS networks.

Credit card arrangements, comprising the rules of the Visa, MasterCard and Bankcard schemes, also fall within the category of 'consumer electronic'. However, these arrangements are not under APCA's jurisdiction, did not form part of the applications for authorisation, and have not been considered by the Commission in this draft determination. These credit card scheme arrangements are not currently authorised, and so are not protected from court action, under the Trade Practices Act.

In August 1997 the Commission issued a draft determination in respect of the then draft CECS arrangements, proposing to deny authorisation. However, the Commission also indicated that with appropriate further development, the CECS arrangements would be likely to result in net public benefit so that authorisation may be granted. APCA subsequently made a number of amendments to the CECS arrangements and requested that the Commission finalise its consideration of the applications for authorisation.

The ATM and EFTPOS networks

ATMs provide customers of financial intermediaries with an electronic means of withdrawing cash from their accounts, transferring funds between their own accounts and inquiring about their available balances. EFTPOS provides customers with an electronic payment mechanism for the supply of goods and services at a merchant's point of sale (many merchants also offer a 'cash out' service). There are usually four parties to an EFTPOS transaction:

- the Issuer who operates the account from which funds are withdrawn and who issues a transaction card to its customer,
- the customer/cardholder who makes the payment using the card,
- the merchant who exchanges goods or services for the customer's card details and consent to make the payment, and
- the Acquirer who supports the merchant's participation in EFTPOS, pays the merchant and forwards the transaction to the Issuer for settlement.

There are three essential parties to an ATM cash withdrawal transaction – the Issuer, cardholder and the Acquirer/owner of the ATM who acquires the transaction and dispenses the cash.

Issuers and Acquirers provide the payment services in the ATM and EFTPOS networks. There is no central ownership of the networks. Issuers' cardholders are able to undertake debit card transactions through the ATM and EFTOS facilities owned or supported by individual Acquirers because of a series of bilateral interchange agreements (which facilitate the clearing or exchange of payment instructions, and the settlement of payment obligations) between the Issuers and Acquirers. Interchange fees are payable by Issuers to Acquirers in respect of ATM and EFTPOS debit card transactions. (The Commission and Reserve Bank are currently conducting a joint study into both debit and credit card interchange fees.)

The bilateral interchange agreements, which include standards for ATM or EFTPOS facilities as well as clearing, settlement and interchange fee arrangements, form the core of the ATM and EFTPOS networks. For an organisation to participate in the ATM or EFTPOS networks as an Issuer it would need to enter into bilateral interchange agreements with the Acquirers in the networks, or enter into an arrangement with a 'gateway' Issuer that has bilateral interchange agreements with the Acquirers.

Similarly, for an organisation to participate in these networks as an Acquirer it would need to enter into bilateral interchange agreements with the Issuers, or into an arrangement with a 'gateway' Acquirer that has such agreements with the Issuers.

Traditionally merchants have been end-users of the payment services provided by Acquirers in the EFTPOS network. However, should a merchant enter into interchange agreements with Issuers, or enter into a 'gateway' arrangement with an Acquirer that has such agreements with the Issuers, the merchant could provide its own acquiring services and be a direct participant in the EFTPOS network.

CECS arrangements

The object of CECS is to co-ordinate and manage standards and procedures to facilitate the conduct and settlement of exchanges of ATM and EFTPOS payment instructions between CECS Members and all aspects of the related clearing cycle. These standards and procedures are set out in the CECS Manual and will be mandatory when CECS Members engage in the exchange of ATM or EFTPOS transactions with other CECS Members. However, any two CECS Members may agree to apply divergent standards and procedures, provided they satisfy the CECS Management Committee that the integrity, security or efficiency of CECS as a whole will not be lessened in any material way as a result. Although, no CECS Member may require any other Member or prospective Member to apply standards and procedures in ATM or EFTPOS interchanges other than those in the CECS Manual.

Thus, CECS is a forum in which its Members will agree on minimum mandatory standards and procedures for the interchange arrangements between themselves as Issuers or Acquirers in the ATM and EFTPOS networks. (Currently, the standards and procedures relevant to ATM and EFTPOS interchanges are bilaterally agreed between each Issuer and Acquirer and included in their interchange agreement.)

The Commission considered that the setting of minimum mandatory standards and procedures for interchange would have a positive effect on access to the ATM and EFTPOS networks for Issuers, Acquirers and merchants who provide their own EFTPOS acquiring services ('Merchant Principals' under the proposed CECS arrangements). This is so because the respective interchange partners of such Issuers, Acquirers and Merchant Principals would not be able to insist they meet more stringent and unjustified standards and procedures.

The Commission also considered that the proposals under which APCA will provide certification that Acquirers and Merchant Principals satisfy the CECS minimum mandatory standards and procedures for interchanges will increase the objectivity and transparency of such certification by removing the process from the existing Acquirers. It noted that these proposals will also assist Acquirers' and Merchant Principals' access the ATM or EFTPOS networks.

The Commission concluded that the minimum standards and procedures and the certification process for Acquirers and Merchant Principals of the proposed CECS Manual would be likely to result in net benefit to the public by enhancing the security and integrity of the ATM and EFTPOS networks. It considered, however, that:

- proposed CECS Regulation 4.1(b) required amendment so that CECS Members could not require that non-Members meet interchange standards and procedures other than those set out in the CECS Manual; and
- proposed CECS Regulation 2.11 required amendment so that no CECS Member may refuse on technical, operational or security grounds, to engage in ATM or EFTPOS interchanges with either a Member or non-Member Acquirer or Merchant Principal that has APCA certification.

The proposed CECS Regulations specify that no CECS Member is obliged, solely on account of its membership of CECS, to exchange ATM or EFTPOS payment instructions with any other CECS

Member. Thus, although CECS Members and prospective Members will be required to comply with the CECS standards and procedures in their ATM and EFTPOS interchange arrangements, such compliance will not ensure they obtain access to the ATM or EFTPOS networks as either an Issuer, Acquirer or Merchant Principal. It will continue to be necessary for CECS Members or prospective Members to enter into bilateral interchange agreements or 'gateway' arrangements for them to obtain such access. (This will also be the case for organisations that are not members of CECS.)

The Commission noted that for an industry association to require its members to contract with other members or with non-members that meet certain criteria would be to exceed what is generally required under the competition provisions (Part IV) of the Act. The Commission considered that, to require as a condition of authorisation of the proposed CECS arrangements that Members enter into ATM or EFTPOS interchange agreements with other Members or non-Members that are able to satisfy the proposed interchange standards and procedures under CECS, would not be justified. To do so would be to impose upon CECS, through the authorisation process, elements of a comprehensive access regime for the ATM or EFTPOS networks. In the Commission's view, should such an access regime be considered necessary it should be established under the appropriate legal provisions of Part 111A of the Act or by the Payments System Board under the *Payment Systems (Regulation) Act*.

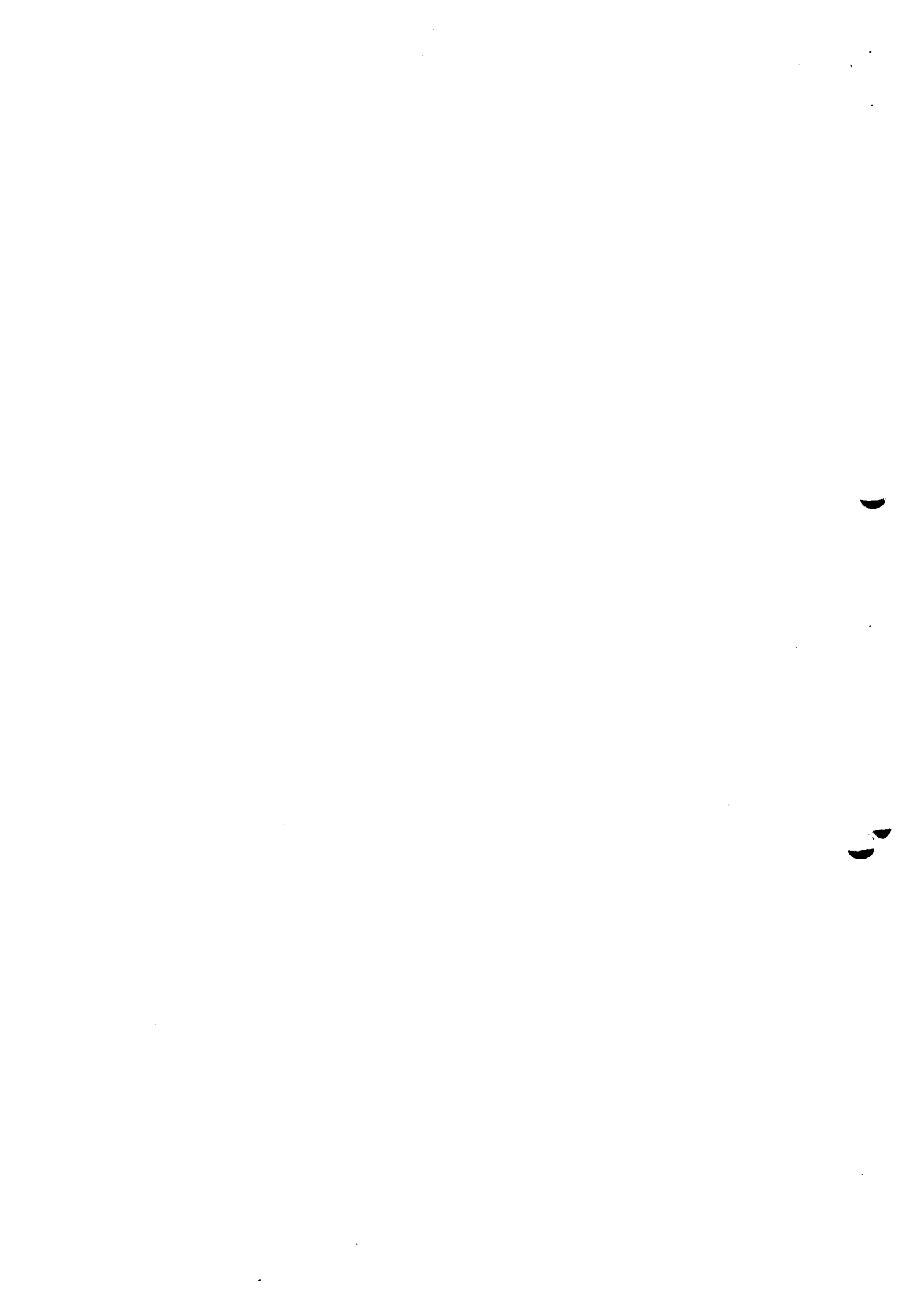
CECS membership will be confined to organisations that are Issuers or Acquirers in the ATM or EFTPOS networks, or are Merchant Principals in the EFTPOS network. The CECS Management Committee, which is drawn from CECS Members, will set the ATM and EFTPOS minimum interchange standards and procedures. The composition of the Management Committee, and voting rights of members of the Committee, will depend upon the ATM and EFTPOS transaction volume of relevant CECS Members.

The Commission noted that membership of CECS will not be required for an organisation to participate in the ATM or EFTPOS networks as an Issuer, Acquirer or Merchant Principal. Central to the Commission's evaluation of the proposed membership and Management Committee criteria, was the privilege of CECS membership identified by APCA - of being able to contribute to the setting of ATM and EFTPOS minimum interchange standards and procedures.

The Commission observed that should merchants not structure their EFTPOS arrangements so they would qualify as Merchant Principals, or should other non-traditional participants not enter the ATM or EFTPOS networks as Acquirers (in particular) or Issuers, the membership of CECS and its Management Committee will be dominated by authorised deposit taking institutions (ADIs). It was argued that should ADIs determine the procedures and standards for the ATM and EFTPOS networks, it may not be in their commercial interest to further develop these networks to the detriment of other payment systems (eg, the credit card system).

The Commission noted its concern should ADIs so manipulate the procedures and standards for the ATM and EFTPOS networks under the proposed CECS membership and Management Committee arrangements. However, the Commission considered there would be a number of impediments to such manipulation in practice. These included the Commission's power to revoke any authorisation granted in respect of the CECS arrangements, and the Payments System Board's power to designate a particular payment system and to set standards and procedures in respect of that system.

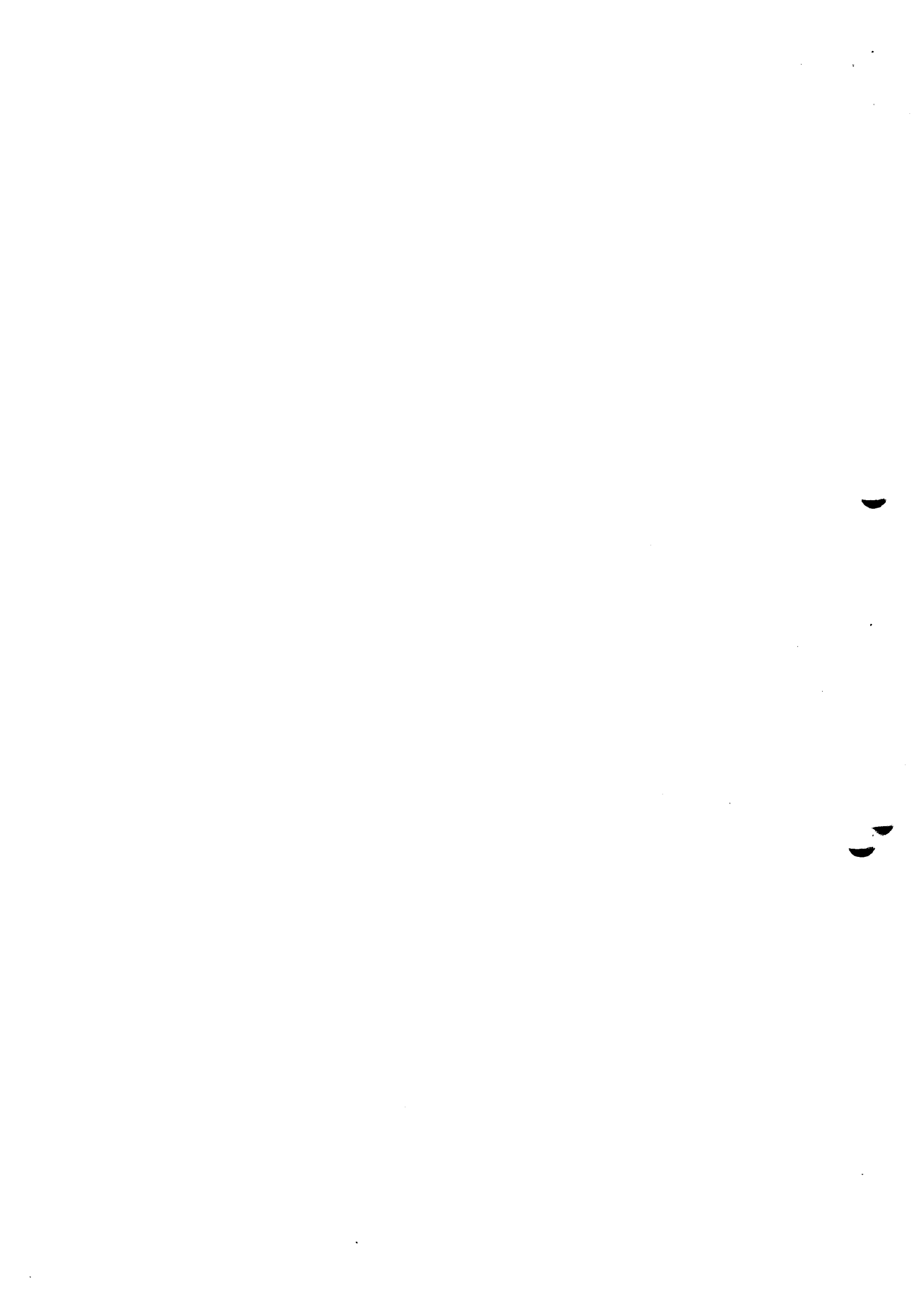
The Commission concluded that in all the circumstances the proposed CECS arrangements are likely to result in net public benefit. It granted conditional authorisation to APCA in respect of the proposed CECS arrangements until 7 September 2003.



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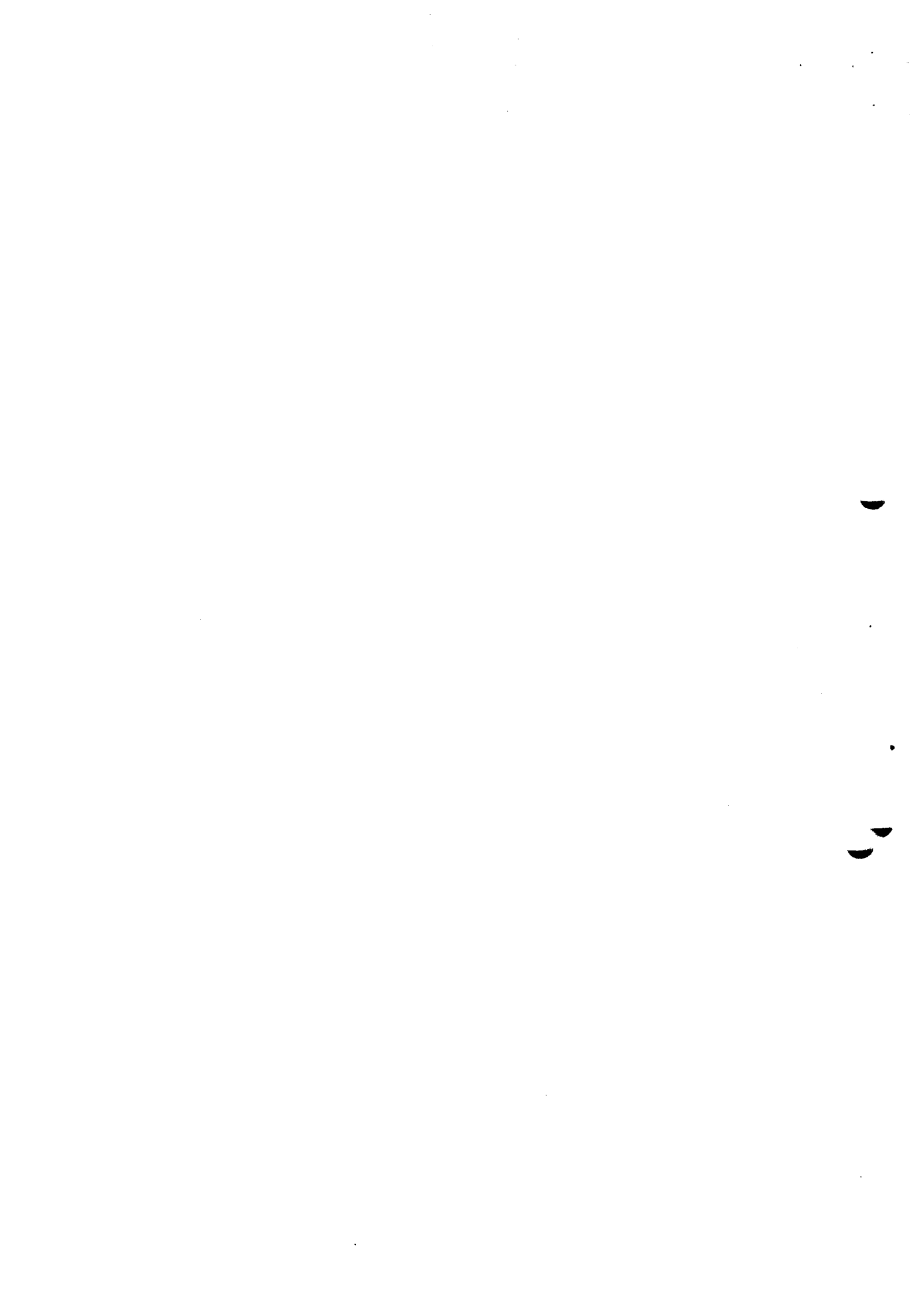
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Attachment A - ATM linkages (December 1999)



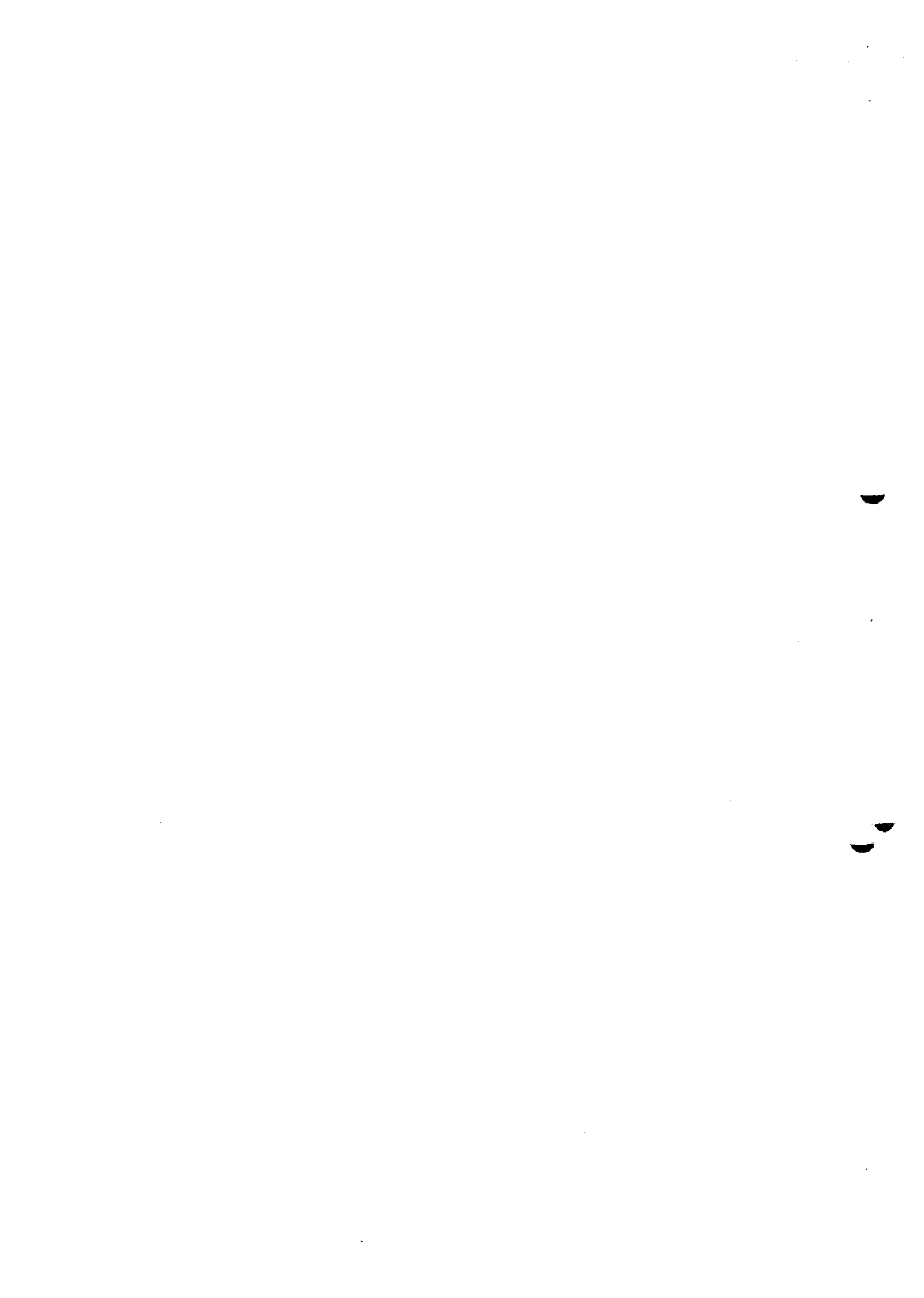
Attachment B - EFTPOS linkages (December 1999)

Attachment C – Parties that lodged submissions



List of abbreviations

AAPBS	Australian Association of Permanent Building Societies Incorporated
ADI	Authorised deposit-taking institution
ANZ	Australian and New Zealand Banking Group Limited
APCA	Australian Payments Clearing Association
APCS	Australian Paper Clearing System
APRA	Australian Prudential Regulation Authority
APSC	Australian Payments System Council
ASIC	Australian Securities and Investment Commission
ATM	Automatic teller machine
BECS	Bulk Electronic Clearing System
BITS	Bank Interchange Transfer System
CECS	Consumer Electronic Clearing System
CUFSAL	Credit Union Financial Services (Australia) Limited
EDI	Electronic data interchange
EFTPOS	Electronic funds transfer at point of sale
ESA	Exchange settlement account
HVCS	High Value Clearing System
ISO	International Standards Organisation
NAB	National Australia Bank Limited
PED	PIN Entry Device
PIN	Personal identification number
PSB	Payments System Board
RITS	Reserve Bank Information and Transfer System
RTGS	Real Time Gross Settlement
SCM	Security control module
SSP	Special Services Provider
TPC	Trade Practices Commission



1. Introduction

Original applications

1.1. On 6 September 1996 the Australian Payments Clearing Association Limited (APCA)¹ lodged two applications for authorisation in respect of its proposed Regulations and Procedures for the Consumer Electronic Clearing System.

1.2. Application A30176 was made under sub-section 88(1) of the *Trade Practices Act* (the Act) for an authorisation to make or give effect to 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 the Act.

1.3. Application A30177 was made under sub-section 88(1) of the Act for an authorisation to make a contract or arrangement, or arrive at an 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 Act.

1.4. APCA advised that the other parties or proposed parties on whose behalf applications A30176 and A30177 were made were the parties listed in Annexure B of its applications and future members of APCA. It described the contract, arrangement or understanding as the proposed Regulations and Procedures for the Consumer Electronic Clearing System (CECS) to be established by it. The provisions that would or might be exclusionary provisions were identified as including, without limitation, Regulations 4.2, 4.3, and 4.14 to 4.19 (CECS membership) and Regulation 5.1 (entrance fees).

1.5. On 22 May 1997, APCA lodged a further application for authorisation in respect of its proposed Regulations and Procedures for CECS. Application A90620 was made under sub-section 88(8) of the Act for an authorisation to engage in conduct that constitutes or may constitute the practice of exclusive dealing. APCA described the conduct that would or may constitute exclusive dealing as including, without limitation, conduct pursuant to Regulations 4.2, 4.3 and 4.14 to 4.19 (CECS membership requirements).

Commission consideration

1.6. On 20 August 1997 the Australian Competition and Consumer Commission (the Commission) issued a draft determination proposing to deny authorisation to APCA in respect of the CECS arrangements. However, the Commission also indicated that with appropriate further development and amendment the CECS arrangements would be likely to result in net benefit to the public so that authorisation may be granted by the Commission. The issues of concern to the Commission and its suggested changes to the CECS arrangements are noted briefly below. These matters are discussed in detail in the draft determination of 20 August 1997, a copy of which is on the public register maintained by the Commission for adjudication matters.

1.7. The Commission noted that consumer electronic payment instructions within the scope of the CECS arrangements were debit card transactions generated within the ATM and EFTPOS networks. Interchange agreements are at the core of the ATM and EFTPOS networks as they enable a card issued to a customer of one institution (the Issuer) to be used to pay a merchant whose banking

¹ APCA was formed in February 1992. Its role is to manage and develop the Australian payments clearing system.

services are provided by another institution (the Acquirer), or to transact at another institution's ATMs. The Commission considered the CECS arrangements the subject of the applications deficient in that they only specified standards and procedures relevant to participating in the EFTPOS network as an Issuer. They did not specify EFTPOS interchange standards for Acquirers, or ATM interchange standards for Issuers or Acquirers. The Commission considered that these deficiencies needed to be addressed before authorisation could be granted for the CECS arrangements.

1.8. The Commission also noted that the interchange standards under CECS were voluntary standards. It was not therefore satisfied that those industry-agreed standards would be likely to increase the integrity and security of CECS interchanges as claimed by APCA. Several interested parties had expressed concern that proposed EFTPOS Acquirers experienced considerable delay in entering into interchange agreements with Issuers. Such delay resulted from the process of having the current Acquirers (who were also the major Issuers) 'certify' security aspects of the proposed Acquirers' equipment and systems. The Commission considered that in order to obtain authorisation the CECS interchange standards should be mandatory minimum standards and that APCA should be responsible for administration of compliance with those standards.

1.9. The CECS arrangements provided for only one level of membership of CECS, with all members required to satisfy prudential supervision and financial standing criteria. The Commission considered these membership criteria required amendment as they were unnecessarily restrictive and not justified in the public interest, particularly for those CECS members who settled their payment obligations indirectly through settlement representatives. The Commission also considered that APCA should provide a forum through which it and CECS members could consult with organisations that participate in the ATM or EFTPOS networks but do not qualify for membership of CECS.

1.10. Finally, the Commission noted that interchange fees in ATM and EFTPOS transactions are payable from Issuers to Acquirers, that such fees are negotiated bilaterally and that there was an apparent inequality of bargaining power in such negotiations. The Commission considered that the CECS arrangements should require CECS members to base their interchange fees on efficient pricing principles, and should ensure that access to the ATM and EFTPOS networks is available to Issuers and Acquirers on fair and reasonable commercial terms.

1.11. In its draft determination the Commission advised that it would assess whether APCA was to introduce the changes to CECS that the Commission considered necessary for authorisation to be granted. If adequate progress was made towards implementing those changes the Commission advised that it would delay issuing a final determination to enable it to consider the CECS arrangements as further developed by APCA.

Amendments to the applications

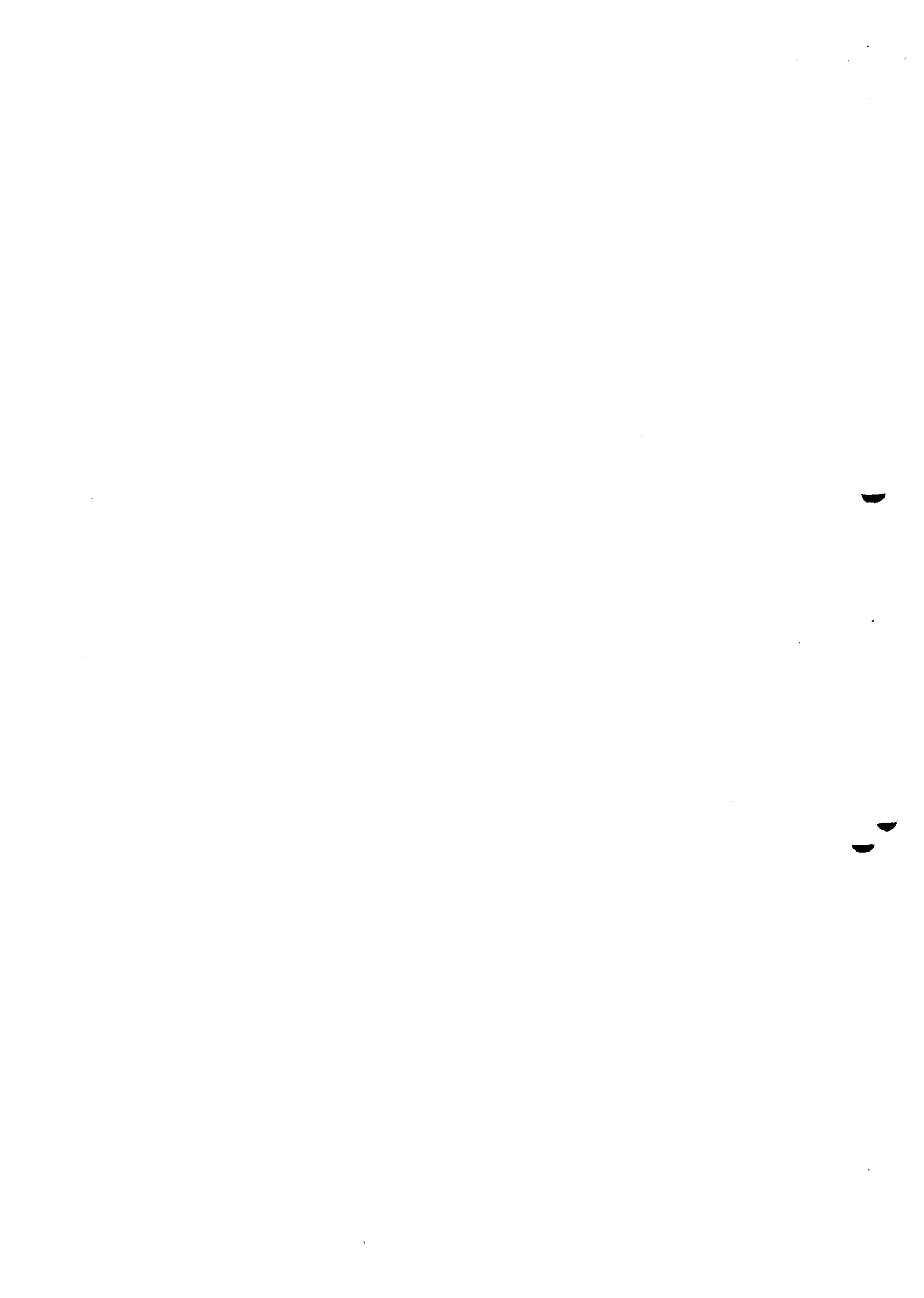
1.12. On 16 December 1998 APCA lodged amendments to its CECS Regulations and Procedures and requested that the Commission finalise its consideration of the applications for authorisation. APCA described the amendments to the CECS arrangements as follows:

- deletion from membership criteria of the requirements for 'prudential supervision' and that prospective members be 'providers of payment services';
- revised definitions of 'acquirers' and 'issuers' as a functional, rather than institutional, basis for membership;
- adjusted representation at the CECS management committee to cater for a potentially wider membership;

- establishment of a consultative forum;
- introduction of mandatory technical, security and operational standards;
- introduction of EFTPOS acquirer standards; and
- introduction of ATM interchange and acquirer standards.

1.13. APCA advised that it had not amended the CECS arrangements to implement efficient pricing principles for interchange fees. APCA's firm view was that its role does not extend to regulating the setting of prices by its members, and that prices should be set through negotiation in the open market. It also advised that it had neither the specialised knowledge nor the resources to perform the regulatory/supervisory role that any reasonable pricing procedure would require.

1.14. On 7 July 1999 APCA lodged further amendments to the CECS Regulations to include a new membership category for certain non-clearers, termed 'Merchant Principals' in the amended Regulations.



2. Background

Payments system

2.1. A 'payment' is the transfer of a financial asset, of the kind generally used as a medium of exchange, from one person to another. Such assets are generally cash or obligations drawn on organisations which, in the normal course of their business, provide the means for their customers to transfer value to third parties. Cash payments are still important in volume terms, but non-cash means of making payments predominate in value terms and are increasingly replacing cash.

2.2. A 'payments system' is the institutional infrastructure which carries payment messages and transfers funds from one party's account to another's. It underpins commerce and is at the core of the financial system. A payments system comprises:

- payment instrument(s) - the form which a payment message takes (eg cheque, credit card) and is the means by which one party transfers value to a third party; and
- delivery mechanism(s) - the means by which payment messages are carried from one point within the payments system to another.

2.3. Where both parties to a payment transaction maintain accounts with the same organisation, payment arrangements are relatively simple. The organisation debits the paying customer and credits the receiving customer. Where the parties to a payment transaction are customers of different organisations, a process is needed for both organisations to reflect the change in their customers' accounts and for value to pass between those organisations. The process is called clearing and settlement.

2.4. APCA advises that the provision by an organisation to its customers of a payment instrument which restricts the transfer of value to third parties who are also customers of the same organisation (ie, within a "closed system") will not, as a general rule, generate the need to clear and settle, no matter how extensive is the use of that payment instrument. APCA says that charge cards issued by organisations such as American Express and Diners come into this category.

Clearing

2.5. Clearing is the cross-institutional exchange of individual payment messages for the purpose of obtaining settlement. APCA advises that clearing entails sorting, routing and exchanging payment instructions; verifying the integrity of the instructions and the accuracy of the sums involved; correcting the sums for errors and other adjustments and finally, determining net amounts which, once paid, will settle any resultant debt between the financial institutions involved.

2.6. Clearing in Australia is primarily regulated under rules agreed between members of APCA.

Settlement

2.7. Settlement is the exchange of value between organisations providing payment services for the purpose of providing finality of payment for the obligations arising out of payments clearing. Central bank money is generally regarded as the only medium which provides finality of payment (ie, payment which is free from default).

2.8. Settlement between banks in Australia is achieved through transfers of their Exchange Settlement Account (ESA) balances held with the Reserve Bank of Australia. The Reserve Bank has

also provided settlement accounts to two Special Services Providers (SSPs)² representing majority sections of the building society and credit union industries. In November 1999 the Sydney Futures Exchange Clearing House was granted an ESA to be operated exclusively on a Real Time Gross Settlement (RTGS) basis. This was the first such approval under the more liberal ESA access arrangements announced by the Reserve Bank in March 1999 under which non-bank institutions which provide third-party payment services are eligible for ESAs³.

2.9. Except in respect of high value electronic payments, Australia has a deferred settlement payment system. That is, one in which the settlement of clearing obligations between financial institutions occurs at some interval after the transfers of the payment messages underlying settlement have taken place. (In Australia, settlement occurs the following morning.) Deferred settlement systems carry the inherent risk of an institution paying away and then not receiving due settlement.

Australia's payments systems

2.10. The systems used for making payments in Australia are as follows⁴:

- *paper* - mainly cheques and payment orders;
- *direct entry* - which allows organisations to make arrangements with their financial institution to debit (eg, for payment of insurance premiums, utility bills) and/or credit (eg, with employees' salaries) large numbers of customers' accounts on a regular basis;
- *consumer electronic* - electronic funds transfer at point of sale (EFTPOS), debit and credit cards, stored value cards;
- *high value electronic* - payments through APCA's High Value Clearing System (HVCS); the Reserve Bank Information and Transfer System (RITS), which provides registry, depository, clearing and settlement facilities for Commonwealth Government Securities; and Austraclear's 'Fintracs' system, which provides registry, depository, clearing and settlement facilities for money market securities (private sector and semi-government securities).

2.11. Approximately 8.5 million non-cash transactions are processed through Australia's payments systems each working day with a value of around \$120 billion⁵.

2.12. The following tables provide further data on the size and growth of the payments system. (Data in these tables are taken from APCA's 1999 annual report, except for the RITS and Austraclear data and the 1997 HVCS data in Table 2 which are taken from the Australian Payments System Council's 1998 annual report and the Payments System Board's 1999 annual report.)

² A Special Service Provider (SSP) is an organisation that provide financial services to building societies or credit unions, and is registered under the national scheme for the regulation and prudential supervision of building societies and credit unions.

³ Reserve Bank of Australia media release, 11 November 1999.

⁴ APCA is currently working to develop industry procedures and standards for exchanging financial Electronic Data Interchange (EDI) messages between financial institutions. EDI is the electronic transfer of business information between trading partners. Financial EDI is an EDI message using established standards which contains both the remittance advice relating to a purchase of goods or services and the corresponding payments message.

⁵ Payments System Board annual report 1999.

Table 1: Number of payments transactions and ATM withdrawals

	1997	1998	1999
<i>(Millions of items per day)</i>			
Cheques	3.7	3.7	3.2
Direct entry credits	1.8	1.9	2.1
Direct entry debits	0.4	0.6	0.8
<i>(Millions of items per month)</i>			
ATM withdrawals	39.2	42.9	41.9
EFTPOS	39.2	44.5	48.6
Credit cards	25.9	32.8	42.9

Table 2: Value of payments transactions and ATM withdrawals

	1997	1998	1999
<i>(\$billions per day)</i>			
Cheques	24.9	14.6	12.3
Direct entry credits	3.4	3.6	5.3
Direct entry debits	1.6	2.4	4
HVCS	26*	64.1	65.7
RITS	14	15	13.8
Austraclear	18	20	21.3
<i>(\$billions per month)</i>			
ATM withdrawals	5.4	6.2	6.8
EFTPOS	2.1	2.4	2.8
Credit card	2.5	3.6	4.3

* This figure is for Bank Interchange Transfer System (a large-value payment system built around bilateral links between the four major banks and the Colonial State Bank) transactions, which in subsequent years are included in the HVCS data.

2.13. In terms of the value of payments, there has been considerable growth in the wholesale electronic systems (HVCS, RITS and Austraclear). In volume terms, the main area of growth has been in the retail electronic systems, particularly in credit card and EFTPOS transactions.

APCA

2.14. APCA, which was incorporated in February 1992, is a public company limited by both shares and guarantee. Its Memorandum and Articles of Association were granted authorisation by the Commission's predecessor, the Trade Practices Commission (TPC), in September 1993. APCA's charter, as set out in its Memorandum of Association, is to co-ordinate, manage and ensure the implementation and operation of effective payments clearing and settlement systems, policies and procedures.

2.15. APCA does not process payments, nor does it own or manage payments infrastructure. APCA develops and manages rules governing payments clearing arrangements for each of the clearing systems it establishes. Individual institutions are responsible for their own clearing operations, and must conduct their operations according to APCA's rules as set out in the Regulations and Procedures for each system. APCA is currently responsible for establishing and managing four payments clearing systems:

- Australian Paper Clearing System (APCS)- which is operating under APCA's management, Regulations and Procedures authorised by the TPC in September 1993;
- Bulk Electronic Clearing System (BECS) – which is operating under APCA's management, Regulations and Procedures authorised by the TPC in October 1994;
- Consumer Electronic Clearing System (CECS) – which is being established, Regulations and Procedures are the subject of the current applications for authorisation;
- High Value Clearing System (HVCS) – which is operating under APCA's management, Regulations and Procedures authorised by the Commission in April 1998.

APCA's charter does not restrict it to these four clearing systems. It may establish additional clearing systems if the need arises.

2.16. APCA currently has three broad categories of membership - share members, participating members and associate members. However, its Memorandum and Articles of Association provide for the creation of additional categories of membership if required. As noted, APCA is in fact proposing under the revised CECS arrangements the subject of the current applications for authorisation to introduce a new category of participating membership (Merchant Principals) in CECS.

2.17. APCA's shares are divided into five classes - ordinary shares, and 'A', 'B', 'C', and 'D' class voting redeemable preference shares.

- The Reserve Bank, Australia and New Zealand Banking Group Limited (ANZ), Commonwealth Bank of Australia (Commonwealth Bank), National Australia Bank Limited (NAB), and Westpac Banking Corporation (Westpac) may each hold one ordinary share.
- 'A' class voting redeemable preference shares may be held by state and regional banks. 'B' class voting redeemable preference shares may be held by other licensed banks. Each such bank is entitled to one share plus an additional share for each clearing system in which it participates.
- 'C' class voting redeemable preference shares may be held by the Australian Association of Permanent Building Societies Incorporated (AAPBS), and permanent building societies which are not members of AAPBS. 'D' class voting redeemable preference shares may be held by Credit

Union Financial Services (Australia) Limited (CUFSAL), and credit unions which are not affiliated with the CUFSAL group. The allocation of these shares is determined on the basis of the percentage of the total assets of the building society industry (at 30 June each year) held by AAPBS members and non-members; and the percentage of total assets of the credit union industry (at 30 June each year) held by CUFSAL affiliated and non-affiliated credit unions; respectively.

2.18. The holders of each ordinary share have one vote at general meetings of APCA and are entitled to appoint one director to the Board. The holders of each class of voting redeemable preference shares collectively have one vote at general meetings of the company, and collectively are entitled to elect one director. (The questions of how the vote of share members with the same class of voting redeemable preference shares is to be cast at general meetings, and the appointment or removal of a director by such share members, are determined by a simple majority with members having one vote for each such share held.)

2.19. Participating members of APCA are institutions which participate on a day-to-day operational basis in one or more of APCA's clearing systems. There are four classes of participating membership, corresponding to the four clearing systems. Eligibility criteria for participating members is (or will be) specified in the regulations (or proposed regulations) of each clearing system. A participating member has no right to vote at general meetings of the company, but is entitled to attend and speak at such meetings. The APCA Board may terminate the membership of a participating member provided the pre-conditions (if any) specified in the relevant regulations have been fulfilled.

2.20. The APCA Board may admit any person, other than a share member or a participating member, as an associate member of the company. An associate member has no right to vote at general meetings of the company, but is entitled to attend and speak at such meetings. The APCA Board may terminate the membership of an associate member and is not obliged to give any reason for such decisions.

2.21. The business of the company is managed by the Board. However, the Board must establish a committee of management in respect of each clearing system to be responsible for the efficient operation and management of the relevant system. The Board must adopt and prescribe the regulations for each clearing system. The regulations may be amended at meetings of the participating members, provided such amendments have been recommended by the management committee. However, such amendments do not become effective unless approved by the APCA Board. The committee of management is responsible for determining the procedures/standards relating to the clearing cycle. Any significant amendment to such procedures/standards must accord with amendment of the regulations or otherwise be approved by the chairman of the management committee, APCA's Chief Executive Officer or APCA Board. Disputes regarding a clearing system are determined by the management committee, although a participating member may refer a dispute to the APCA Board or request the Board to review a management committee's determination of a dispute.

2.22. There are a maximum of nine votes that can be cast at general meetings of the company, and at meetings of the APCA Board (each director has one vote). At such meetings, six votes are required to be cast in favour of a resolution for it to be passed; except when the Board is reviewing a decision of a management committee when five votes are required to be cast in favour of the resolution for it to be passed.

2.23. For each of APCA's clearing systems (APCS, BECS and HVCS) currently authorised under the Act, the composition of the management committee is similar to that of APCA's Board. (The rules that determine the composition of the CECS management committee are outlined in section 4 of this determination.) Such committees are comprised of a nominee of each member of the clearing

system being an ordinary share member of APCA (the Reserve Bank, ANZ, Commonwealth Bank, NAB and Westpac) and a person nominated by each of the groups who may hold redeemable preference shares in APCA (ie, by clearing system members of the state or regional bank group, other bank group, building society group, and credit union group). Voting rights of each member of a management committee are weighted to reflect the transaction volume of the particular clearing system held by his/her nominee institution or group of institutions. Questions arising at Management Committee meetings are decided by a simple majority of votes. Questions arising at meeting of the participating members of a clearing system are also decided by a simple majority of votes, with the voting rights of members weighted to reflect the transaction volume of the clearing system held by each member.

Australian Paper Clearing System (APCS)

2.24. As noted, the TPC authorised the APCS Regulations and Procedures in September 1993. The APCS Regulations provide for three levels of participating membership - Tier 1A (direct clearer and direct settler), Tier 1B (indirect clearer and direct settler) and Tier 2 (indirect clearer and indirect settler). To qualify for membership a company must be a provider of payment services and meet a number of other criteria. In addition, to become a Tier 1 member a company must satisfy criteria as to prudential supervision and financial standing, and must provide for the settlement of obligations incurred by it as a result of the exchange of payment instructions (in practice, by the debiting or crediting of its exchange settlement account with the Reserve Bank). New Tier 1A members are also required to meet minimum clearing volumes. In 1993 when the APCS arrangements were authorised, entry fees, which are indexed annually, were \$400 000 for Tier 1A, \$6000 for Tier 1B, and \$1000 for Tier 2, participating members.

2.25. Tier 1A and Tier 1B members settle directly to the system and are required to provide liquidity support and ultimately to share any residual settlement shortfall should another Tier 1 member fail to settle.

Bulk Electronic Clearing System (BECS)

2.26. The BECS Regulations and Procedures were authorised by the TPC in October 1994. The BECS Regulations provide for two levels of participating membership - Tier 1 (direct clearer and settler) and Tier 2 (indirect clearer and settler). Membership criteria are similar to that of APCS, and similar rules are in place in respect of failure to settle. In 1994 when the BECS arrangements were authorised, entry fees, which are indexed annually, were \$25 000 of Tier 1 members, and \$1000 for Tier 2 members.

High Value Clearing System (HVCS)

2.27. The HVCS Regulations and Procedures were authorised by the Commission in April 1998. The HVCS Regulations provide for one level of membership. A HVCS member must be a provider of payment services, must satisfy criteria as to prudential supervision and financial standing, and in practice must be a member of RITS and settle its HVCS transactions through its own ESA. In 1998 when the HVCS arrangements were authorised, the entry fee, which is indexed annually, was \$25 000.

3. Consumer electronic payments

The systems

3.1. The payment instruments that fall within the category of “consumer electronic” are debit card (ATM and EFTPOS) and credit card transactions. Currently a number of Australian financial institutions and card organisations are trialing stored value cards, which also fall into this category. Credit card arrangements are not part of CECS and are noted only briefly below.

3.2. EFTPOS evolved in Australia in the early 1980s, developing from bilateral arrangements between financial institutions. EFTPOS devices were at first connected to only one financial institution, and could accept only the cards of that financial institution. Merchants therefore often had more than one device on their service counter. As a result of demand from both customers and merchants, the major financial institutions began to develop communications links between themselves which facilitated the exchange of payment messages so that today virtually all cards are accepted by virtually all EFTPOS merchants, regardless of their banking arrangements.

3.3. A similar co-operative effort between financial institutions has fostered the use of ATMs for each institution’s cardholders 24 hours a day, every day of the year.

3.4. At the core of the ATM and EFTPOS systems are the “interchange” agreements between financial institutions which enable a card issued to a customer of one financial institution to be used to pay a merchant whose banking services are provided by another financial institution, or to transact at another financial institution’s ATMs. Over the years various industry participants and bodies have sought to standardise and protect the electronic messages sent between financial institutions and to ensure the integrity of the transfer of funds between them.

3.5. APCA advises that to a somewhat larger extent than in other payment systems, consumer electronic payments involve a number of participants which are not financial institutions, including payment service bureaux, merchants, and card associations. APCA also advises that the components of these systems are proprietorial (ie, the terminals, switches and communication networks are owned by individual industry participants), and the availability of these proprietary components to other participants is a matter for commercial negotiation between the participants concerned.

Participants

Acquirers

3.6. Acquirers support merchants’ participation in EFTPOS by making payments to the merchant and by forwarding transactions to Issuers for settlement. (As recognised in the CECS proposed Merchant Principal concept, it is possible for merchants to forward EFTPOS transactions direct to Issuers.) They acquire transactions from EFTPOS terminals on behalf of Issuers by obtaining the Issuers’ authorisation for card transactions accepted by merchants and providing financial transaction/data to the Issuers for posting debits and credits to cardholder accounts. Corresponding crediting/debiting of settlement value is made to the merchants’ accounts. EFTPOS Acquirers also:

- take responsibility for ensuring merchants’ compliance with all operational standards that have been developed for the system in the interests of transaction integrity, security and cardholder service;
- ensure merchants implement agreed fallback rules within the relevant floor limit in the event of hardware or communication failure;

- guarantee and ensure merchants receive payment for all properly accepted transactions; and
- settle with Issuers for the transactions of each issued card.

3.7. In the ATM system, Acquirers provide ATM facilities for its own and other institutions' cardholders for the purpose of cash withdrawals and balance enquiries. These debits are forwarded to the relevant Issuers for debiting of the cardholders' accounts.

Issuers

3.8. Issuers provide their customers with a payment instrument (a card) that complies with appropriate standards and which can be used to withdraw funds or make payments in accordance with specific terms and conditions. Issuers' are responsible for:

- negotiating with Acquirers for card acceptance and appropriate cardholder service;
- ensuring that transactions provided to them are capable of being authorised, cleared and settled with Acquirers;
- settling for the value of the cardholders' transactions with the relevant Acquirer and agreeing settlement arrangements and guarantees with Acquirers;
- providing for final settlement, either directly or indirectly through a representative;
- funding balances on debit accounts and managing the risk of unauthorised debt;
- determining rules for operation of cardholders' accounts; and
- optionally in respect of EFTPOS, providing authorisation services and help desk facilities to support efficient transaction approval process at the merchant point-of-sale.

3.9. APCA advises that all banks, most building societies and many credit unions issue cards that enable their customers to transfer value to the generality of third parties. The use of these cards gives rise to inter-financial institution clearing/settling, and will fall under CECS's purview. Other organisations - American Express, Diners Club, some major retailers, and others - issue cards but these are used only with merchants which are customers of the issuer organisation and do not generate inter-financial institution clearing/settling, and consequently fall outside the purview of APCA.

Cardholders

3.10. The cardholder is the ultimate customer of the EFTPOS system. The cardholder is also the joint customer of the Issuer and the merchant.

Merchants

3.11. Merchants are an important component of the EFTPOS payment system, representing the final link in the delivery of the service to a cardholder. Merchants provide goods, services and (where appropriate) cash to customers and initiate non-cash payment transactions in accordance with the operational rules of the system. The merchant receives value for these transactions from the Acquirer via payment to a nominated financial institution account.

3.12. A merchant's participation in the EFTPOS payment system has traditionally been facilitated by an Acquirer, being based on a normal bilateral commercial arrangement between them. Under such arrangements a merchant must:

- comply with the relevant Issuer's instructions (as advised by the Acquirer) and must also comply with additional instructions provided by the Acquirer;
- be guaranteed payment (by the Acquirer) for the value processed correctly of transactions initiated by it; and
- be properly supported by the Acquirer's help desk to ensure prompt and efficient customer service.

3.13. Merchants may install their own terminals and other system components, but the merchant's Acquirer must ensure this technology complies with all relevant standards.

Payment services bureaux

3.14. Payment services bureaux provide out-sourced facilities for transaction processing and support to other participants. They provide smaller participants with a cost-effective means of participating as Issuers. A Bureau may receive the transaction stream from an Acquirer or directly from an Acquirer's merchant, and either process the transactions on behalf of the Issuer, or redistribute the transactions to the Issuer for self-processing.

3.15. APCA advises that Cashcard Australia and First Data Resources are the most prominent examples of payment services bureaux in Australia. Cashcard also negotiates network access and provides network management for its members.

ATM interchanges

3.16. In general, ATMs provide customers with a means of withdrawing funds, transferring funds between their own accounts and inquiring about their available balances. ATMs are typically located both inside and outside the branches of financial institutions, with a number also located "off site" in, for example, shopping malls and airports (some off site terminals provide a more limited "cash dispenser" service and may be connected to either the ATM or EFTPOS networks). Australia had 9387 ATM terminals as at 30 June 1999⁶.

3.17. Customers access their accounts using a plastic card with a magnetic stripe, and a previously established PIN (personal identification number). The customer's transaction is almost always authorised via an on-line link from the ATM to a processing centre where the authenticity of the card and PIN are validated and a check in made on funds availability.

3.18. Most ATM transactions are initiated by cardholders through their own financial institution's terminals. Such transactions are really part of the cash system and not the non-cash payments system. Only ATM transactions initiated through a terminal other than one owned by the cardholder's own financial institution give rise to inter-institutional clearance and settlement which falls within APCA's purview. Such transactions are facilitated by interchange agreements between financial institutions. Although the ATM network is not completely linked (which means that no card can access all ATMs), all institutions currently provide their customers with widespread access to ATM services. ATM linkages as at December 1999 are shown in Attachment A.

EFTPOS

3.19. EFTPOS provides customers with a payment mechanism for the supply of goods and services at the point of sale (an increasing number of merchants also offer "cash out" services). Payment is made through an on-line debit of the customer's savings or cheque account, with a resultant credit to the merchant's account overnight. This transaction, like the ATM transaction, uses a plastic card with a magnetic stripe and a PIN to identify the customer.

⁶ APCA annual report 1999.

3.20. EFTPOS terminals are owned by the merchant or its financial institution, and the communications lines linking the EFTPOS terminal to the (acquiring) bank are leased or are normal telephone lines. Australia had 265 391 EFTPOS terminals as at 30 June 1999⁷.

3.21. There are a number of proprietary EFTPOS networks that are all linked through a series of interchange agreements. The interchange arrangements between financial institutions in the EFTPOS system are complete in the sense that all issued cards can transact at all terminals. EFTPOS linkages as at December 1999 are shown in Attachment B.

Credit/debit cards

3.22. Australian financial institutions issue their own proprietary debit cards which can be used in ATMs and for EFTPOS transactions. They also issue three combined function credit/debit cards - Bankcard, Visa and MasterCard. All three cards can be used in ATMs and are widely accepted in retail establishments for credit and EFTPOS transactions. Although some card transactions are still recorded on paper vouchers, for the most part card transactions are now processed electronically from the point of capture, with the cardholder's account debited on-line in real time.

3.23. The Bankcard Association, which has nine member banks, determines policy in respect of Bankcard. The rules for participation in the Visa and MasterCard schemes are established by their respective international and regional bodies. In general, when an institution becomes a member of a credit card scheme, all other members must deal with that new member in either Acquirer or Issuer capacity. The schemes rules are comprehensive in so far as they provide most, if not all, of the interchange standards members need to participate in the schemes (eg, membership criteria, card design, merchant rules, settlement guarantees, terminal standards, PIN standards and key management authentication).

Settlement

3.24. For EFTPOS and ATM transactions most banks advise bilateral settlement figures directly to the National Collator (in the Reserve Bank). These figures are combined with other bilateral clearing obligations to produce for each "settlement" bank a multilateral due or owed to the "system" figure for settlement at 9.00am each day. The remaining banks, building societies and credit unions and/or their SSPs, settle directly to the "system", or indirectly via a representative member. Some banks, building societies and credit unions out-source clearing services to SSPs and/or payment services bureaux, who arrange settlement through the agency of a "settlement" bank.

3.25. Bankcard members settle to "the system" through their exchange settlement accounts. Members of MasterCard and Visa have a lead settlement bank (the Commonwealth Bank and ANZ respectively), which is required under the schemes rules. The position is eventually settled through exchange settlement accounts on a netted position for domestic transactions vis-a-vis the lead bank.

⁷ APCA annual report 1999.

4. The applications

- 4.1. APCA has applied for authorisation of its draft Regulations and Procedures for CECS.
- 4.2. The draft CECS Regulations are modelled generally on the APCS, BECS and HVCS Regulations that were granted authorisation in September 1993, October 1994, and April 1998 respectively.
- 4.3. The draft Procedures, which are referred to by APCA as the 'CECS Manual', comprise both EFTPOS and ATM Acquirer standards and interchange operations procedures, security standards and standard interchange specifications.
- 4.4. If there is inconsistency between a provision of the CECS Regulations or the CECS Manual and a provision of APCA's Articles of Association, the provision of the Articles prevails. If there is any inconsistency between a provision of the CECS Manual and a provision of the CECS Regulations, the provision of the Regulations prevails.
- 4.5. CECS Members agree to be bound by and comply with APCA's Articles, the CECS Regulations and Manual. The CECS Regulations and Manual have the effect of a contract under seal between APCA and each CECS Member, and between the CECS Members.

CECS Regulations

- 4.6. The CECS Regulations have been adopted by APCA's Board and are to take effect on a date to be specified by the Chief Executive Officer of APCA.
- 4.7. The primary object of CECS is to co-ordinate, manage and ensure the development, implementation and operation of effective standards, policies and procedures to facilitate the conduct, and where applicable, the settlement of exchanges of ATM and EFTPOS payment instructions between CECS Members and all aspects of the related clearing cycle. These include procedures to promote the efficiency, security and integrity of such exchanges; and specifications and standards for equipment utilised and cards issued by, and communications links and message formats between, Members that participate in ATM or EFTPOS interchange activity.
- 4.8. No CECS Member is obliged, solely on account of its membership of CECS, to engage with any other CECS Member in business that would ordinarily give rise to the exchange of ATM or EFTPOS payment instructions between them. However, no CECS Member may refuse - on technical, security or operational grounds - to engage in ATM or EFTPOS interchange activity with another Member that has been granted certification (under Part 11 of the CECS Regulations) in the relevant capacity by APCA.
- 4.9. CECS Members must, to the extent they engage in ATM or EFTPOS interchange activity with other CECS Members, satisfy applicable technical, operational and security standards, specifications and requirements in the CECS Manual. However, any two CECS Members may bilaterally agree to apply divergent standards etc, provided they each satisfy the CECS Management Committee (by producing internal auditor confirmation) that the integrity, security or efficiency of CECS as a whole will not be lessened in any material way as a result. Further, neither of the parties to any such a bilateral agreement can require any other CECS Member or prospective Member to engage in ATM or EFTPOS interchanges which apply standards other than those set out in the CECS Manual.

CECS Membership

4.10. In order to be a CECS Member, a person must:

- be a body corporate which carries on business at or through a permanent establishment in Australia;
- engage, or propose to engage:
 - in ATM or EFTPOS interchange activities in the capacity of an Acquirer or Issuer;
 - in activities which satisfy the definition of a Merchant Principal (ie, a merchant that electronically transmits or receives payment instructions for value to or from one or more EFTPOS Issuers as a result of EFTPOS transactions initiated at terminals operated by the merchant, and bears the risk as principal in relation to payment obligations of each such Issuer arising out of such exchanges);

or be a body corporate which represents one or more Acquirers or Issuers and, in such capacity, settles directly in accordance with the CECS Regulations for the value of payment obligations incurred by them in the course of ATM or EFTPOS interchange activities;

- be able to comply with any applicable laws, the Articles of APCA, the CECS Regulations and the minimum applicable technical and operational standards in the CECS Manual;
- provide for the obligations incurred by it as the result of exchanges of payment instructions to be settled in accordance with the CECS Regulations;
- if applicable, be authorised under section 88 of the Trade Practices Act to be a party to a contract, arrangement or understanding in respect of any matter contained in the APCA Articles (relevant to CECS), the CECS Regulations or Manual;
- agree to pay all relevant fees, costs, charges and expenses.

4.11. Applications for CECS Membership are considered by the Management Committee, or by the APCA Board in limited circumstances. Unsuccessful applicants may, within three months, request the Board to review the decision, or may lodge a fresh application at any time.

Suspension and termination

4.12. The Management Committee may suspend the membership of a CECS Member for a specified or indefinite period of time following - a request from the Member's prudential supervisor, agreement with the Member concerned, the Member ceasing to satisfy any applicable requirement for membership, various insolvency events, or a breach of obligations by the Member without satisfactory explanation.

4.13. CECS membership ceases upon a Member resigning, becoming insolvent or making an arrangement or composition with creditors generally, being wound-up, dissolved or otherwise ceasing to exist, or ceasing to engage in ATM or EFTPOS interchange activities. In addition, the APCA Board, after consultation with the Management Committee, may terminate the membership of a CECS Member. However, the Board may not do so unless a 'suspension event' has occurred and not been remedied, the Board has consulted with the relevant prudential supervisor, and the member has had the opportunity to make submissions to the Board regarding such termination. The Board is not obliged to give any reasons for its decision (although, as noted, the proposed Regulations provide substantial procedural safeguards against the termination of CECS Membership).

Fees

4.14. Each CECS Member must pay to APCA an entrance fee of \$37 500 (indexed on an annual basis) in respect of CECS. Such fees are to be applied by APCA, first towards pro rata reimbursement of initial CECS Members for 30 per cent of their contribution towards the establishment costs of CECS, and second towards payment of the operating costs of CECS.

4.15. Each CECS Member must also pay to APCA an annual fee of \$1000 for membership of CECS commencing January 2001. Such fees are to be applied by APCA towards payment of the operating costs of CECS.

4.16. A dispute resolution fee of \$1000 (indexed on an annual basis) is payable to APCA by each CECS Member which is party to a dispute referred to the Management Committee or to APCA's Board (either initially or by way of review). The parties must also pay to APCA any costs and expenses incurred by APCA in relation to the referral of a dispute. Such fees are to be applied by APCA towards payment of the operating costs of CECS.

4.17. The operating costs of CECS will be borne by each CECS Member in an amount represented by a formula under which:

- the 'corporate governance' costs (which include costs associated with APCA's Board, APCA's administration and compliance matters) element of the clearing system costs apportioned by APCA's Board to CECS will be shared equally by all CECS Members; and
- costs not attributable to corporate governance will be shared by CECS Members in proportion to their share of national transaction volume of payment instructions sent through CECS.

Management of CECS

4.18. The day-to-day operations of CECS will be managed by a Management Committee consisting of the following persons:

- (a) if the APCA Directors so elect, one person nominated by APCA's Board;
- (b) a nominee of each CECS Member which has, or by CECS Members which collectively have, at least 5 per cent of CECS national transaction volume;
- (c) a person elected by each of the following groups - building society CECS Members including any SSP that acts primarily for building societies, and credit union CECS Members including any SSP that acts primarily for credit unions, which are not entitled to nominate a Management Committee member under (b);
- (d) one person nominated by the Reserve Bank, if the Bank is not otherwise represented; and
- (e) if the APCA Directors so elect, one person appointed by the APCA Board to represent the collective interests of CECS Members not entitled to, or who choose not to, nominate a member of the Management Committee.

4.19. The Management Committee is responsible for the effective operation and management of CECS, including:

- admission of CECS Members, and the suspension of such membership;
- technical and efficiency standards;
- the amendment of the fees and charges payable by CECS Members;
- operating procedures and policies;

- subject to any CECS Member being entitled to refer any dispute (whether initially or by way of request for a review) to the APCA Board, the resolution of disputes between Members;
- supervision of the observance by CECS Members of the Regulations and CECS Manual;
- estimation of national transaction volume for each CECS Member on the basis of statistical information collected;
- such other matters as the APCA Board may consider necessary, desirable or expedient for the better and more secure, efficient and equitable operation of CECS.

4.20. The quorum for a meeting of the Management Committee is 75 per cent of the number of members of the Committee. Questions arising at such meetings are decided by a simple majority of votes. Each member of the Committee (other than the director nominated by the APCA Board who has no vote) is entitled to cast one vote for every 1 per cent of national transaction volume held by the CECS Member, or CECS Members collectively, which nominated, elected or are represented by, that member.

4.21. The Management Committee is required to liaise with the CECS Advisory Council, and the Management Committee must have regard to the opinions or decisions of the Council in performing its duties under the Regulations.

Meetings of CECS Members

4.22. Meetings of CECS Members must be held at least annually. The purpose of the annual meeting is to receive a report on the operations of CECS during the preceding financial year and to provide a forum for CECS Members and where applicable the CECS Advisory Council, to discuss any aspect of the operations of CECS and any other matters relevant to membership of CECS.

4.23. A quorum for any meeting of CECS Members is 50 per cent of the total voting entitlement. Questions arising at meetings are decided by a simple majority of votes. Each CECS Member is entitled to one vote for every 0.1 per cent of national transaction volume held by that Member. Procedures exist for CECS Members with smaller percentages to exercise a collective vote.

Settlement

4.24. Each CECS Member must provide for the obligations incurred by it as the result of exchanges of payment instructions in the course of ATM or EFTPOS interchange activity to be settled directly by it, or indirectly by a representative appointed on its behalf, by the debiting or crediting of an Exchange Settlement Account (or a similar account) at the Reserve Bank or by such other means which are recommended by the Management Committee and approved by the APCA Board.

4.25. The CECS Regulations, unlike the APCS and BECS Regulations previously authorised under the Act (and which also relate to deferred settlement payment systems), do not include loss sharing arrangements among CECS Members in the event of a failure to settle.

CECS Advisory Council

4.26. APCA is required to establish the CECS Advisory Council. The Council provides a forum to enable interested bodies corporate that are not eligible for membership of CECS but which participate in payments transfers in connection with the clearing cycle for consumer electronic payments (interested non-clearers), effectively and efficiently to communicate to the Management Committee opinions, advice and information on matters related to aspects of that clearing cycle.

4.27. The Council is to comprise no more than 12 members at any time, with the APCA Board to appoint (and remove) members after consultation with relevant interests or persons. APCA is not

required to establish or maintain a Council that would comprise fewer than 6 representatives of interested non-clearers. Council members may attend and speak, but not vote, at the annual CECS meeting. The Chairman of the Council may attend and speak, but not vote, at meetings of the Management Committee. Council members are entitled to receive copies of documents for use in deliberations at Management Committee meetings. The quorum for a meeting of the Council is two-thirds of the number of members for the time being.

Certification

4.28. Each CECS Member which participates in ATM or EFTPOS interchange activities with other CECS Members in the capacity as an Acquirer must arrange for certification in accordance with the CECS Manual. The objective of certification is to ensure that each CECS Member which is an Acquirer or Merchant Principal confirms for the benefit of each other CECS Member and APCA that it meets the technical, operational and security requirements applicable to Acquirers set out in the CECS Manual. Certification is to be renewed at least tri-annually.

Disputes

4.29. A dispute is defined as a difference between the APCA Board, the Management Committee, any delegate of the Management Committee and any one or more CECS Members; or two or more CECS Members; concerning the APCA Articles, CECS Regulations or CECS Manual.

4.30. Disputes must be referred to the Management Committee for determination. However, a CECS Member who is party to a dispute has the right to refer the dispute direct to the APCA Board for determination, or to request the Board to review the Management Committee's determination of the dispute. As noted above in the 'fees' section of this chapter, each CECS Member which is party to a dispute referred to the Management Committee or to APCA's Board (either initially or by way of review) must pay a fee of \$1000 (indexed on an annual basis) to APCA. The parties must also pay to APCA any costs and expenses incurred by APCA in relation to the referral of a dispute.

4.31. The Regulations also include a means of enforcing the dispute determinations of the Management Committee and the APCA Board.

Amendment of the Regulations

4.32. The CECS Regulations may be amended by a resolution passed at a meeting of the CECS Members, provided that the amendments have been recommended by the Management Committee. However, such amendments do not become effective unless approved by the APCA Board (which may refer an amendment to the Management Committee and the CECS Members for reconsideration).

CECS Manual

4.33. The CECS Manual lodged with the applications sets out EFTPOS Acquirer standards, EFTPOS interchange operations procedures, ATM Acquirer standards, ATM interchange operations procedures, security standards for PIN entry device (PED) and security control module (SCM), standard interchange specifications, and settlement procedures.

4.34. The Management Committee determines the CECS operating procedures. The Regulations provide the Management Committee with the power to determine practices, procedures, standards and specifications relating to all or any aspects of the clearing cycle. Any significant variation to such practice, procedure, standard or specification must be approved by the chairman of the Management Committee and APCA's Chief Executive Officer, or approved by APCA's Board, or

accord with amendment of the Regulations. Amendments of a grammatical, cosmetic or minor nature may be made by APCA's Chief Executive Officer.

4.35. APCA requested, and the Commission granted, confidentiality to certain parts of the CECS Manual including - EFTPOS fallback operations (section 4.2), "hot cards" (section 4.7), security standards (Part 7), electronic fallback and manual key entry on faulty card reads (Appendices I and J of Part 8, standard interchange specifications), and the exchange summary and interchange report (Appendices A and B of Part 9, settlement).

EFTPOS Acquirer standards

4.36. Part 3 of the CECS Manual sets out the standards required to be met by all CECS Members that participate or propose to participate in EFTPOS transactions in the capacity of Acquirers.

EFTPOS terminal and PIN Entry Device (PED)

4.37. The Manual notes that an EFTPOS terminal consists of a number of components, including; PED, printer, communications devices, Merchant interface, Acquirer application and magnetic stripe reader.

4.38. A PED is a physically and logically protected device. It provides a set of cryptographic services to assure the secure entry and transmission of PINs, and the integrity of the message in the processing of a transaction to the intended Acquirer. All Acquirers are required to use PEDs that as a minimum satisfy current PED Security Standards set out in the Manual. PED Security Standards are to be reviewed and re-issued by the Management Committee as part of a rolling tri-annual updating of Acquirer standards.

4.39. A list of devices and models that satisfy current PED Security Standards are published in the Manual, together with a sunset date on which certification of that device will lapse requiring its withdrawal from use. A device may be upgraded and re-certified or a new device added to the list of approved PEDs following confirmation by an approved Evaluation Facility, (or if no such facility has been approved by APCA, by an independent auditor) that the device meets current PED Security Standards. Costs for securing approval of a device are the responsibility of the relevant Acquirer.

4.40. An Acquirer must be capable, as a minimum, of supporting EFTPOS purchase transactions and refunds or reversals of purchase transactions. A record of transaction generated by an EFTPOS terminal must comply, as a minimum, with the standards detailed in the EFT Code of Conduct⁸ (eg, the transaction amount, date, time and type, account being debited, name of merchant, etc)

Security Control Module (SCM)

4.41. All Acquirers are required to use SCMs that as a minimum satisfy current SCM Security Standards set out in the Manual. SCM Security Standards are to be reviewed and re-issued by the Management Committee as part of a rolling tri-annual updating of Acquirer standards.

4.42. A list of devices and models that satisfy current SCM Security Standards and applicable requirements in regard to operational security are published in the Manual, together with a sunset date on which certification of that device will lapse requiring its withdrawal from use. A device may be upgraded and re-certified or a new device added to the list of approved SCMs following confirmation by an approved Evaluation Facility, (or if no such facility has been approved by APCA, by an independent auditor) that the device meets current SCM Security Standards. Costs for securing approval of a device are the responsibility of the relevant Acquirer.

⁸ The EFT Code of Conduct is a voluntary self-regulatory code monitored by the Australian Securities and Investments Commission, with input from participating financial institutions and other interested parties.

Network requirements

4.43. The Acquirer has responsibility for the network downstream of the terminal, which may include third party switches. An Acquirer switch should not add more than a maximum three seconds elapsed time through the components of its network to the total processing time of a transaction.

Interchange links

4.44. For all interchange links established after the commencement date of CECS, Acquirers must ensure that message formats and contents, and security for transactions processed over the interchange link, comply with relevant parts of AS2805⁹, *Electronic funds transfer – Requirements for interfaces*, published by Standards Australia. Existing interchange links that do not comply with particular AS2805 requirements are subject to a sunset date for use.

Operational procedures

4.45. Standards that apply between Acquirers and Issuers in regard to the operation of EFTPOS interchange are set out in Parts 4 and 8 of the CECS Manual.

4.46. Acquirers are urged to use reasonable care and diligence in satisfying themselves as to the integrity, solvency and reliability of merchants whom they appoint as EFTPOS merchants. The Acquirer is wholly responsible for ensuring that only compliant PEDs and SCMs are attached to the EFTPOS network. At the time of installation, each merchant must be provided with copies of a merchant operating guide that details the various procedures relating to the processing of transactions.

Certification

4.47. Each existing Acquirer as at the commencement date of CECS must obtain certification within three months of that date. Each prospective Acquirer after the commencement date of CECS must arrange for certification before it commences processing EFTPOS transactions.

4.48. Certification means that a person being an existing or prospective Acquirer confirms for the benefit of all relevant CECS Members and APCA, by completing and submitting to APCA a 'Certification Checklist' (Appendix A, Part 3 of CECS Manual) satisfactory to APCA that:

- the PEDs it uses satisfy applicable PED Security Standards;
- the SCMs it uses satisfy applicable SCM Security Standards;
- the interchange satisfies applicable AS2805 standards;
- its operating environment satisfies applicable standards (set out in the Acquirer Operations Infrastructure Checklist, Appendix C of Part 3); and
- its settlement procedures comply with Part 9 of the CECS Manual.

4.49. Certification Checklists are reviewed by APCA and a report is provided to the applicant. If all requirements appear to have been met, details of the successful application are provided to the Management Committee for its acceptance. If the certification process fails in part, details are provide to the applicant who is required to rectify all deficiencies and submit supporting evidence which is then re-evaluated by APCA.

4.50. A Certified Acquirer that proposes to implement any new device (PED, SCM) or substantially upgrade any existing device or interchange must arrange for such device to be evaluated as outlined above (see PED and SCM sub-headings). For any devices in use in connection with

⁹ AS2805 is based on the ISO standards for Electronic Funds Transfer.

existing bilateral interchange activities at the commencement date of CECS, relevant Acquirers will have a short period of time to effect upgrades and obtain certification. For devices that remain uncertified following this period allowed for upgrades, APCA is to determine a date (being not later than 31 December 2000) when such non-compliant devices must be removed from use.

4.51. The Management Committee is to review and reissue the standards applicable to Acquirers tri-annually. Following such reviews, existing Certified Acquirers must submit to APCA an 'Audit Compliance Certificate' (Appendix B, Part 3 of the CECS Manual) within 60 days of the effective date for the reissued standards. Should an Acquirer fail to meet any of the applicable technical requirements and in the opinion of APCA's CEO the deficiency poses a risk to the efficiency or security of CECS, the deficiency is reported to the Management Committee which may take remedial action including (without limitation) suspension of the CECS Member.

EFTPOS interchange operations procedures

4.52. Part 4 of the CECS Manual sets out the standards required to be met by all CECS Members that participate or propose to participate in interchange arising out of EFTPOS transactions, whether in the capacity of Issuers and/or Acquirers. These includes standards for 'fallback operations' (ie, procedures agreed between the Acquirer and merchant for processing when online authorisation is not available) and 'hot cards' (ie, cards reported by Cardholders as lost or stolen or for which there is evidence of fraudulent use), which have been granted confidentiality by the Commission.

4.53. Each Issuer and Acquirer must produce the following reports on their interchange activity – a daily transaction listing, a daily interchange settlement report, and a monthly interchange billing report which includes the number of transactions acquired and issued and the settlement figure for monthly interchange fee. (The Manual states that the basis rate and payment of the interchange fee will be agreed from time to time bilaterally and is to be specified in the relevant interchange agreement.)

4.54. The Manual specifies procedures for 'doubtful transactions' (ie, transactions which may not have been successfully completed at the terminal but may have been posted to the Cardholder's account, or which may have been successfully completed at the terminal but may not have been posted to the Cardholder's account). 'Disputed transactions' (ie, a PIN supported transaction which the Cardholder denies having generated or where the amount is claimed to be incorrect) must be dealt with in accordance with the EFT Code of Conduct (which includes complaint investigation and resolution procedures). In general it is the Issuer's responsibility to resolve a disputed transaction and as far as possible avoid referral back to the merchant. Procedures, including the timeframe for investigation of a disputed transaction by the Acquirer, are set out in the Manual.

4.55. Enquiries from Cardholders concerning transactions are to be directed to the Issuer, and Cardholders should not be referred back to the merchant except in the case of enquiries concerning the provision of goods or services. Merchants' enquiries are to be directed to the Acquirer's help desk or as otherwise detailed in the Acquirer's operator's guide.

4.56. Interchange links are to be supported 24 hours a day every day of the year. Interchanges established after the commencement date for CECS must conform to relevant parts of AS2805 for communications message formats and security, and SCM Security Standards.

ATM Acquirer standards

4.57. Part 5 of the CECS Manual sets out the standards required to be met by all CECS Members that participate or propose to participate in ATM transactions in the capacity of Acquirers.

ATM terminals

4.58. The Manual notes that an ATM terminal consists of a number of components, including; key pad, screen, cash dispenser, printer, communications devices, Acquirer application, cryptographic processing unit and magnetic stripe reader. These components are to be contained in a physically robust enclosure and will normally include a safe.

4.59. All Acquirers are required to use ATMs that as a minimum satisfy current PED Security Standards set out in the Manual. PED Security Standards are to be reviewed and re-issued by the Management Committee as part of a rolling tri-annual updating of Acquirer standards.

4.60. A list of devices and models that satisfy current PED Security Standards are published in the Manual, together with a sunset date on which certification of that device will lapse requiring its withdrawal from use. A device may be upgraded and re-certified or a new device added to the list of approved ATM devices following confirmation by an approved Evaluation Facility, (or if no such facility has been approved by APCA, by an independent auditor) that the device meets current PED Security Standards. Costs for securing approval of a device are the responsibility of the relevant Acquirer.

4.61. An Acquirer must be capable, as a minimum, of supporting ATM cash withdrawal/cash advance transactions, balance inquiries and reversals (full or partial). If requested by a customer a record of transaction generated by a terminal must comply, as a minimum, with the standards detailed in the EFT Code of Conduct.

4.62. ATM installation must comply, as a minimum, with the standards detailed in AS3769 *Automatic teller machines – User access*.

Security Control Module (SCM)

4.63. All Acquirers are required to use SCMs that as a minimum satisfy current SCM Security Standards set out in the Manual. SCM Security Standards are to be reviewed and re-issued by the Management Committee as part of a rolling tri-annual updating of Acquirer standards.

4.64. A list of devices that satisfy current SCM Security Standards and applicable requirements in regard to operational security are published in the Manual, together with a sunset date on which certification of that device will lapse requiring its withdrawal from use. A device may be upgraded and re-certified or a new device added to the list of approved SCMs following confirmation by an approved Evaluation Facility, (or if no such facility has been approved by APCA, by an independent auditor) that the device meets current SCM Security Standards. Costs for securing approval of a device are the responsibility of the relevant Acquirer.

Network requirements

4.65. The Acquirer has responsibility for the network downstream of the ATM terminal, which may include third party switches and connection of devices owned by independent third parties. An Acquirer switch should not add more than a maximum three seconds elapsed time through the components of its network to the total processing time of a transaction.

Interchange links

4.66. For all interchange links established after the commencement date of CECS, Acquirers must ensure that message formats and contents, and security for transactions processed over the interchange link, comply with relevant parts of AS2805. Existing interchange links that do not comply with particular AS2805 requirements are subject to a sunset date for use.

Operational procedures

4.67. Standards that apply between Acquirers and Issuers in regard to the operation of ATM interchanges are set out in Part 6 of the CECS Manual.

4.68. Acquirers are urged to use reasonable care and diligence in satisfying themselves as to the integrity, solvency and reliability of third party service providers and the owners of independent networks/devices. The Acquirer is wholly responsible for ensuring that only compliant ATMs and SCMs are attached to the ATM network.

Certification

4.69. Each existing Acquirer as at the commencement date of CECS must obtain certification within three months of that date. Each prospective Acquirer after the commencement date of CECS must arrange for certification before it commences processing ATM transactions.

4.70. Certification means that a person being an existing or prospective Acquirer confirms for the benefit of all relevant CECS Members and APCA, by completing and submitting to APCA a 'Certification Checklist' (Appendix A, Part 5 of CECS Manual) satisfactory to APCA that:

- the ATMs it uses satisfy applicable PED Security Standards;
- the SCMs it uses satisfy applicable SCM Security Standards;
- the interchange satisfies applicable AS2805 standards;
- its operating environment satisfies applicable standards (set out in the Acquirer Operations Infrastructure Checklist, Appendix C of Part 5); and
- its settlement procedures comply with Part 9 of the CECS Manual.

4.71. Certification Checklists are reviewed by APCA and a report is provided to the applicant. If all requirements appear to have been met, details of the successful application are provided to the Management Committee for its acceptance. If the certification process fails in part, details are provide to the applicant who is required to rectify all deficiencies and submit supporting evidence which is then re-evaluated by APCA.

4.72. A Certified Acquirer that proposes to implement any new device (ATM, SCM) or interchange, or substantially upgrade any existing device or interchange, must arrange for such device to be evaluated as outlined above (see ATM and SCM sub-headings). For any devices in use in connection with existing bilateral interchange activities at the commencement date of CECS, relevant Acquirers will have a short period of time to effect upgrades and obtain certification. For devices that remain uncertified following this period allowed for upgrades, APCA is to determine a date (being not later than 31 December 2000) when such non-compliant devices must be removed from use.

4.73. The Management Committee is to review and reissue the standards applicable to Acquirers tri-annually. Following such reviews, existing Certified Acquirers must submit to APCA an 'Audit Compliance Certificate' (Appendix B, Part 5 of the CECS Manual) within 60 days of the effective date for the reissued standards. Should an Acquirer fail to meet any of the applicable technical requirements and in the opinion of APCA's CEO the deficiency poses a risk to the efficiency or security of CECS, the deficiency is reported to the Management Committee which may take remedial action including (without limitation) suspension of the CECS Member.

ATM interchange operations procedures

4.74. Part 6 of the CECS Manual sets out the standards required to be met by all CECS Members that participate or propose to participate in interchange arising out of ATM transactions, whether as Issuers or Acquirers.

4.75. Each Issuer and Acquirer must produce interchange reports containing specified details of transactions, as well as interchange settlement reports and finance reports (which detail all transactions sent/received through the interchange link) on an exception basis to assist resolution of discrepancies.

4.76. The Manual specifies procedures for cards retained by an ATM during operation, and 'doubtful transactions' (ie, transactions which may not have been successfully completed at an ATM although value may have been posted to the Acquirer's suspense account). 'Disputed transactions' (ie, transactions which the Cardholder denies having initiated or where the amount is claimed to be incorrect) must be investigated by the Issuer and resolved with the Cardholder in accordance with the EFT Code of Conduct. If the Cardholder approaches the Acquirer in respect of a disputed transaction, the Acquirer must advise the Cardholder to report the dispute to the Issuer. Procedures including the timeframe for investigation of a disputed transaction, including by the Acquirer, are set out in the Manual. Enquiries relating to Cardholders' transactions are to be directed to the Issuer.

4.77. ATM interchange links are to be supported 24 hours a day every day of the year.

4.78. The Manual states that an interchange fee will apply to both successful (authorised cash withdrawal or balance enquiry) and declined (not authorised by the Issuer due to lack of funds or as a result of PIN and/or account error) transactions that were acquired, less any reversals. The Manual also states that the basis rate and payment of the interchange fee is to be agreed from time to time bilaterally and is to be specified in the interchange agreement.

4.79. Technical specifications for ATM interchanges are set out in the Manual.

Security standards

4.80. Part 7 of the CECS Manual contains the security standards for PEDs and SCMs. APCA requested, and the Commission granted, confidentiality to these standards.

4.81. The PED security standards relate to device characteristics (physical and logical security) and device management, and apply to all Acquirers. The SCM security standards relate to device location security, device management, logical security and physical security, and apply to all Issuers and all Acquirers.

Standard interchange specifications

4.82. Part 8 of the CECS Manual contains the standard interchange specifications that must be met by all CECS Members, to the extent applicable to the capacities in which they participate in interchange, whether arising from ATM transactions or EFTPOS transactions.

4.83. The Manual states that the purpose of Part 8 is to define an interface specification for card-originated interactive message traffic between CECS Members. Its scope is to specify CECS requirements for EFTPOS, ATM and credit authorisation interchange in sufficient detail to allow construction and implementation of the required interface. The message specifications given in Part 8, which include requirements for message-type identifies and data elements, are based on the Australian Standard AS2805 *Electronic funds transfer – Requirements for interfaces*.

Settlement

4.84. Part 9 of the CECS Manual contains the settlement procedures for value transactions processed through CECS Members' interchanges. The settlement cut-off time is to be agreed bilaterally between the respective Issuers and Acquirers. CECS settlement is performed daily via the Collator at the Reserve Bank, and is to be undertaken on the next business day following settlement cut-off. The procedures provide for the preparation of interchange settlement reports by CECS members, and the exchange of relevant information with the Collator.

5. Statutory tests for authorisation

5.1. The CECS applications were made under sub-section 88(1) of the Act (in respect of arrangements, provisions of which may be exclusionary provisions, or may have the effect of substantially lessening competition, within the meaning of section 45 of the Act), and sub-section 88(8) of the Act (in respect of conduct that would or may constitute exclusive dealing). The Act provides that the Commission shall only grant authorisation if the applicant satisfies the relevant tests in sub-sections 90 (6), (7) or (8) of the Act.

5.2. Sub-sections 90 (6) and (7) provide that the Commission shall grant authorisation only if it is satisfied in all the circumstances that:

- the provisions of the subject arrangements or conduct have resulted, or would result or be likely to result, in a benefit to the public; and
- that benefit would outweigh the detriment to the public constituted by any lessening of competition that has result, or would result or be likely to result, from the arrangements or conduct.

5.3. Sub-section 90(8) provides that the Commission shall grant authorisation in relation to an application under sub-section 88(1) only if it is satisfied in all the circumstances, that the exclusionary provision has resulted, or is likely to result, in such a benefit to the public that the proposed arrangements should be allowed to be given effect to.

5.4. Whilst there is some variation in the language between sub-sections 90 (6), (7) and (8) the Commission adopts the view taken by the Trade Practices Tribunal (the predecessor of the Australian Competition Tribunal) that in practical application the tests are essentially the same.¹⁰

5.5. In deciding whether it should grant authorisation, the Commission must examine the anti-competitive aspects of the arrangements or conduct, the public benefits arising from the arrangements or conduct, and weigh the two to determine which is the greater. Should the public benefits or expected public benefits outweigh the anti-competitive aspects, the Commission may grant authorisation or grant authorisation subject to conditions.

5.6. If this is not the case, the Commission may refuse authorisation or alternatively, in refusing authorisation, indicate to the applicant how the applications could be constructed to change the balance of detriment and public benefit so that authorisation may be granted.

¹⁰ Re Media Council of Australia (no 2) (1987) ATPR at page 48418.

6. Submissions

From APCA

6.1. As noted in section 1 of this determination, the arrangements the subject of these applications were further developed by APCA following the Commission draft determination of August 1997. In addition to the submissions received from APCA prior to the 1997 draft determination, the Commission received further submissions in relation to the revised arrangements that were lodged in December 1998, and in respect of the merchant principal arrangements that were lodged in July 1999. A copy of these submissions has been placed on the public register maintained by the Commission in authorisation matters.

6.2. APCA's main submissions as to the likely public benefit and competition effects of the proposed CECS arrangements are noted briefly below.

- To function well the economy requires the secure and efficient processing of transactions between financial institutions through a clearing mechanism of the nature contemplated by the arrangements.
- The introduction of comprehensive minimum standards in the amended CECS arrangements will protect the public interest in a secure and stable payments system.
- The amended CECS arrangements establish a system for the secure, effective and efficient clearing of transactions generated within the ATM and EFTPOS networks.
- APCA will provide a forum within which CECS members will consider, agree and promulgate minimum interchange standards. The attraction of membership will be the ability to contribute to setting such standards. The amended CECS arrangements provide for access and participation by a wide range of potential members and also provide for a wide range of outside interests to have input into the current operations and future development of CECS. This enhanced participation is pro-competitive and will considerably enhance the significant public benefits likely to result from the implementation of CECS.
- The proposed merchant principal arrangements will open up membership of CECS to certain non-clearers, and this will further enhance the significant public benefits to be delivered by the proposed CECS arrangements.

From interested parties

6.3. The Commission sought submissions from a range of interested parties prior to issuing its draft determination in August 1997. Submissions were received from ten parties. The Commission also sought submissions from interested parties in respect of the revised CECS arrangements lodged in December 1998 (seven submissions were received), and in respect of the proposed merchant principal arrangements lodged in July 1999 (five submissions were received). A list of parties that lodged submissions is at Attachment C. All non-confidential parts of these submissions have been placed on the Commission's public register of authorisation matters.

6.4. The main submissions on the likely public benefit and competition effects of the proposed CECS arrangements, made by interested parties prior to the Commission's August 1997 draft determination, are noted briefly below.

- There are public benefits in the codification of interchange and settlement arrangements for all payment clearing systems, including those the subject of the applications.
- Because of the (then in progress) Wallis Inquiry review of the financial system regulatory environment and its likely impact upon the payments system including CECS, authorisation should either not be granted or if granted should be subject to review in a relatively short time frame.
- CECS proposed membership criteria were anti-competitive and were unlikely to result in benefit to the public. In particular:
 - technological change may provide opportunities for new players in the payment system who may not satisfy the membership criteria.
 - exclusion from membership of organisations such as retailers may result in the establishment of arrangements that are too concerned with certain participants' risk at the expense of efficiency and service to consumers.
 - CECS members' control of access to the ATM and EFTPOS networks through the setting of interchange standards is likely to impede the development of the financial services industry, including the development of alternative electronic payment systems.
- The CECS arrangements were deficient as they failed to establish objective industry standards for EFTPOS acquiring. In the absence of such standards entry to the EFTPOS acquiring market was very difficult, being controlled by the incumbent Acquirers.

6.5. The main public benefit and competition submissions made by interested parties in response to the revised CECS arrangements lodged in December 1998, are noted briefly below.

- The revised arrangements provide increased transparency and make clear the technical and operational requirements to be met by prospective card issuers, EFTPOS acquirers and ATM operators.
- APCA's proposed role in certifying that equipment complies with the standards will further streamline the processes required for new entrants to gain acceptance by other participants, while protecting the integrity of the system.
- There were two main submission in respect of the proposal to widen the membership base of CECS.
 - Coles Myer considered that this proposal should enable more comprehensive technical standards to be set, and it was supported in principle. However, it submitted that the proposed CECS arrangements should not be authorised until the membership criteria had been finalised and new members had the opportunity to review the proposed arrangements.
 - Commonwealth Bank argued that the proposal will ensure that the CECS technical and operational standards are not only more transparent to all interested parties, but will also ensure that the standards are balanced and serve to protect the operational integrity of the ATM and EFTPOS network.
- The proposed CECS arrangements were deficient in that they do not cover either the credit card or Bpay payment systems.

6.6. When inviting interested parties' submissions on the revised CECS arrangements, the Commission noted that APCA had not implemented efficient pricing principles for interchange fees. The Commission sought comments on the current EFTPOS and ATM interchange fees and whether

some form of regulatory oversight of such fees was necessary or desirable. The Reserve Bank considered that there was insufficient information available to allow a judgement on this matter. Neither Coles Myer nor Telstra believed that APCA was an appropriate body to be involved in interchange pricing. Coles Myer considered that the Payments System Board, in conjunction with the Commission, would be the appropriate regulator for overseeing access to the payments system. NAB and the Commonwealth Bank considered that interchange fees should continue to be set through market forces, and that no regulatory oversight of interchange pricing was justified. The Australian Stock Exchange also supported interchange fees being subject to the discipline of market forces without regulatory intervention and mandating of efficient pricing principles.

6.7. The main public benefit and competition submissions made by interested parties in respect of the proposed merchant principal arrangements lodged in July 1999, are noted briefly below.

- Commonwealth Bank considered that these arrangements represented a further step towards ensuring the maximum practicable involvement of parties committed to the future development of the CECS framework, and strengthen the case for grant of authorisation.
- The Reserve Bank considered the proposed new membership category to be too restrictive. The definition of 'merchant principal' should focus on those responsible for the integrity of messages delivered through the EFTPOS network. That is, those who own and operate the equipment that generates and transmits the messages and who need to have access to the forums in which the standards governing those activities are decided.
- Coles Myer considered that the proposed CECS arrangements would not increase competition and efficiency in the payments system (particularly due to the exclusion of credit card and other consumer electronic payment system arrangements) and that authorisation should not be granted. The proposed change to membership eligibility would not achieve real reform due to the voting methodology, which favours existing or entrenched participants in the clearing system. As CECS Members, merchants such as Coles Myer could add value to the setting of the CECS rules, and would be in a good position to challenge some of the existing practices and procedures by giving a balance to the views of traditional financial institutions. Such involvement by non-traditional participants in the ATM and EFTPOS networks would encourage dynamic efficiency in the networks that is not currently being achieved, eg, use of debit cards for telephone, mail and internet transactions, stored value cards, etc. Further, APCA had not taken the opportunity to restructure decision making in its four clearing systems or at the Board level.
- Woolworths submitted that the new Merchant Principal concept adds little by way of structural or membership change to CECS. It submitted that the Commission should not authorise the proposed CECS arrangements unless they provide for full membership rights of merchants (of which Woolworths would be one) whose EFTPOS and ATM infrastructure is used to initiate any of the interchange activities referred to in the arrangements. If this was accepted, the proposed voting arrangements for CECS Members should also be changed to allocate a fair percentage of total voting rights to a CECS Member according to that Member's comparative position at a particular functional level (eg, the level of merchants whose infrastructure is used to initiate EFTPOS transactions). Woolworths also submitted that the proposed CECS Advisory Council would not redress the imbalance resulting from the proposed membership and voting arrangements.

Further submissions by APCA

6.8. APCA provided comment on issues raised in various interested parties' submissions. These further submissions by APCA are noted briefly below. A copy of the submissions has been placed on the Commission's public register of authorisation matters.

6.9. To a large extent, APCA's comments on interested parties' submissions lodged prior to the Commission's August 1997 draft determination have been overtaken by the further development of the CECS arrangements. However, the following submissions remain relevant.

- CECS standards are largely based on globally-accepted standards. It is not APCA's intention to inhibit participants' ability to compete either domestically or internationally by having the CECS standards depart in any substantial sense from these globally-accepted standards.
- It is appropriate that standards that ensure the integrity of a payments clearing system are not subject to control by organisations who would not bear the risk of loss should the system's security be compromised.

6.10. APCA's letter dated 13 September 1999, which is on the Commission's public register, provided comment on issues raised in submissions lodged by the Reserve Bank and Coles Myer in respect of the proposed merchant principal arrangements. The main submissions by APCA are noted briefly below.

- Within APCA, obligations and liability for meeting industry standards and rights to participate in standards setting all derive logically from the fact of participation in the common activity of clearing. CECS membership rules allow access to all acquirers and issuers (ie clearers) involved in ATM and EFTPOS transactions. To the extent a merchant engages in activities, which can be seen as akin to an acquirer's activities, logic clearly supports extending membership rights to that merchant, and attaching attendant contractual obligations. No such compelling logic has been demonstrated for linking membership to ownership of infrastructure.
- APCA's objective is to engender competitive equity and efficiency in the clearing arrangements under its jurisdiction. This is totally consistent with, and forms part of, achieving overall payments system competitive equity and efficiency. APCA has no jurisdiction over credit card, bill payments or stored value cards, and it would be counterproductive to deny APCA the opportunity to improve important parts of the payments system because of its inability to exercise jurisdiction over all parts of the system.
- Merchant principals will have the same rights to representation on the CECS management committee as other APCA members (apart from the grandfathered rights accorded to building societies, credit unions and the Reserve Bank). Voting entitlements are based on transaction volume. A merchant principal will be entitled to count each item it captures and switches directly to issuers.
- APCA intends as soon as possible to apply a similar broadening approach to membership as in CECS to its other clearing systems, and to restructure shareholder and Board representation in a consistent way.

6.11. APCA (by letters dated 29 and 31 May) also provided comments, including the following, on submissions by Coles Myer and Woolworths lodged in May 2000. APCA advised that ownership of equipment is not a relevant factor, APCA is an association of clearers. Clearers, as Issuers or Acquirers in open payment systems, take operational and financial responsibility for transactions *vis-à-vis* other clearers. If retailers are to be part of the CECS decision-making process as participating members then they must accept some of the multilateral obligations that flow from this. To do this they need to take ultimate responsibility *vis-à-vis* Issuers for the integrity of their process of capture and transmission of EFTPOS transactions, ie to become Merchant Principals. Decision-making forums work effectively only if their members have a very strong commonality of interest. Voting rights without attendant responsibility is not a sustainable model.

7. Commission evaluation

7.1. The Commission's evaluation of the applications is made in accordance with the statutory tests as set out in section 5 of this determination.

The payments system

7.2. It is proposed that the CECS arrangements the subject of the applications will form part of the payments system in Australia. The following brief comments on the payments system are provided as background to the Commission's consideration of the CECS arrangements.

7.3. As noted in section 2 of this determination, the Australian payments system comprises cash payments and various non-cash payments systems.

7.4. In non-cash payments the transfer of funds from one party (the payer) to another (the recipient) is facilitated by the involvement of at least one intermediary that provides accounts to the parties through which the transfer is effected. A payments system is the infrastructure which carries payment messages and transfers funds from the payer's account to the recipient's account. Elements of a payments system are the payment instrument (the form the payments message takes) and the delivery mechanism (the means by which payments messages are carried within the system).

7.5. Where the payer and recipient maintain accounts with the same intermediary, the payment transaction is referred to as an 'own' or 'on us' transaction. The intermediary, in accordance with the payment message, debits the payer's account and credits the recipient's account. In some payments systems all payment transactions are 'own' transactions. Such systems are referred to by APCA as 'closed' systems. An example of a closed payments system is where an organisation issues a credit or charge card to its customers that enables the customers to purchase products from merchants that are also clients of that organisation. (APCA notes that the American Express and Dinner Club systems are closed payments systems.)

7.6. APCA advises that in 'open' payments systems the payer and recipient may maintain accounts with different intermediaries (who are usually banks, building societies or credit unions). In such systems, 'clearing' and 'settlement' processes are required for the parties' intermediaries to reflect the change in their customers' accounts and for value to pass between the intermediaries. Clearing entails intermediaries sorting, routing and exchanging payment instructions, verifying the integrity of the instructions and the accuracy of the sums involved, correcting the sums for errors and other adjustments, and determining the amount which when paid will settle any resultant debt between the intermediaries involved. Settlement is the exchange of value between intermediaries providing payment services for the purpose of providing finality of payment for the obligations arising out of payments clearing.

7.7. Clearing and settlement are thus at the core of 'open' payments systems. These processes enable a payer's intermediary to provide its customer with the means (payment instrument) of transferring funds to recipients generally (ie, within an open payments system) and not just to recipients that are also customers of the payer's intermediary (ie, within a closed payments system). Clearing and settlement are at the heart of the payment (or funds transfer) services provided by intermediaries in open payments systems.

7.8. Standards and procedures, or rules, (eg, in respect of the payment instrument, the payments messages and formats, infrastructure and communication links) are necessary to ensure the integrity and security of non-cash payments systems. In Australia, intermediaries that participate in a

particular payments system, or organisations of which they are members, determine the system's rules. The Australian payments system is thus largely managed under self-regulatory arrangements. (The Payments System Board (PSB) has broad legislative responsibility and powers under the *Payment Systems (Regulation) Act 1998* to promote efficiency and competition in the payments system. However, this legislation adopts a co-regulatory approach that envisages continuing self-regulation of payments systems where such arrangements are performing satisfactorily, but with the PSB having the power to 'designate' a particular payments system as being subject to its regulation. Once a payments system has been designated, the PSB has the power to determine rules for participation and access, set standards and procedures, and arbitrate on disputes in that system. To date no payments system has been designated by the PSB.)

7.9. In a 'closed' payments system the intermediary providing the payments service can set the system's rules, although some common standards across different payments systems may be necessary to the extent the systems interface with each other. For example, where card readers or pin-pads in merchant outlets may be accessed to initiate transactions in a number of different payments systems, some common standards for transaction cards will be necessary.

7.10. Rules are required in particular for the clearing and settlement processes in an 'open' payments system. These can be set either through a series of bilateral agreements between the individual intermediaries that exchange payments messages with each other within the system, or, more usually, collectively by all the intermediaries that provide payment services within the system. APCA is the organisation through which payments system participants set such rules for a number of systems (ie, for the paper/cheque, direct entry and high value systems, and under the proposed CECS arrangements for the ATM and EFTPOS systems).

Scope of the applications for authorisation

7.11. In its submission, APCA notes that the payment arrangements that fall within the category of 'consumer electronic' are debit and credit card transactions (stored value cards, which are currently being trailed by a number of Australian financial institutions, will also fall into this category). APCA advises that the providers of credit cards - Visa, MasterCard and Bankcard - have set their own rules for participation in their respective schemes and for the clearing and settlement of credit transactions. These credit card payment arrangements are not under APCA's jurisdiction, and accordingly have not been included in the proposed CECS arrangements the subject of the applications for authorisation. Payment instructions falling within the scope of the proposed CECS arrangements are therefore debit transactions, including those based on cards which also have a credit facility, generated within the ATM and EFTPOS networks.

7.12. Some interested parties expressed concern that CECS will not include the credit card payments systems and some other consumer electronic payment arrangements. Interested parties appear to be primarily concerned with the current self-regulatory arrangements for credit cards, and that such arrangements are not subject to scrutiny under the authorisation process.

7.13. As noted, the Commission is required to determine whether the provisions of the proposed CECS arrangements for which APCA has sought authorisation are likely to result in a benefit to the public that is sufficient to outweigh any anti-competitive detriment likely to result from the arrangements. It is not the Commission's role in assessing the proposed CECS arrangements under the authorisation process to design, or to insist upon, the development of an ideal system of self-regulation for all consumer electronic payments arrangements.

7.14. The Australian Competition Tribunal made the following observation, in *Re: 7- Eleven Stores Pty Ltd, Independent Newsagents Association, Australasian Association of Convenience Stores Inc*¹¹, in respect of the Commission's role in authorisation matters:

“ the Commission's role is not to design for others business arrangements that can be authorised, nor insist on optimum arrangements before granting authorisation, but rather to assess formally whether some proposed conduct that might breach the provisions of the Act yields a net public benefit, and therefore can be authorised.”

7.15. The Commission confines its consideration in this determination to the ATM and EFTPOS debit card payment arrangements the subject of the applications for authorisation. It notes that there are separate self-regulatory arrangements for credit cards under the Visa, MasterCard or Bankcard organisations, and that some interested parties have expressed concern regarding these arrangements. It also notes that as these self-regulatory arrangements for credit cards are not currently authorised by the Commission, any provisions of such arrangements that may breach the Trade Practices Act are open to court action by an aggrieved party or by the Commission.

The ATM network

7.16. ATMs provide customers of financial intermediaries with an electronic means of withdrawing cash from their accounts, transferring funds between their own accounts and inquiring about their available balances. Customers access their accounts using a plastic card with a magnetic stripe, and a previously established PIN. The customer's transaction is almost always authorised via an on-line link from the ATM to a processing centre where the authenticity of the card and PIN are validated and a check in made on funds availability.

7.17. There are three essential parties to a cash withdrawal transaction through an ATM.

- the Issuer who operates the account from which funds are withdrawn and who issues a transaction card to its customer,
- the customer/cardholder who withdraws the cash, and
- the Acquirer/owner of the ATM who acquires the transaction and dispenses the cash.

7.18. There is no non-cash payment from a payer to recipient in an ATM transaction. The ATM network is essentially part of the cash payments system, providing a financial intermediary's customers/cardholders with a convenient means of withdrawing cash from their accounts.

7.19. In many ATM transactions the Issuer is also the Acquirer - ie, the transactions occur within an Issuer's own ATM network. Such transactions are known as 'own' or 'on us' transactions and are relatively simple. The electronic transaction information flows are within the Issuer's system, the Issuer dispenses the cash and debits the customer's account.

7.20. ATM transactions within an 'open' network where the Issuer and Acquirer are different organisations are known as 'shared' transactions. In such transactions, the ATM-initiated electronic payment information is received by the Acquirer who then forwards the information to the Issuer, when the Issuer's return message approving the transaction is received the Acquirer dispenses the cash to the Issuer's cardholder. The Issuer debits its cardholder's account and must reimburse the Acquirer for the amount of the withdrawal. (As noted in section 3 of this determination, settlement of this and similar transaction obligations between ATM Issuers and Acquirers in Australia occurs across ESAs at the Reserve Bank on the next working day.)

¹¹ (1998) ATPR 41-666 at page 41,481

7.21. An open ATM network is made possible because of clearing and settlement (or interchange) arrangements between Issuers and Acquirers, which allow the Issuers' cardholders to effect transactions at the Acquirers' ATMs. Issuers and Acquirers provide the payment services and are participants in the network. An organisation may participate as either an Issuer or an Acquirer, or as both an Issuer and an Acquirer.

Current ATM Issuers and Acquirers

7.22. Current ATM linkages are shown in the diagram at Attachment A. Current participants in the ATM network are the four major banks (NAB, Westpac, Commonwealth and ANZ), members of the Cashcard network (which include all regional banks, building societies and some credit unions), and members of the credit union (Rediteller) network. Banks, building societies and credit unions are thus the current Issuers and Acquirers in the debit card ATM network.

7.23. However, the Commission is aware that a small number of organisations that are not banks, building societies or credit unions own and operate ATMs within the network. These organisations accept debit card payment instructions from, and dispense cash to, Issuers' cardholders. They have not entered into interchange arrangements with the card Issuers but clear and settle with the Issuers under commercial arrangements with Acquirers that have such agreements with the Issuers.

7.24. Card issuing in the ATM network is reasonably concentrated with cardholders of the four major Issuers accounting for around 80 percent (by number and value) of transactions in the network.

7.25. The Commission does not have figures on the level of concentration of acquiring in the ATM network.

The EFTPOS network

7.26. EFTPOS provides customers with an electronic payment mechanism for the supply of goods and services at the merchant's point of sale (many merchants also offer 'cash out' services). Payment is made through an on-line debit of the customer's savings or cheque account, with a resultant credit to the merchant's account. Such transactions, like ATM transactions, use a plastic card with a magnetic stripe and a PIN to identify the customer.

7.27. There are (usually) four parties to an EFTPOS transaction:

- the Issuer who operates the account from which funds are withdrawn and who issues a transaction card to its customer,
- the customer/cardholder who makes the payment using the card,
- the merchant who exchanges goods or services for the customer's card details and consent to make the payment, and
- the Acquirer who supports the merchant's participation in EFTPOS, pays the merchant and forwards the transaction to the Issuer for settlement.

7.28. In 'own' or 'on us' EFTPOS transactions the same financial intermediary provides EFTPOS payment services, to both the cardholder (as Issuer) and the merchant (as Acquirer). The intermediary receives the EFTPOS-initiated electronic transaction information through a terminal in the merchant's outlet, advises the merchant of approval of the transaction, and then debits the cardholder's account and credits the merchant's account.

7.29. Transactions in an open EFTPOS network where the Issuer and Acquirer are different organisations are 'shared' transactions. In such transactions, the electronic transaction information is

received by the Acquirer through facilities in its merchant's outlet. The Acquirer then forwards the information to the Issuer, when the Issuer's return message approving the transaction is received the Acquirer advises the merchant who accepts the payment in exchange for the goods or services provided to the Issuer's cardholder. The Issuer debits the cardholder's account, the Acquirer credits the merchant's account, and the Issuer must then reimburse the Acquirer to complete the payment transaction. (Settlement of this and similar transaction obligations between EFTPOS Issuers and Acquirers in Australia occurs across ESAs at the Reserve Bank on the next working day.)

7.30. An open EFTPOS network is made possible because of clearing and settlement (or interchange) arrangements between Issuers and Acquirers, which allow the Issuers' cardholders to effect transactions at merchant facilities supported by the Acquirers. Issuers and Acquirers provide the payment (funds transfer) services and are participants in the network. An organisation may participate as either an Issuer or an Acquirer, or as both an Issuer and an Acquirer.

Current EFTPOS Issuers and Acquirers

7.31. Current EFTPOS linkages are shown in the diagram at Attachment B (which does not include retailers who own terminals and switch transactions).

7.32. Banks, building societies and credit unions are the current Issuers in the debit card EFTPOS network. Card issuing in the EFTPOS network is reasonably concentrated with cardholders of the four major Issuers accounting for around 80 percent (by number and value) of transactions in the network.

7.33. Current Acquirers in the EFTPOS network are the NAB, Westpac, Commonwealth, ANZ, Colonial State Bank, St George, BankWest, Bank of Queensland, and under Cashcard Acquire the Adelaide Bank, Bendigo Bank, Suncorp-Metway and Trust Bank. EFTPOS acquiring is even more concentrated than issuing, with the top four Acquirers accounting for around 90 percent (by number and value) of all EFTPOS transactions.

Access to the ATM and EFTPOS networks

7.34. As noted, the ATM network is based upon interchange arrangements between Issuers and Acquirers, which allow the Issuers' cardholders to effect transactions at the Acquirers' ATMs. Similarly, the EFTPOS network is based upon interchange arrangements between Issuers and Acquirers, which allow the Issuers' cardholders to effect transactions at merchant facilities supported by the Acquirers. The networks thus depend upon the participation of both Issuers and Acquirers. In general access terms, the interchange arrangements provide Issuers with access to the Acquirers' ATM or EFTPOS facilities, while the Acquirers obtain access to the Issuers' cardholders.

7.35. The impact of the proposed CECS arrangements on access to the ATM and EFTPOS networks was raised by a number of interested parties. In order to assess the likely impact of the CECS arrangements in this regard, Issuers' and Acquirers' access to the networks under current arrangements (ie, without the proposed CECS arrangements) is first discussed below.

Access under current arrangements

Issuers

7.36. To obtain access to either the ATM or EFTPOS debit card network as an Issuer, an organisation must be able to:

- maintain transaction accounts which act as the sources of value for customers wishing to withdraw cash through an ATM, or transfer value through EFTPOS to a merchant in exchange for goods or services;
- issue transaction cards (payment instruments) to its customers/cardholders for their use in withdrawing cash through an ATM, or making EFTPOS payments to merchants;
- clear its cardholders' payment instructions with the Acquirer/owner of the ATM, or for EFTPOS transactions with the merchant's Acquirer; and
- settle its obligations generated as a result of clearing its cardholders' payment instructions with the Acquirer/owner of the ATM, or for EFTPOS transactions with the merchant's Acquirer.

Maintenance of transaction accounts

7.37. Cardholders' own sources of value in the form of deposits to transaction accounts¹², are drawn upon in ATM and EFTPOS debit card transactions.

7.38. There are some legislative restrictions placed on organisations' ability to accept deposits. Such restrictions constitute a barrier to obtaining access to either the ATM or EFTPOS debit card networks as an Issuer.

7.39. Authorised deposit-taking institutions (ADIs) are not required to issue prospectus when seeking to accept deposits from the general public. Depositors demand certainty of payment and the ADIs promise at-call access to a fixed value (the principal plus interest). To ensure they remain financially sound and are able to meet their obligations to depositors, all ADIs are subject to prudential regulation and are licensed and supervised under the same regime by the Australian Prudential Regulation Authority (APRA).

7.40. Currently, all ADIs are either banks, building societies or credit unions. Deposits with these institutions provide the predominant source of value from which ATM and EFTPOS debit card transactions are made.

7.41. Other 'deposit like' sources of value that could be drawn upon in ATM and EFTPOS debit card transactions include cash management trusts and insurance bonds. Transaction accounts based on such investment products may be maintained by organisations other than ADIs.

Issuing of debit cards

7.42. There are no legislative restrictions on the issuing of debit cards. However, technical standards for debit cards and their use in ATM and EFTPOS devices are likely to be specified in the confidential bilateral agreements between the current Issuers and Acquirers in the ATM and EFTPOS networks.

Clearing and settlement

7.43. As noted, clearing and settlement are at the core of the ATM and EFTPOS debit card networks. These processes enable an Issuer's cardholder to:

- withdraw cash from ATMs other than those of the card Issuer;
- transfer value through an EFTPOS debit card transaction to a business that does not also have an account with the card Issuer.

¹² Such accounts may include overdraft facilities that are made available to the cardholders by their financial intermediaries.

7.44. Currently, clearing and settlement arrangements for the ATM and EFTPOS networks are part of the confidential bilateral interchange agreements between the Issuers and Acquirers in these networks. Agreement on the standards and procedures for the exchange of payments instructions (clearing) between Issuer and Acquirer is necessary to ensure the integrity and security of those instructions. Further, an Acquirer is unlikely to accept a payment obligation drawn on an Issuer by its cardholder unless the Acquirer and Issuer have agreed the (settlement) arrangements under which the Issuer will reimburse the Acquirer for the value of the payment.

7.45. In addition, because the Issuer is agreeing to accept payment instructions for its customers' accounts that are initiated through the Acquirer's ATM or EFTPOS facilities (or facilities for which the Issuer holds the Acquirer responsible), the Issuer is likely to require assurance under the confidential interchange agreement as to the standards and security of the facilities.

7.46. Agreement is also reached on the fees paid by the Issuer for its cardholders' use of the Acquirer's facilities. These 'interchange fees', which in ATM and EFTPOS debit card transactions are usually flat (or fixed amount) fees paid on a per transaction basis, are also part of the confidential bilateral interchange agreements.

7.47. There are multiple Issuers and Acquirers in the both the ATM and EFTPOS networks in Australia. As noted in section 3 of this determination, the ATM network is not completely linked, although all debit card Issuers through a series of interchange agreements provide their cardholders with widespread access to ATM services. However, the interchange arrangements in the EFTPOS network are complete so that all issued debit cards can transact at all EFTPOS terminals. This appears to indicate that to be competitive a debit card Issuer needs to enter into interchange arrangements which provide its cardholders with access to the ATMs of a number of Acquirers, and with access to the EFTPOS facilities of all Acquirers.

7.48. To achieve such widespread access for its cardholders an Issuer would have to enter into bilateral interchange agreements with each relevant Acquirer, alternatively an Issuer could obtain access through another ('gateway') Issuer that has interchange agreements with the Acquirers.

7.49. Most importantly, an Issuer must have the means to settle its obligations with each Acquirer. As noted, an Issuer's ability to settle its obligations to Acquirers is critical to the Acquirers accepting payment obligations drawn on the Issuer by its cardholders. When an Issuer acts as a gateway for another Issuer, it is the 'gateway' Issuer that is responsible for settlement with the Acquirers.

7.50. Settlement of ATM and EFTPOS debit card transaction obligations between Issuers and Acquirers currently occurs across ESAs at the Reserve Bank. ESA deposits are generally regarded as the only practically available medium that provides payment that is free from default. The Reserve Bank has stated:

"Deposits (in the domestic currency) with the central bank are riskless; a deposit with any other financial institution carries an element of credit risk. Only the central bank can ensure that the system as a whole is capable of finalising settlement obligations, because only it can meet the liquidity needs of the system at all times and provide 'lender of last resort' facilities to individual institutions."¹³

7.51. The Reserve Bank's policy on providing ESAs is noted in the PSB's 1999 annual report. Briefly:

- any provider of third party (customer) payment services that has the need to settle clearing obligations with other providers of such services and the liquidity to meet these obligations, may apply for an ESA;

¹³ Reserve Bank of Australia, Occasional Paper No. 15, Supplementary Submission to the Financial System Inquiry, January 1997, page 25.

- Because organisations authorised and supervised by APRA are required to meet rigorous capital and liquidity requirements on an ongoing basis, they are eligible for ESAs without special conditions provided they satisfy the Reserve Bank they have the capacity to meet their settlement obligations.
- Organisations not supervised by APRA need to demonstrate to the Reserve Bank that they have sufficient financial substance and liquidity policies appropriate to their business. Where such organisations operate in deferred net settlement systems (such as ATM and EFTPOS) they will be required to lodge collateral on an ongoing basis, except for organisations that are always net receivers in payments clearing arrangements.

7.52. In view of the financial substance of organisations that have ESAs, and the finality of settlement provided through the transfer of ESA balances, the ability of an Issuer to settle its obligations through an ESA provides Acquirers in the ATM and EFTPOS networks with the assurance they require to accept payment obligations drawn on the Issuer by its cardholders. It may be possible for an Issuer to reach alternative non-ESA based settlement arrangements with individual Acquirers (eg, pre-funded accounts with financial institutions other than the Reserve Bank), however, any such arrangements are likely to have competitive and cost disadvantages compared to ESA based settlement. Because ESA settlement is accepted without question by Acquirers, access by an Issuer to an ESA for settlement of its clearing obligations provides the Issuer with at least a significant competitive advantage, and may in fact be necessary for its widespread and successful participation in the ATM and EFTPOS networks. The PSB has stated as follows on the advantages of holding and ESA.

Although an ES account is not a prerequisite for participation in the payments system, holding one can reduce participants' risk by allowing them to use a risk-free settlement medium. It can also affect their competitive position and lower their costs by reducing dependence on agency arrangements with an institution that is otherwise a competitor in payments.¹⁴

7.53. As noted in section 2 of this determination, to date ESAs have been provided to all banks, the building society industry's SSP, the SSP representing a majority of the credit union industry, and to the Sydney Futures Exchange Clearing House (the latter for settlement on a Real Time Gross Settlement basis only). Thus, in terms of the participants in the ATM and EFTPOS networks only ADIs being the banks, building societies and credit unions have access to their own, or industry-based, ESAs. However, it is currently possible for an organisation without its own or industry-based ESA facilities to gain access to such facilities under a commercial arrangement with an institution that has an ESA.

7.54. This latter option of obtaining access to a bank, building society or credit union ESA would be one way an organisation that provides deposit-like investment products, such as cash management trusts and insurance bonds, could provide Acquirers in the ATM and EFTPOS networks with the assurance they require to accept payment obligations drawn on the organisation. Alternatively, such an organisation seeking to become an Issuer in the ATM and/or EFTPOS networks could apply for its own ESA. In the absence of compelling information to the contrary the Commission does not consider non-ESA based settlement arrangements provide a viable or practical means for an Issuer's widespread and successful participation in the ATM and EFTPOS networks.

7.55. In summary, for an organisation to participate in the ATM and/or EFTPOS network as an Issuer under current arrangements, the organisation must:

- be an ADI and thus maintain customers' deposit accounts, or an organisation that maintains customers' deposit-like sources of value, which the customers can draw upon in ATM and EFTPOS debit card transactions;

¹⁴ Payments System Board, Annual Report 1999, page 22.

- enter into bilateral interchange agreements (which include standards for ATM or EFTPOS facilities, as well as clearing, settlement and interchange fee arrangements) with a number of Acquirers in the ATM network and with each Acquirer in the EFTPOS network, or enter into an arrangement with a ‘gateway’ Issuer that has bilateral interchange agreements with the Acquirers in the ATM network and in the EFTPOS network;
- have a means of settling its ATM and EFTPOS clearing obligations with each relevant Acquirer, in practice this would require the organisation to either have its own ESA or have access (under a commercial arrangement) to another institution’s ESA.

ATM Acquirers

7.56. ATM Acquirers provide ATM facilities for, in particular, cash withdrawals by cardholders. For an Acquirer to participate in the ATM debit card network so that the cardholders of various Issuers have access to the Acquirer’s ATM facilities, it must enter into bilateral interchange agreements with the card Issuers. Alternatively, an Acquirer could enter into an arrangement with another (‘gateway’) Acquirer that has interchange agreements with the Issuers.

7.57. As noted, an Issuer looks to the Acquirers for assurance as to the integrity and security of the payments instructions initiated and cleared through the Acquirers’ facilities (or facilities for which the Issuer holds the Acquirers responsible). An Acquirer in particular looks for assurance from the Issuers that they have the means to settle their obligations to the Acquirer arising out of the exchange (clearing) of payments instructions. There are multiple Issuers and Acquirers in the ATM debit card network in Australia. The network is not completely linked. However, each ATM Acquirer provides access to its facilities to the cardholders of various Issuers. Settlement of ATM debit card transaction obligations between Issuers and Acquirers currently occurs across ESAs at the Reserve Bank. Although it is open for an Acquirer to accept non-ESA based settlement arrangements with Issuers, such arrangements would not have the risk-free and cost advantages to an Acquirer of ESA based settlement.

7.58. In summary, for an Acquirer to participate in the shared ATM network under current arrangements, the organisation must:

- enter into bilateral interchange agreements (which include standards for the Acquirer’s ATM facilities, as well as clearing, settlement and fee arrangements) with a number of Issuers in the network, or enter into an arrangement with a ‘gateway’ Acquirer that has bilateral interchange agreements with the Issuers in the network;
- have the means of settling its clearing obligations with each relevant Issuer, in practice this would require the organisation to either have its own ESA or have access (under a commercial arrangement) to another institution’s ESA.

EFTPOS Acquirers

7.59. EFTPOS Acquirers make EFTPOS facilities available to merchants that enable cardholders to initiate debit card payment transactions in favour of the merchants in exchange for the merchants’ goods or services. A merchant’s Acquirer accepts the debit card payments instructions initiated at the merchant’s point of sale and drawn by cardholders on their Issuers, makes the payments to the merchant, and obtains reimbursement from the Issuers in the settlement process.

7.60. As noted, the EFTPOS network in Australia is complete so that all issued debit cards can transact at all EFTPOS terminals. There are practical and commercial reasons for this. It is in the commercial interest of merchants who wish to provide customers with the option of payment by EFTPOS debit card, that the merchant’s EFTPOS facilities accept the cards of all Issuers. Further, merchants want to achieve this universal acceptance of debit cards through the same EFTPOS facility, rather than through a number of facilities supported by different Acquirers. Merchants are

therefore unlikely to contract with an organisation as its EFTPOS Acquirer unless the organisation can ensure that its EFTPOS facilities are able to accept cards from all Issuers.

7.61. Thus in order for an organisation to participate as an Acquirer in the EFTPOS network it must enter into bilateral interchange agreements with all Issuers so that their cardholders have access to the EFTPOS facilities provided to merchants by the Acquirer. Alternatively, an Acquirer could enter into an arrangement with another ('gateway') Acquirer that has interchange agreements with the Issuers.

7.62. As with ATM interchange agreements, EFTPOS interchange agreements would include standards for the EFTPOS facilities, as well as clearing, settlement and interchange fee arrangements.

7.63. An important part of the Acquirer's role is that it makes payment (passes value) to the merchant in respect of payment instructions initiated at the merchant's point of sale and drawn by cardholders on their Issuers. An Acquirer usually makes these payments by crediting the merchant's deposit account that is maintained by the Acquirer. Traditionally therefore Acquirers have been ADIs, particularly banks. It would not, however, appear necessary for an organisation to be an ADI for it to participate in the EFTPOS network as an Acquirer. A non-ADI Acquirer could make payments to its EFTPOS merchant by crediting the merchant's deposit account maintained by a (third-party) ADI.

7.64. In summary, for an Acquirer to participate in the shared EFTPOS network under current arrangements, the organisation must:

- enter into bilateral interchange agreements (which include standards for the EFTPOS facilities provided to merchants by the Acquirer, as well as clearing, settlement and fee arrangements) with all Issuers in the network, or enter into an arrangement with a 'gateway' Acquirer that has bilateral interchange agreements with Issuers in the network;
- have the means of settling its clearing obligations with each Issuer, in practice this would require the organisation to either have its own ESA or have access (under a commercial arrangement) to another institution's ESA.

EFTPOS merchants

7.65. As noted, merchants are an important part of the EFTPOS network. Traditionally, merchants have been end-users of the payment services provided by Acquirers in the network. That is, an Acquirer accepts the debit card payment transactions initiated at its merchant's EFTPOS facilities, and the merchant receives value for these transactions from the Acquirer via payment to a nominated financial institution account (the Acquirer subsequently obtains reimbursement from the Issuers in the settlement process).

7.66. Acquirers may also provide EFTPOS facilities to merchants. However, some merchants, particularly the larger merchants, have invested in their own EFTPOS facilities and undertake at least some of the transaction information exchange activities that would otherwise be undertaken by their Acquirers. To date such merchants have not usually entered into interchange arrangements with Issuers (although Coles Myer has interchange arrangements with some Issuers). Rather these merchants continue to rely upon Acquirers that have interchange arrangements with the Issuers.

7.67. As noted above, the EFTPOS network is based upon interchange arrangements between Issuers and Acquirers. Should a merchant enter into interchange arrangements with Issuers, or enter into a 'gateway' arrangement with an Acquirer that has interchange agreements with the Issuers, the merchant would in effect be providing its own acquiring services and would be a direct participant in the EFTPOS network.

Access under the proposed CECS arrangements

7.68. CECS will effect the interchange arrangements upon which the ATM and EFTPOS networks are based. CECS will therefore effect access to these networks by Issuers and Acquirers, and by merchants wishing to provide their own acquiring services in the EFTPOS network.

7.69. As noted in section 4 of this determination, the object of CECS is to co-ordinate and manage standards and procedures to facilitate the conduct and settlement of exchanges of ATM and EFTPOS payment instructions between CECS Members and all aspects of the related clearing cycle. These include procedures to promote the efficiency, security and integrity of such exchanges; and specifications and standards for equipment utilised and cards issued by, and communications links and message formats between, Members that participate in ATM or EFTPOS interchange activity.

7.70. These standards and procedures are set out in the CECS Manual and will be mandatory when CECS Members engage in the exchange of ATM or EFTPOS transactions with other CECS Members. Any two CECS Members may agree to apply divergent standards and procedures, provided they satisfy the CECS Management Committee that the integrity, security or efficiency of CECS as a whole will not be lessened in any material way as a result. However, no CECS Member may require any other Member or prospective Member to apply standards and procedures in ATM or EFTPOS interchanges other than those in the CECS Manual. Thus, CECS is a forum in which its Members will agree on minimum mandatory standards and procedures for the interchange arrangements between themselves as Issuers or Acquirers in the ATM and EFTPOS networks.

7.71. Although CECS Members and prospective Members will be required to comply with the CECS standards and procedures in their ATM and EFTPOS interchange arrangements, such compliance will not ensure they obtain access to the ATM or EFTPOS networks as either an Issuer or Acquirer. The proposed CECS Regulations specify that no CECS Member is obliged, solely on account of its membership of CECS, to exchange ATM or EFTPOS payment instructions with any other CECS Member. It will therefore continue to be necessary for CECS Members or prospective Members to enter into bilateral interchange agreements or 'gateway' arrangements for them to obtain access to the ATM or EFTPOS networks as either an Issuer or Acquirer.

Issuers

7.72. As noted, Issuers in the ATM and/or EFTPOS network must either be ADIs maintaining customers' accounts, or organisations that maintain customers' deposit-like sources of value, which the customers can draw upon in debit card transactions. The CECS arrangements can not and will not effect this requirement for access to these networks as an Issuer.

7.73. The Commission considers that in practice Issuers must also either have their own ESA or have access (under a commercial arrangement) to another institution's ESA in order to settle their obligations incurred as the result of the exchange of ATM or EFTPOS payment instructions with Acquirers. The proposed CECS arrangements require that each Member must provide for such obligations to be settled directly by it, or indirectly by its appointed representative, by the debiting or crediting of an ESA or similar account at the Reserve Bank; or by such other means recommended by the Management Committee and approved by the APCA Board.

7.74. The proposed CECS requirement for settlement thus does not raise additional barriers to Issuers' access to the ATM or EFTPOS network, but simply reflects what the Commission considers to be a necessary requirement in practice for such access. The Commission also recognises that the integrity of the payments system rests primarily upon the financial soundness of those organisations that are responsible for the direct settlement of obligations arising from the clearing of transactions through the system. As noted, ESAs provide a risk-free settlement medium and are only made

available to (net paying) organisations that are prudentially supervised by APRA or that have demonstrated their financial soundness to the Reserve Bank. The Commission therefore accepts that there is public benefit in the CECS requirement that Members' obligations arising through the exchange of ATM and EFTPOS payment instructions be settled by the debiting or crediting of an ESA.

7.75. At present the standards and procedures relevant to ATM and EFTPOS interchanges are bilaterally agreed between each Issuer and Acquirer and included in their interchange agreement. As noted, under CECS all Members will agree on minimum mandatory standards and procedures for such interchanges.

7.76. The Commission considers that appropriate minimum mandatory standards and procedures can ensure the integrity and security of transactions generated within the ATM and EFTPOS networks, and would be likely to result in net benefit to the public. However, if set at an inappropriate level, minimum mandatory standards and procedures can be anti-competitive, raise barriers to entry to the networks, and stifle innovation by network participants. The Commission did not receive any submissions that the proposed CECS standards and procedures were inappropriate, and in particular that they raised inappropriate barriers to entry for Issuers. As noted, under the proposed CECS arrangements Members have the capacity to bilaterally agree to apply divergent standards and procedures provided they satisfy the CECS Management Committee that the integrity, security or efficiency of CECS as a whole will not be lessened in any material way as a result. The Commission considers that under this approach CECS Members will retain the ability to innovate in their development of interchange arrangements without threatening the overall integrity and security of the ATM and EFTPOS networks.

7.77. As also noted, for Issuers to obtain access to the ATM or EFTPOS networks under CECS it will continue to be necessary for them to enter into bilateral interchange agreements with Acquirers, or enter into an arrangement with a 'gateway' Issuer that has bilateral interchange agreements with Acquirers. However, under CECS it is proposed that no Member may require any other Member or prospective Member to apply standards and procedures in ATM or EFTPOS interchanges other than those in the CECS Manual. The proposed CECS arrangements will therefore assist Issuers' access the ATM and EFTPOS networks by ensuring that Acquirers will not be able to insist Issuers meet more stringent, and unjustified, standards and procedures. (It should be noted, however, that the Commission did not receive any submissions that indicate that Issuers have in practice encountered any such problems in obtaining access to the ATM or EFTPOS networks.)

7.78. With the proposal to set minimum mandatory standards and procedures for ATM and EFTPOS interchanges under CECS, the element of bilateral interchange agreements that will remain open for negotiation will be the interchange fees, which in ATM and EFTPOS transactions are paid by the Issuer to the Acquirer.

7.79. In its 1997 draft determination concerning the then proposed CECS arrangements the Commission noted that the PSA, in its 1995 report on banking fees and charges¹⁵, had found that EFTPOS interchange fees were unlikely to reflect efficiency and competitive pressures as the balance of power was strongly in favour of Acquirers with major retailers as EFTPOS customers. In its draft determination the Commission expressed the view that the CECS arrangements should require CECS Members to base their interchange fees on efficient pricing principles, and should ensure that access to the ATM and EFTPOS networks is available to Issuers and Acquirers on fair and reasonable commercial terms. As noted earlier, APCA has not amended the CECS arrangements to implement self-regulation of ATM and EFTPOS interchange fees based on efficient pricing principles. APCA's firm view is that its role does not extend to regulating the setting of prices by its members, and that

¹⁵ Inquiry into fees and charges imposed on retail accounts by banks and other financial institutions and by retailers on EFTPOS transactions, PSA Report No 65, 30 June 1995, Chapter 12.

prices should be set through negotiation in the open market. APCA also advised that it had neither the specialised knowledge nor the resources to perform the regulatory/supervisory role that any reasonable pricing procedure would require. In addition, APCA submitted that the proposed CECS arrangements clearly result in net public benefit regardless of the method used for determining interchange fees. As also noted in section 6 of this determination there was no support from interested parties for ATM and EFTPOS interchange fees to be regulated under the CECS arrangements.

7.80. Given that self-regulation of ATM and EFTPOS interchange fees is not being proposed by APCA under the revised CECS arrangement, this issue has not been the focus of either APCA's or interested parties' submissions concerning the current applications for authorisation. In light of the few brief submissions that were received on the issue the Commission is of the view that further consideration of the current interchange fee arrangements is required, and that this should proceed separately from the Commission's consideration of the authorisation applications for the proposed CECS arrangements. In this regard it is noted that the Commission and the RBA are currently conducting a joint study¹⁶ into debit and credit card interchange fees. Objectives of the study include the obtaining of information on debit and credit card interchange fees, clarifying the basis on which such fees are set looking particularly at the role of costs, and assessing whether current fees are encouraging efficient provision of debit and credit card services.

7.81. It should be recognised however that the proposed CECS arrangements will not provide a comprehensive access regime for the ATM or EFTPOS networks, including for prospective Issuers (even should they maintain customers' deposit accounts and have access to an ESA for settlement purposes). As noted, under the proposed CECS arrangements prospective Issuers could be denied access to the ATM or EFTPOS networks because relevant Acquirers refuse to enter into interchange agreements with them, or because existing Issuers refuse to enter into 'gateway' arrangements with the prospective Issuers. Alternatively, such interchange agreements or 'gateway' arrangements may not be available on commercial terms that would allow viable entry of the prospective Issuers to the ATM or EFTPOS networks.

7.82. Under the proposed CECS arrangements each Member may decide whether or not to enter into an ATM or EFTPOS interchange agreement with another Member or non-Member. (Once a Member has made a decision to enter such agreements certain minimum mandatory standards and procedures will apply under CECS in respect of the agreements with other Members). It is noted that CECS does not include any collective agreement not to enter into ATM or EFTPOS interchange agreements. Any such collective refusal to deal arrangement between CECS Members would be a significant problem under the Act and require authorisation. A decision take by an individual CECS Member to refuse to deal with another organisation may also raise problems under the competition provisions (Part IV) of the Act depending on the circumstances (usually if the refusal would substantially lessen competition in the relevant market). However, because under the proposed CECS arrangements such a decision will be one for each individual Member, any such circumstances are outside of the scope of the applications for authorisation.

7.83. The freedom of an individual CECS Member to decide whether or not to enter into an ATM or EFTPOS interchange agreement with another Member or non-Member is a consequence of the lack of any obligation on Members to enter into such agreements. This is so even though a prospective counterparty to an interchange agreement is able to satisfy the proposed interchange standards and procedures under CECS. However as noted above, for an industry association to require its members to contract with other members or with non-members that meet certain criteria would be to exceed what is generally required under the competition provisions (Part IV) of the Act. Further, to require as a condition of authorisation of the proposed CECS arrangements that Members

¹⁶ See joint ACCC/RBA media release dated 16 September 1999, Study of Interchange Fees and Access in Debit and Credit Card Schemes.

enter into ATM or EFTPOS interchange agreements with other Members or non-Members that are able to satisfy the proposed interchange standards and procedures under CECS, is not justified in the Commission's view. To do so would be to impose upon CECS, through the authorisation process, elements of a comprehensive access regime for the ATM or EFTPOS networks. The Commission considers that should such an access regime be considered necessary (and the Commission here expresses no view on this issue), it would be more appropriate that the regime be established under the provisions of Part 111A of the Act¹⁷, or by the PSB under the *Payment Systems (Regulation) Act*¹⁸.

7.84. To grant authorisation the Commission must be satisfied that the CECS arrangements would be likely to result in benefit to the public which would outweigh any anti-competitive detriment to the public likely to result from the arrangements. As noted, the proposed CECS Manual will set minimum mandatory standards and procedures for ATM and EFTPOS interchanges, and this will have a positive effect on Issuers' access to the ATM and EFTPOS networks by ensuring that Acquirers are unable to insist Issuers meet more stringent, and unjustified, standards and procedures. As they relate to Issuers the Commission considers that the minimum mandatory standards and procedures of the proposed CECS Manual would be likely to result in net benefit to the public by enhancing the security and integrity of the ATM and EFTPOS networks.

7.85. The Commission is however concerned that the proposed CECS minimum mandatory standards and procedures will apply only as between CECS Members or prospective Members. Thus, as proposed CECS Regulation 4.1(b) is currently drafted, Acquirers who are CECS Members will be able to insist that Issuers or proposed Issuers who are not CECS Members meet more stringent ATM or EFTPOS interchange standards and procedures than those specified in the CECS Manual. The Commission can see no public benefit justification for allowing CECS Members to so discriminate against non-Members, the effect of which could be to place non-Members at a competitive disadvantage compared to Members. The Commission considers that proposed CECS Regulation 4.1(b) requires amendment so that CECS Members may not require non-Members to meet interchange standards and procedures other than those set out in the CECS Manual.

Acquirers

7.86. The Commission considers that in practice ATM or EFTPOS Acquirers must either have their own ESA or have access (under a commercial arrangement) to another institution's ESA in order to settle their clearing obligations with Issuers in these networks. As noted, the proposed CECS arrangements require that each Member must provide for such obligations to be settled directly by it, or indirectly by its appointed representative, by the debiting or crediting of an ESA or similar account at the Reserve Bank; or by such other means recommended by the Management Committee and approved by the APCA Board.

7.87. The proposed CECS requirement for settlement thus does not raise additional barriers to Acquirers' access to the ATM or EFTPOS network, but simply reflects what the Commission considers to be a necessary requirement in practice for such access. As indicated above, the Commission accepts that there is public benefit in the CECS requirement that Members' obligations arising through the exchange of ATM and EFTPOS payment instructions be settled by the debiting or crediting of an ESA.

¹⁷ Part 111A of the Act establishes a legal regime to facilitate access to the services of certain facilities of national significance. The Commission has a regulatory and administrative role in the arbitration of disputes over access to facilities declared to be essential under the terms of the Act, and in the assessment of undertakings by owners/operators of facilities.

¹⁸ Under the *Payment Systems (Regulation) Act* the PSB has the ultimate say on issues of access to the payments system. It may 'designate' a particular payment system as being subject to its regulation, and then determine rules for participation in that system including rules on access and arbitrate on access disputes.

7.88. The CECS arrangements as originally proposed, and which were the subject of the Commission's 1997 draft determination, did not include any standards and procedures relevant to Acquirers' participation in the EFTPOS network (neither did these proposed arrangements include any standards and procedures relevant to ATM Acquirers or Issuers). In preparing its 1997 draft determination the Commission received a number of submissions which indicated that organisations had been experiencing significant difficulty in obtaining access to the EFTPOS network as Acquirers. In summary these submissions indicated that:

- an Acquirer needed to reach interchange agreements with all Issuers because merchants were unlikely to contract with an organisation as its EFTPOS Acquirer unless that organisation could ensure its terminals were able to accept cards from all Issuers.
- as the major Issuers were also the major EFTPOS Acquirers, the standards and procedures for prospective Acquirers' access to the EFTPOS network were in practice determined by the existing Acquirers.
- prospective Acquirers were not aware of all the standards and procedures they would be required to satisfy, were in the hands of their potential competitors (existing Acquirers) when seeking to obtain certification that the required standards and procedures had been satisfied, and were experiencing difficulty in obtaining such certification.

7.89. In its 1997 draft determination the Commission accepted that Issuers have a genuine interest in ensuring that Acquirers' EFTPOS facilities are secure in view of Issuers' potential liability for fraudulent EFTPOS transactions on their customers' accounts. It also accepted that certification of Acquirers' EFTPOS facilities against appropriate standards and procedures would provide Issuers with a level of assurance as to the security of such facilities. The Commission was however concerned at the lack of objectivity and transparency in the standards setting and certification processes for entry into EFTPOS Acquiring, which appeared not only inefficient but also anti-competitive. The Commission concluded that these problems should be addressed under the proposed CECS arrangements, and proposed that APCA should:

- introduce minimum mandatory interchange standards and procedures relevant to participation in the EFTPOS network (and the ATM network) as an Acquirer, and
- assume responsibility for the administration of compliance with these minimum mandatory standards and procedures.

7.90. As noted in sections 1 and 4 of this determination significant amendments were subsequently made to the proposed CECS Manual. The Manual now includes proposed minimum mandatory standards and procedures for all CECS Members that participate or propose to participate in EFTPOS or ATM transactions in the capacity of Acquirers, and a process of certification by APCA that such standards have been met. (That it will continue to be necessary under CECS for Acquirers seeking to obtain access to the ATM or EFTPOS networks to enter into bilateral interchange agreements with Issuers, or enter into an arrangement with a 'gateway' Acquirer that has bilateral interchange agreements with Issuers, has been noted above. The fact that the proposed CECS arrangements will thus not provide a comprehensive access regime for the ATM or EFTPOS networks, including for prospective Acquirers, has been discussed in paragraphs 7.81 to 7.83 above.)

7.91. The Commission did not receive any submissions that the proposed standards or procedures or the certification process of the CECS Manual were inappropriate, and in particular that they raised inappropriate barriers to entry for Acquirers. As noted, CECS Members will retain the capacity to bilaterally agree to apply divergent standards and procedures provided they satisfy the CECS Management Committee that the integrity, security or efficiency of CECS as a whole will not be lessened in any material way as a result. However, it is proposed that no Member may require any other Member or prospective Member to apply standards and procedures in ATM or EFTPOS

interchanges other than those in the CECS Manual. The Commission considers that under these proposals CECS Members will retain the ability to innovate in their development of interchange arrangements without threatening the overall integrity and security of the ATM and EFTPOS networks. The proposals will also assist Acquirers' access the ATM and EFTPOS networks by ensuring that Issuers (some of which are existing Acquirers) will not be able to insist the prospective Acquirers meet more stringent, and unjustified, standards and procedures.

7.92. The proposals under which APCA will provide certification that Acquirers satisfy the CECS minimum mandatory standards and procedures for interchanges will increase the objectivity and transparency of such certification by removing the process from the existing Acquirers, and will thus also assist Acquirers' access the ATM or EFTPOS networks. In view of the competitive benefits to Acquirers or prospective Acquirers in obtaining certification from APCA, the Commission would be concerned should such certification be available only to CECS Members or prospective Members. APCA has advised 'that, in principle, it would be reasonable for it to contemplate certifying non-Member Acquirers for an adequate fee to assist them in their dealings with other players in the system.' The Commission welcomes this advice and agrees that APCA should be able to recover, through a fee, any costs incurred by it in the certification process. However, it would not appear that APCA's certification costs would be significantly different should the Acquirer or prospective Acquirer be a CECS Member or a non-Member. (APCA has also advised that as it is a voluntary association, it is quite possible for an Acquirer to operate outside of APCA by striking bilateral arrangements with Issuers in respect of standards. In this latter situation certification of the Acquirer by APCA would not appear necessary.)

7.93. The competitive benefit of Acquirer certification by APCA is recognised in proposed CECS Regulation 2.11 which states that no CECS Member (as an Issuer) may refuse on technical, operational or security grounds, to engage in ATM or EFTPOS interchanges with another Member which at that time has certification as an Acquirer. The Commission considers that a similar obligation should be placed on CECS Members in respect of non-Members who have obtained Acquirer certification from APCA.

7.94. The proposed CECS Manual will set minimum mandatory standards and procedures for ATM and EFTPOS interchanges, and provide for APCA to certify that Acquirers satisfy these standards and procedures. As noted, the Commission considers that this will have a positive effect on Acquirers' access to the ATM and EFTPOS networks. The Commission considers that the minimum mandatory standards and procedures and the certification process for Acquirers of the proposed CECS Manual would be likely to result in net benefit to the public by enhancing the security and integrity of the ATM and EFTPOS networks.

7.95. However, the Commission is concerned that the proposed CECS minimum mandatory standards and procedures will apply only as between CECS Members or prospective Members. As noted in paragraph 7.85 above, the Commission considers that proposed CECS Regulation 4.1(b) requires amendment so that CECS Members may not require non-Members to meet interchange standards and procedures other than those set out in the CECS Manual. The Commission also considers that proposed CECS Regulation 2.11 requires amendment so that no CECS Member (as an Issuer) should be able to refuse on technical, operational or security grounds, to engage in ATM or EFTPOS interchanges with either a Member or non-Member Acquirer that has APCA certification.

EFTPOS merchants

7.96. As noted, merchants and debit-cardholders (consumers) are the end-users of the payment services provided by Acquirers and Issuers respectively in the EFTPOS network. The network is based upon interchange agreements between Issuers and Acquirers that allow the Issuers' cardholders to effect transactions at merchant facilities supported by the Acquirers. However, some (particularly the larger) merchants have invested in their own EFTPOS facilities and undertake at least some of the

transaction information exchange activities that would otherwise be undertaken by their Acquirers. Although merchants may enter into interchange arrangements directly with Issuers few have done so to date.

7.97. Should a merchant enter into interchange agreements with Issuers, or enter into a 'gateway' arrangement with an Acquirer that has interchange agreements with the Issuers, the merchant would in effect be providing its own acquiring services and would be a direct participant in the EFTPOS network. Such a merchant would satisfy the definition of Merchant Principal in the proposed CECS arrangements. (It would also be eligible for membership of CECS, which issue is discussed later in this determination.)

7.98. As noted the Commission considers that the proposed CECS minimum mandatory standards and procedures and the certification process for Acquirers will have a positive effect on Acquirers' access to the EFTPOS network, and would be likely to result in net benefit to the public by enhancing the security and integrity of the network. The Commission is concerned that the proposed CECS minimum mandatory standards and procedures and the certification process should also apply if merchants provide or propose to provide their own EFTPOS acquiring services. This would appear to be the case in respect of such merchants who become CECS Members. (Proposed Regulation 1.8 provides that obligations which an EFTPOS Acquirer is required to discharge under the Regulations will be taken to apply to and bind a Merchant Principal in the same terms and to the same extent, including without limitation obtaining Acquirer certification.) The Commission is also concerned that such merchants who do not become CECS Members are not disadvantaged competitively. For this reason the Commission requires that such merchants be included within the protection provided under the proposed amendments (noted in paragraph 7.95 above) to CECS Regulations 4.1(b) and 2.11 concerning CECS Members interchange arrangements with non-Members.

CECS membership and governance

7.99. The proposed CECS Regulations include arrangements for membership and management of, and the voting rights within, CECS (as well as arrangements for the handling of any disputes within CECS).

7.100. CECS is a forum in which its Members will agree on minimum mandatory standards and procedures for the interchange arrangements between themselves as Issuers or Acquirers in the ATM or EFTPOS networks. As noted, CECS Members can agree bilaterally to apply divergent standards and procedures with the approval of the CECS Management Committee. The Commission also considers that the proposed CECS minimum standards and procedures should apply in respect of interchange arrangements between CECS Members and non-Members.

7.101. It is considered likely that most, and particularly the larger, Issuers and Acquirers in the ATM and EFTPOS networks will become CECS members. The proposed CECS minimum standards and procedures are therefore likely to have near industry-wide application. Thus, in practice, for an organisation to participate in either the ATM or EFTPOS networks as an Issuer or Acquirer it will most likely need to satisfy the CECS minimum standards and procedures for interchanges within the networks, or have CECS Management Committee approval to adopt divergent standards and procedures. (The CECS minimum standards and procedures will also impact on the business arrangements of persons other than Issuers and Acquirers in the ATM and EFTPOS networks. These will include suppliers of equipment and services used in these networks, and merchants who use the services of EFTPOS Acquirers in order to provide the option of payment by debit card to their customers.)

7.102. However, while compliance with the proposed CECS minimum standards and procedures for interchange may be a requirement for an organisation to participate as an Issuer or Acquirer in the

ATM or EFTPOS networks, membership of CECS is not. (As noted, the Commission is also concerned to ensure that CECS Members cannot require non-Members to meet interchange standards and procedures other than those set out in the CECS Manual as such a practice could disadvantage non-Members competitively, and could also force them to become Members.)

Membership and Management Committee

Criteria

7.103. The criteria for CECS membership is set out in proposed Regulation 4.1 (which is outlined at paragraph 4.10 above). The effect of this proposed Regulation and the various relevant definitions of proposed Regulation 1.1 appears to be that membership of CECS will be confined to organisations that have (or propose to) exchange payment obligations for value in the ATM or EFTPOS networks under relevant interchange agreements or gateway arrangements. That is, CECS membership will be confined to organisations that are Issuers or Acquirers in the ATM or EFTPOS networks, and to merchants who provide their own acquiring services in the EFTPOS network ('Merchant Principals' under the proposed CECS arrangements). It is also noted that organisations that represent Issuers or Acquirers and settle their ATM or EFTPOS payment obligations will qualify for CECS membership.

7.104. APCA has advised that the attraction of CECS membership will be the ability to contribute to the setting of ATM and EFTPOS minimum interchange standards. The CECS Management Committee, which is drawn from CECS Members, will in fact set the ATM and EFTPOS minimum interchange standards.

7.105. The proposed rules that will determine the composition of the Management Committee and the voting rights of members of the Committee, as well as the responsibilities and powers of the Committee are outlined at paragraphs 4.18 to 4.20 of this determination.

7.106. In essence the composition of the Management Committee will depend upon the ATM and EFTPOS transaction volume of CECS Members. Each CECS Member that has, or CECS Members that collectively have, at least 5 per cent of CECS national transaction volume will be entitled to appoint one member of the Management Committee. However, building society CECS Members collectively, credit union CECS Members collectively and the Reserve Bank, will be entitled to each appoint one member of the Committee regardless of their CECS national transaction volume. Finally, the APCA Board may itself appoint two members of the Committee, one member to represent the Board itself and the other to represent the collective interests of CECS Members who are not entitled or choose not to nominate a member of the Committee.

7.107. The voting rights of members of the Management Committee (the member of the Committee representing the APCA Board has no vote) will also depend upon the CECS national transaction volume of the CECS Member, or CECS Members collectively, that appoint or are represented by the Committee member. The national transaction volume of CECS Members is calculated from the volume of transactions exchanged for value under interchange or gateway arrangements in the ATM and EFTPOS networks.

Submissions

7.108. As noted, APCA will co-ordinated and managed minimum mandatory standards and procedures for ATM and EFTPOS interchanges under CECS. APCA submitted, prior to the Commission's 1997 draft determination, that it is appropriate that membership of CECS be confined to those organisations that participate in the process (ATM or EFTPOS interchange) that it manages under that system. It argued that such organisations share a commonality of interest in ensuring the integrity of the system that would not necessarily be shared by other organisations.

7.109. APCA has advised that as a result of its wider membership taskforce review in 1998 it expanded the membership criteria for CECS, which was previously confined to Issuers and

Acquirers, to include merchants that capture and transmit EFTPOS transactions direct to Issuers. APCA submitted that such merchants (Merchant Principals) are in a fundamentally different position from a merchant with an Acquirer. Without an Acquirer the merchant deals as principal for value with the Issuer and bears the risk as principal in respect of the Issuer's obligations. Further, if the transaction is not acquired there is a potential gap in recourse available to Issuers if the transaction fails to comply with industry standards and loss ensues in relation to that transaction. APCA submitted that it was therefore appropriate to extend membership of CECS only to merchants that capture and transmit transactions direct to Issuers. APCA also submitted that widening the CECS membership criteria to include Merchant Principals further enhances the significant public benefits to be delivered by the proposed CECS arrangements.

7.110. A number of interested parties were critical of the CECS membership criteria. It was submitted that the exclusion of merchants in particular from membership may result in the establishment of arrangements that are too concerned with Issuers' and Acquirers' risk at the expense of the efficiency of the EFTPOS system and service to customers.

7.111. Coles Myer advised that it currently operates its own PIN pads and electronic transaction switch in the EFTPOS system, and maintains its own security and key management system between its PIN pads and switch. Coles Myer considered that it is in a good position to challenge some of the existing EFTPOS and ATM practices and procedures by giving a balance to the views of traditional participants (financial institutions) in these networks. Coles Myer submitted that as CECS Members, it and other non-traditional participants could add value to the setting of rules and encourage dynamic efficiency in the payment system that is not currently being realised - eg, use of debit cards for telephone, mail and internet transactions, stored value cards, etc. The proposed CECS rules, including the Merchant Principal concept, would not in Coles Myer's view result in net public benefit as dynamic efficiency cannot flourish where only some participating ADIs determine the rules going forward. Under the proposed CECS rules only those judged to be involved in clearing (or interchange) are eligible for Management Committee representation, and this reduces the effective involvement of other qualified participants to comment and assist in setting the development agenda.

7.112. In its submission Coles Myer acknowledged that the rules for CECS technically allow new entrants to gain membership. Coles Myer expressed concern, however, that even with its very substantial involvement in the EFTPOS system, it would not qualify (and was not aware of any other corporate that would qualify) in its own right for representation on the Management Committee. It submitted that as real participation in CECS can only be made via membership of the Management Committee, doubt is cast on the value of the new categories of membership.

7.113. Woolworths advised that it owns all card reading devices and related telecommunications systems in its stores. It submitted that the Commission should not authorise the proposed CECS arrangements unless they provide for full membership rights of merchants whose EFTPOS and ATM infrastructure is used to initiate any of the interchange activities referred to in the arrangements, and made subsequent amendments to the proposed voting rights of Members.

7.114. As noted in section 6 of this determination, the Reserve Bank also considered that the proposed new membership category (of Merchant Principal) was too restrictive.

7.115. In response APCA submitted that decision-making forums work effectively only if their members have a very strong commonality of interest, and that voting rights without attendant responsibility is not a sustainable model. APCA advised that it is an association of clearers who, as Issuers or Acquirers in open payment systems, take operational and financial responsibility for transactions *vis-à-vis* other clearers. If merchants are to be part of the CECS decision-making process as participating members then they must take ultimate responsibility *vis-à-vis* Issuers for the integrity of their process of capture and transmission of EFTPOS transactions, ie they need to become Merchant Principals.

Commission evaluation

7.116. As noted, membership of CECS is not required for an organisation to participate in the ATM or EFTPOS networks. Central to the Commission's evaluation of the proposed membership and Management Committee criteria, is the privilege of CECS membership identified by APCA - of being able to contribute to the setting of ATM and EFTPOS minimum interchange standards and procedures.

7.117. Obviously, because the CECS arrangements are not currently in force, the proposed minimum standards and procedures of the CECS Manual were not determined under the proposed CECS membership and Management Committee arrangements. As discussed above the Commission did not receive any submissions which indicated that these proposed minimum standards and procedures were likely to result in any significant anti-competitive detriment or that they should not be granted authorisation on net public benefit grounds.

7.118. The concern of interested parties appears to be that under the proposed CECS membership and Management Committee arrangements, the minimum standards and procedures for the ATM and EFTPOS networks (in the CECS Manual) will not be developed in the future so that the potential of the networks is not realised. It is argued that this would have an adverse effect on competition within, and the efficiency of, these networks and the payments system generally. There has been a rapid expansion of the ATM network, and the EFTPOS network in particular, in recent years. As submitted by Coles Myer, there may also be opportunity to further develop the functionality of these networks.

7.119. The issue for the Commission is whether limiting CECS membership to organisations involved in ATM or EFTPOS interchanges, - ie, Issuers, Acquirers or Merchant Principals - and limiting CECS Management Committee representation and voting rights to such Members based on their CECS national transaction volume, are likely to result in net public benefit. More particularly, the Commission has to consider whether the CECS membership and Management Committee based on such criteria are likely in the future to implement minimum standards and procedures for the ATM or EFTPOS networks that are likely to result in net public benefit.

7.120. The Commission notes that while it is proposed to confine CECS membership to organisations involved in a certain activity (ie, interchange in the ATM or EFTPOS networks), the proposed CECS arrangements do not confine membership to organisations of a particular institutional status (eg, financial institutions).

7.121. While traditionally Issuers and Acquirers in the ATM or EFTPOS networks have been financial institutions, or more precisely ADIs, it is open to non-ADIs to enter these networks as Acquirers (in particular) or Issuers. There is nothing in the proposed CECS arrangements that require Issuers or Acquirers to be ADIs. In addition, merchants will be eligible for CECS membership should they exchange payment obligations for value direct with Issuers. As noted, merchants may engage in such exchanges should they enter into interchange agreements with Issuers or enter into 'gateway' arrangements with an Acquirer that has interchange agreements with the Issuers. Should merchants so structure their EFTPOS arrangements they could collectively command significant voting power within the CECS Management Committee.

7.122. Coles Myer currently exchanges EFTPOS payment obligations for value with the majority of credit unions (CUSCAL members) and with building societies and various regional banks (Cashcard members). These interchange arrangements would qualify Coles Myer for membership of CECS. However, because it exchanges the majority of its EFTPOS transactions through NAB as its Acquirer, Coles Myer would not meet the 5 per cent national transaction volume threshold which would give it the right to appoint a member of the Management Committee. The Commission is not

aware of any other merchant that currently has interchange arrangements that would qualify the merchant for membership of CECS or the right to appoint a member of the Management Committee.

7.123. Should merchants not structure their EFTPOS arrangements so they would qualify for CECS membership as Merchant Principals, or should other non-traditional participants not enter the ATM or EFTPOS networks as Acquirers (in particular) or Issuers, the membership or CECS and its Management Committee will be dominated by ADIs. There is an argument that should ADIs determine the procedures and standards for the ATM and EFTPOS networks, it may not be in their commercial interest to further develop these networks to the detriment of other payment systems (eg, the credit card system).

7.124. The Commission would be concerned should ADIs so manipulate the procedures and standards for the ATM and EFTPOS networks under the proposed CECS membership and Management Committee arrangements. However, there would appear to be a number of impediments to such manipulation in practice. Firstly, the performance of the CECS membership and Management Committee is likely to be closely monitored so that any such manipulation by ADIs, or any other group of CECS Members, would have a high probability of attracting adverse comment and complaint. This is particularly so in view of the concerns expressed by the Reserve Bank (who will be a Member of CECS, and of the APCA Board) and two of the largest merchants in the EFTPOS network, Coles Myer and Woolworths, in relation to the CECS membership and Management Committee criteria. In addition, APCA, CECS members and the Management Committee will be aware of the legislative responsibility of the PSB to promote efficiency in the payments system, and its power to designate a particular payment system and to set standards and procedures in respect of that system.

7.125. While it is possible in the future that the CECS membership and Management Committee could be responsible for inappropriate minimum standards and procedures that would raise barriers to entry and stifle innovation and efficiency in the ATM and EFTPOS networks, the Commission is unable at this time to conclude that this is likely to occur.

7.126. The Commission proposes to grant authorisation to the proposed CECS arrangements, including the membership and Management Committee criteria, but for a limited period of three years. At the end of this period it will be open to APCA to again apply for authorisation of the CECS arrangements and argue that the arrangements have resulted or are likely to result in net public benefit. The Commission will then have the opportunity to assess the CECS arrangements, including the membership and Management Committee criteria, in light of the practical application of the arrangements.

7.127. During the three-year period of the proposed authorisation APCA and CECS Members will need to ensure, should they wish to retain the authorisation, that they are not responsible for inappropriate minimum standards and procedures for the ATM and EFTPOS networks. Such an outcome could lead the Commission to revoke the authorisation on the ground of material change of circumstances since the authorisation was granted. It could also result in the Commission refusing to renew its authorisation of the CECS arrangements at the end of the three-year authorisation period.

Advisory Council

7.128. The purpose of the proposed CECS Advisory Council, its composition and function are outlined at paragraphs 4.26 and 4.27 above. The proposed Council will provide a forum to enable interested companies that are involved in ATM or EFTPOS payment transfers but are not eligible for membership of CECS, to communicate efficiently and effectively to the Management Committee opinions, advice and information on matters related to aspects of the ATM or EFTPOS clearing cycle.

7.129. Both Coles Myer and Woolworths considered that the concerns they raised regarding the proposed CECS membership, Management Committee and voting arrangements would not be redressed under the Advisory Council proposals.

7.130. The Commission notes the limitations of the proposed Advisory Council but considers that there is value in providing a forum in which organisations that are involved in ATM or EFTPOS payment transfers but are not eligible for membership of CECS may consult formally with the CECS Management Committee. Such consultations should assist the Management Committee better understand the practical effects of the CECS minimum standards and procedures for the ATM and EFTPOS networks, and to identify areas for further development of the standards and procedures.

8. Determination

8.1. For the reasons outlined in section 7 of this determination, and subject to the conditions set out in paragraph 8.3 below, the Commission is satisfied that in all the circumstances the proposed arrangements and conduct the subject of these applications for authorisation:

- are likely to result in benefit to the public which would outweigh the detriment to the public constituted by any lessening of competition that is likely to result from the proposed arrangements and conduct; and
- in respect of any exclusinonary provisions in the proposed arrangements, are likely to result in such a benefit to the public that the proposed arrangements should be allowed to be given effect to.

8.2 On 5 July 2000 the Commission issued a draft determination proposing, subject to any pre-decision conference pursuant to section 90A of the Act, to grant authorisation to APCA in respect of the proposed arrangements and conduct the subject of the applications for authorisation. No pre-decision conference was requested. The Commission therefore confirms its draft determination and grants authorisation to:

- APCA in respect of any exclusive dealing conduct contained in the CECS Regulations and Manual;
- APCA to give effect to the provisions of the contract, arrangement or understanding constituted by the CECS Regulations and Manual.

This authorisation also applies to or in relation to persons who become parties to the contract, arrangement or understanding constituted by the CECS Regulations and Manual at a time after the authorisation is granted.

8.3 The authorisation that the Commission grants is subject to the following conditions:

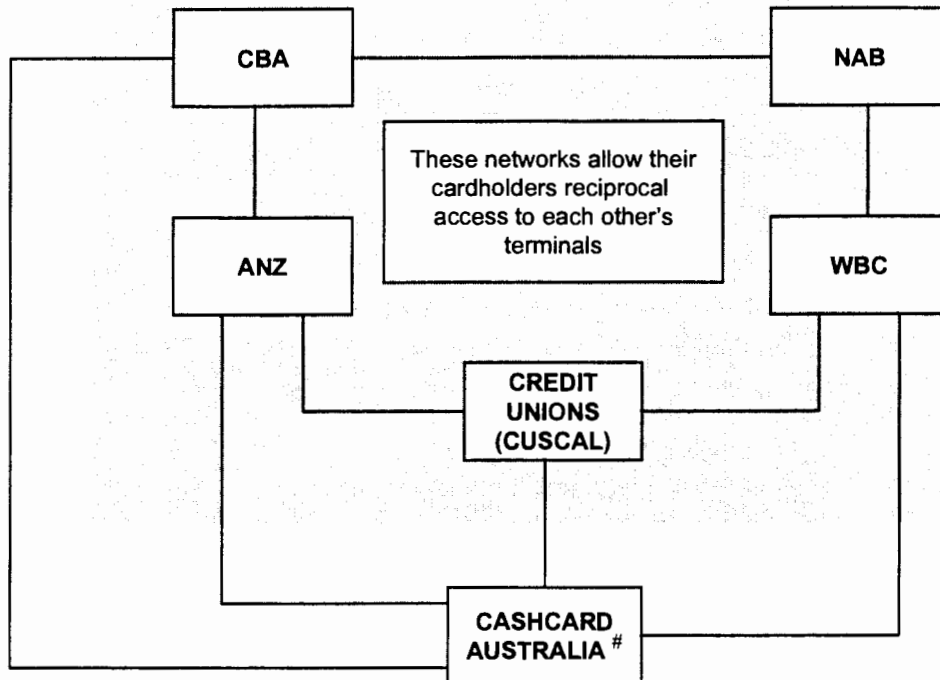
- that proposed Regulation 4.1(b) be amended so that CECS Members may not require non-Members (including relevant merchants) to meet interchange standards and procedures other than those set out in the CECS Manual; and
- that proposed Regulation 2.11 be amended so that no CECS Member may refuse on technical, operational or security grounds, to engage in ATM or EFTPOS interchanges with either Member or non-Member Acquirers (including relevant merchants – Merchant Acquirers) that have APCA certification.

8.4 This determination is made on 16 August 2000. If no application for a review of the determination is made to the Australian Competition Tribunal, the authorisation will come into force on 7 September 2000. If an application for review is made to the Tribunal, the authorisation will come into force:

- 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.

8.5 The authorisation that the Commission grants in respect of applications A30176, A30177 and A90620 will remain in force until 7 September 2003.

**ATM Linkages
(December 1999)**

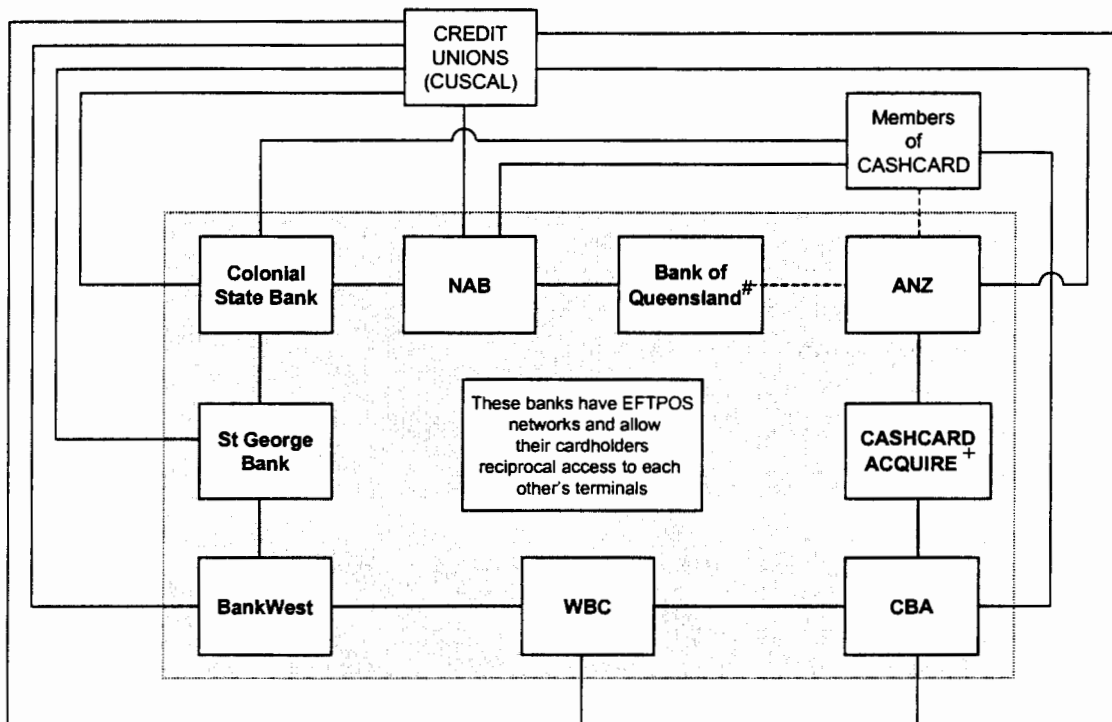


* This diagram shows the links between the six national ATM networks. There are institutions (such as local branches of foreign banks and some credit unions) which issue cards but are not part of these networks. They have arranged access for their customers to the terminals of one or more of the networks.

All regional banks (including the former state banks) are now members of the Cashcard Australia network. It also covers building societies, a number of non-CUSCAL credit unions and some other card issuers. Some Cashcard members have also negotiated their own individual reciprocal access arrangements with ANZ, CBA, NAB and WBC.

Source: Reserve Bank of Australia

EFTPOS Linkages^{*} (December 1999)



- * This diagram shows linkages between financial institutions. Retailers who own terminals and switch transactions are not included, as they do not process transactions to customer accounts. Institutions that don't have EFTPOS networks or belong to the main non-bank industry groupings (ie. CASHCARD, CUSCAL) are not shown. A number of these do issue cards and have arranged access for their customers to the terminals of the networks.
- # The Bank of Queensland has direct bi-lateral arrangements with ANZ and NAB. Its links with other institutions are via ANZ, which provides a "gateway" facility.
- + A service provided by CASHCARD to some of its members who have EFTPOS networks. Current participants are Adelaide Bank, Bendigo Bank, Suncorp-Metway and Trust Bank.
- These linkages also provide access to other banks' terminals on a "gateway" (sponsorship) basis.

Source: Reserve Bank of Australia

Parties that lodged submissions

1. Prior to the Commission's draft determination of August 1997:

Advance Bank Australia Limited
National Australia Bank Limited
AMP Society
The Treasury (Commonwealth)
Reserve Bank of Australia
American Express International Inc.
Cashcard Australia Limited
Adelaide Bank
Coles Myer Limited
Australian Association of Permanent Building Societies

2. In respect of revised CECS arrangements lodged in December 1998

Commonwealth Bank of Australia
Australian and New Zealand Banking Group Limited
Australian Stock Exchange
National Australia Bank Limited
Coles Myer Limited
Telstra
Reserve Bank of Australia

3. In respect of proposed Merchant Principal arrangements lodged in July 1999

Australian and New Zealand Banking Group Limited
Commonwealth Bank of Australia
Coles Myer Limited
Reserve Bank of Australia
Woolworths Limited

- (ii) the payment claimed as due was not the correct payment for the work that was actually done.
- (d) In any proceedings commenced concerning work performed pursuant to this clause, it lies upon any person alleging that the person performing such work was not an employee to prove that this was the case.
- (e) An employer bound by this clause shall not in any way, whether directly or indirectly, be a party to or concerned in conduct that:
 - (i) hinders, prevents or discourages the observance of this clause; or
 - (ii) causes or encourages or is likely to cause or encourage, a breach of, or non-observance of, this clause.
- (f) An employer shall provide to the outworker, each time work is given out, information as to their entitlements as per Schedule J of this award.
- (g) Any dispute arising out of or concerning this award relating to the employment of an outworker may be referred to the Industrial Relations Commission of New South Wales.

27A. Registration of Employers

- (a) Except as prescribed in subclause (a) of clause 26, Contract Work, an employer bound by this award having or proposing to have work performed away from his or her own factory or workshop pursuant to clauses 26, Contract Work, and 27, Outworkers, shall make application for registration to the Industrial Committee.
- (b) The Industrial Committee may register the employer on conditions as determined by it for a twelve-month period. The Industrial Committee may revoke the registration if any or all of such conditions have not been complied with.
- (c) Upon registration the employer will be given a registration number.
- (d) The Industrial Registrar shall maintain a record of employers registered pursuant to this clause.
- (e) Upon registration and at yearly intervals thereafter, such employer shall cause a notice to be placed in the public notices column of a metropolitan daily newspaper circulating throughout the State in which the work is to be performed, notifying such registration. Such notice shall:
 - (i) specify the identity of the employer and the registration number; and
 - (iii) specify where all documents in the employer's possession or custody containing the terms of any agreement or contract to perform work made in accordance with the provisions of this award may be inspected by a person entitled under the award to do so.
- (f) An employer, by application to the Industrial Committee or (subject to any order by the Committee or the Industrial Relations Commission) by agreement in writing with the State Secretary of the Union, may be exempted from the requirement to comply with the provisions of subclause (e) of this clause. Where any such agreement is made a copy shall be lodged with the Industrial Registrar.

