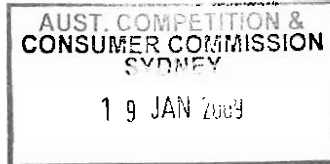


Partner Gina Cass-Gottlieb
Contact Paula Gilardoni
T +61 2 9263 4187
pgilardoni@gtlaw.com.au
Our ref GCG:PXG:1006463



LAWYERS

19 January 2009

By hand

Mr Richard Chadwick
General Manager
Adjudication
Australian Competition & Consumer Commission

FILE No:
DOC:
MARS/PRISM:

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Sydney NSW 2000
Australia
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Sydney NSW 2001
T +61 2 9263 4000
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DX 10348 SSE
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Dear Mr Chadwick

Third line forcing notification

We act for Westpac Banking Corporation (**Westpac**).

We enclose for lodgement a notification relating to third line forcing.

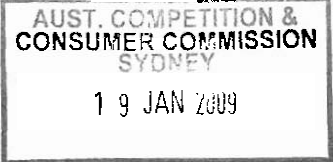
A cheque for \$100 has been attached to this notification to cover the required lodgement fee.

Please note that this notification includes a confidential schedule, in respect of which the notifying party claims confidentiality. We believe this confidential material to be non-controversial, given the details provided elsewhere in the notification and supporting documentation, but please advise if the Commission has a different view

Should you have any questions in relation to this notification, please do not hesitate to contact us.

Yours sincerely

Paula Gilardoni
Lawyer
T+61 2 9263 4187
pgilardoni@gtlaw.com.au



FORM G

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

(regulation 71)

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

Please follow directions on back of this form

1 Applicant

(a) Name of person giving notice:

N93744 Westpac Banking Corporation (**Westpac**).

(b) Short description of business carried on by that person:

Banking business, including retail banking and business banking.

(c) Address in Australia for service of documents on that person:

Gina Cass-Gottlieb
Partner, Gilbert + Tobin
Level 37, 2 Park Street
Sydney NSW 2000

2 Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

This notification relates to Westpac's supply of ATM services to retail bank customers and the charging of a fee (**Direct Charge Fee**) for these services.

For further information, see Attachment A.

(b) Description of the conduct or proposed conduct:

Westpac is proposing to enter into separate agreements with:

- Citigroup Pty Ltd (**Citibank**);
- Australian Settlements Limited (**ASL**), which represents 16 credit unions and building societies;

- Members Equity Bank (**ME**);¹
- GE Money (**GE**);² and
- Indue Ltd (**Indue**),³ which provides cards and payment services,

(together, **ATM Agreements**).

In brief, under the terms of the ATM Agreements, the retail bank customers of each of Citibank, ME, GE and the credit unions and building societies represented by ASL and Indue that have accepted the Westpac offer⁴ (together, the **Issuers**) will get a discount on the Direct Charge Fee that would be payable to Westpac when these customers use a Westpac owned ATM.

For further information, see Attachment A.

3 Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:

The conduct affects retail customers of any of the Issuers who have been issued with a card and pin number to use with an ATM, and who choose to use that card at a Westpac ATM.

- (b) Number of those persons:

- (i) At present time: Greater than 50.⁵
- (ii) Estimated within the next year: Same as above.

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses: Not applicable.

4 Public benefit claims

- (a) Arguments in support of notification:

See Attachment A.

- (b) Facts and evidence relied upon in support of these claims:

See Attachment A.

Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions).

The relevant market is the market for the provision of ATM services to retail bank customers.

¹ <http://www.membersequitybank.com.au/>.

² <http://www.gemoney.com.au/en/index.html>.

³ <http://www.indue.com.au/home/default.asp>.

⁴ See Confidential Schedule to the Annexure for more information.

⁵ See Confidential Schedule to the Annexure for more information.

6 Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

See Attachment A.

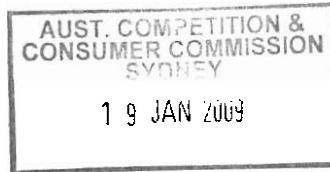
- (b) Facts and evidence relevant to these detriments:

See Attachment A.

7 Further information

Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Gina Cass-Gottlieb
Partner, Gilbert + Tobin
Level 37, 2 Park Street
Sydney NSW 2000



Dated 19 January 2009

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to read "Gina Cass-Gottlieb", written over a horizontal dotted line.

Gina Cass-Gottlieb
Gilbert + Tobin Lawyers
Partner

Directions

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.

Describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.

If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.

Describe the business or consumers likely to be affected by the conduct.

State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.

Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.

- 9 Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

ATTACHMENT A

1 Notifying party

Westpac Banking Corporation (**Westpac**) is involved in the supply of banking services including retail and business banking.

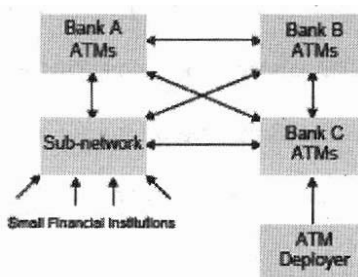
2 Background

2.1 The Australian ATM system

Typically, banks offer their customers various types of transaction accounts to manage their finances. Generally, customers have at least two options to make withdrawals and deposits in those accounts, namely, doing the withdrawal/deposit over the counter at a bank branch or using an ATM.¹

ATMs are widely available in Australia. Most major banks have their own ATM network, but there are also ATMs that are offered by “sub-networks” (eg, building societies and credit unions joining forces to create their own proprietary network) and by non-bank third parties (also known as “ATM deployers”). A stylised representation of the ATM system is provided below.

Figure 1 - ATM system²



All ATMs operating in Australia are interconnected with all card issuing institutions so that a cardholder can use any ATM to access funds in his/her account. Generally, if the cardholder uses an ATM that belongs to the same bank where the cardholder has his/her account, there is no charge for the use of that ATM.³ If, however, the cardholder uses an ATM that belongs to a different bank or network, typically a “foreign fee” will apply.

Interconnectivity in the ATM system is achieved through a series of bilateral agreements. These agreements typically provide for the payment of an “interchange fee” from the card issuer to the ATM owner in compensation for the service that the ATM owner is providing to the cardholder.

2.2 Reform of the ATM system

The operation of the ATM system in Australia has been the subject of several reviews. In 2000, a joint study prepared by the RBA and the ACCC identified a number of concerns with the operation of the system.⁴

In response to these and other concerns, the ATM industry and the RBA have been working on a package of reforms over a period of several years. The package of reforms finally adopted covers three key elements:

¹ Although note that not all ATMs allow making deposits.

² RBA, *Access Regime for the ATM System: A Consultation Document*, December 2008, page 3.

³ Alternatively there may be only a small charge or a charge that only applies after a number of available “free transactions” have been exhausted.

⁴ See http://www.rba.gov.au/PaymentsSystem/Publications/PaymentsInAustralia/interchange_fees_study.pdf at page 42.

- **abolition of the bilateral interchange fees paid by financial institutions to ATM owners for the provision of ATM services.** The RBA has formed the view that bilateral interchange fees in the ATM system are not subject to competitive pressures and act as a barrier to entry.⁵ Hence the RBA decision to impose a requirement that no interchange fees be paid within the ATM system. However, the RBA also identified two circumstances in which interchange fees could be paid between ATM participants:
 - if the interchange fee is paid by a participant to another participant in a one-way arrangement for access to the second participants' ATMs (referred to as a "one-way arrangement"); and
 - if the fee is being paid between participants in a sub-network;⁶
- **providing ATM owners with the ability to direct charge cardholders for ATM withdrawals.** It is expected that most ATM operators will impose some form of direct charging (generally referred to as "direct charge fees"). However, it is also expected that customers will not be charged for using their own bank's ATM network; and
- **the introduction of an objective and transparent Access Code.** The Access Code will set out the conditions that new entrants are required to meet, the rights of new entrants and the obligations of current participants in dealing with new entrants.⁷

2.3 Proposed implementation of the ATM reform proposal

The ATM reform package will operate in a co-regulatory regime:

- the RBA has designated the ATM system under the *Payment Systems (Regulation) Act*,⁸
- the RBA intends to impose an access regime on the ATM system (**Access Regime**);⁹ and
- the Access Regime will work in conjunction with an industry-developed ATM Access Code (**Access Code**).¹⁰

Drafts of the Access Regime and the Access Code were released for public comment on 10 December 2008. The public had until 16 January 2009 to make submissions.

Subject to making any changes that may be deemed necessary following the consultation period, it is intended that the reform package will become operational in March 2009.

3 Description of the relevant conduct

As noted above, the reform package allows direct charging of customers for ATM use. However, ATM owners are not required to direct charge. Indeed, it is expected that most customers will not be direct charged for using their own financial institution's ATMs.¹¹ For customers of financial institutions with a large ATM network, this can be a highly attractive offer. However, if a financial institution has a very small ATM network, its customers would be unlikely to find such offer attractive because of the limited coverage of the network in question.

So, financial institutions with small ATM networks have negotiated agreements with institutions with a large ATM network to allow their customers to use the large ATM network for free (or at a discount).

⁵ RBA, *Access Regime for the ATM System: A Consultation Document*, December 2008, page 11.

⁶ RBA, *Access Regime for the ATM System: A Consultation Document*, December 2008, page 11.

⁷ http://www.rba.gov.au/MediaReleases/2008/mr_08_28.html.

⁸ http://www.rba.gov.au/MediaReleases/2008/Pdf/mr_08_28_atm_designation.pdf.

⁹ http://www.rba.gov.au/MediaReleases/2008/Pdf/mr_08_28_daratmps.pdf,

¹⁰ http://www.apca.com.au/Public/apca01_live.nsf/WebPageDisplay/ATMACCESS_EXPOSUREDRAFT?OpenDocument.

¹¹ Westpac customers are not expected to be charged for using Westpac's own ATMs.

Westpac is proposing to enter into several such agreements with the following institutions:¹²

- Citigroup Pty Ltd (**Citibank**);
- Australian Settlements Limited (**ASL**), which represents 16 credit unions and building societies;
- Members Equity Bank (**ME**);
- GE Money (**GE**);
- Indue Ltd (**Indue**), which provides cards and payment services,

(together, **ATM Agreements**).

In brief, under the terms of the ATM Agreements, the customers of each of Citibank, ME, GE and the credit unions and building societies represented by ASL and Indue that have accepted to be part of the ATM Agreements¹³ (together, the **Issuers**) will get a discount on the direct charge fee that will be payable to Westpac (**Direct Charge Fee**) when these customers use a Westpac ATM.¹⁴

Effectively, in relation to the use of Westpac ATMs and the charging of the Direct Charge Fee, Westpac will be:

- giving a discount to customers who have an account with one of the Issuers; and
- refusing to give such discount to customers who do not have an account with one of the Issuers.

Further information is provided in the Confidential Schedule to this Annexure.

4 Public benefits/public detriments

4.1 Benefits

The ATM reform package implemented through the Access Regime and the Access Code will deliver significant benefits to consumers including:

- making the cost of cash withdrawals more transparent to cardholders and placing downward pressure on the cost of ATM withdrawals;
- helping to ensure that there is continued widespread availability of ATMs by creating incentives to deploy ATMs in a wide variety of locations and therefore providing consumers with choice and convenience;
- promoting competition between financial institutions; and
- making access less complicated for new entrants and therefore strengthening competition.¹⁵

Direct charging is key to the realisation of these benefits.

However, as noted above, direct charging is not compulsory, so it is expected that most banks will not direct charge their own customers for the use of their ATMs. Most direct charging is expected to occur when customers use the ATMs of another bank.

¹² In addition to the agreement with HSBC Bank which is the subject of a separate notification to the ACCC.

¹³ See Confidential Schedule to this Annexure for more information.

¹⁴ For the purposes of this annexure, "Westpac ATMs" are ATMs showing the Westpac brand and logo. ATMs belonging to St. George and BankSA will be part of the Westpac network but will not be part of the offer described in this notification.

¹⁵ http://www.rba.gov.au/MediaReleases/2008/mr_08_28.html

In this environment, small financial institutions have argued that they will have difficulties competing with banks with larger ATM networks, because they will not be able to offer their customers a reasonably sized ATM network from which they can withdraw cash without paying a direct charge.¹⁶

Taking this into consideration, the RBA drafted the Access Regime so that arrangements such as the ATM Agreements will be allowed. Under the Access Regime, although interchange fees are generally prohibited, fees paid by one participant to another in "one way" arrangements that allow the first participant access to the second participant's ATM network are specifically permitted.¹⁷ In allowing such arrangement, the RBA has said that:

"the purpose of allowing fees to be paid between participants in these circumstances is to permit arrangements that enhance competition".¹⁸

The RBA has also written to the industry indicating that, in its view, arrangements such as the ones described above "promote competition in the provision of transaction accounts".¹⁹

In addition to benefits for smaller banks, the ATM Agreements will also have benefits for the customers of banks with smaller ATM networks. In this case, customers of the Issuers will be able to use Westpac ATMs without having to pay the full Direct Charge Fee (or without having to pay the Direct Charge Fee in all transactions).

4.2 Public detriments

No public detriments have been identified.

Absent the ATM Agreements, implementation of the Access Regime and the Access Code in accordance with the requirements of the RBA would be likely to result in customers of the Issuers paying direct charge fees each time they use an ATM belonging to a bank other than their own bank.

The ATM Agreements will allow customers of the Issuers to avoid the Direct Charge Fee (or to minimise the amounts paid as Direct Charge Fees) anytime they choose to use a Westpac ATM.

The ATM Agreements will be notified to the RBA so that their operation can be monitored to ensure compliance with the RBA's ATM reform proposal. To further ensure such compliance, the ATM Agreements will comply with the following rules imposed by the RBA:²⁰

each ATM Agreement is one way – ie, the arrangement provides the customers of one institution (ie, each Issuer) with access to the ATMs operated by a second institution (ie, Westpac) but not the other way around; and

the Issuers will not have similar arrangements with other banks.²¹

4.3 Public benefits significantly outweigh any public detriment

Given the benefits outlined above, and the lack of any discernible detriment, the Proposed Agreement's benefits will far outweigh any potential detriment.

¹⁶ RBA, *Access Regime for the ATM System: A Consultation Document*, December 2008, page 12.

¹⁷ See clauses 10 and 11 of the draft Access Regime.

¹⁸ RBA, *Access Regime for the ATM System: A Consultation Document*, December 2008, page 12.

¹⁹ RBA. Letter to APCA, dated 1 September 2008, available at http://www.rba.gov.au/PaymentsSystem/Reforms/ATM/rba_010908_1.pdf.

²⁰ See RBA. Letter to APCA, dated 1 September 2008, available at http://www.rba.gov.au/PaymentsSystem/Reforms/ATM/rba_010908_1.pdf.

²¹ But note that Westpac can, and indeed is likely to, enter into similar arrangements with other small banks.