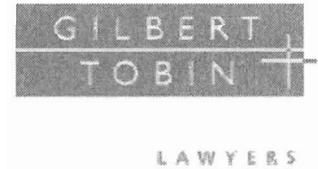


Partner Gina Cass-Gottlieb
Contact Paula Gilardoni
T +61 2 9263 4187
pgilardoni@gtlaw.com.au
Our ref GCG:PXG:9999999



30 December 2008

By email

Mr Richard Chadwick
General Manager
Adjudication
Australian Competition & Consumer Commission
Email adjudication@acc.gov.au

Gilbert + Tobin
2 Park Street
Sydney NSW 2000
Australia
GPO Box 3810
Sydney NSW 2001
T +61 2 9263 4000
F +61 2 9263 4111
DX 10348 SSE
www.gtlaw.com.au

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.

An electronic funds transfer of \$100 has been made to the Commission's bank account to cover the required lodgement fee.

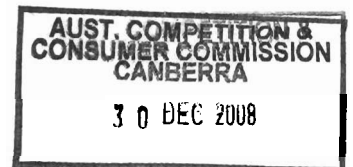
Please note that this notification includes a confidential schedule, in respect of which the notifying party claims confidentiality. We believe this confidential material to be non-controversial, given the details provided elsewhere in the notification and supporting documentation, but please advise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

A handwritten signature in black ink, appearing to read 'P. Gilardoni'.

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:

Westpac Banking Corporation (**Westpac**). N93735

(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 the supply of ATM services to retail customers of HSBC Bank Australia Limited (**HSBC Bank**). Those HSBC customers who elect to use a Westpac ATM will not be required to pay direct charges for the use of that ATM.

(b) Description of the conduct or proposed conduct:

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 HSBC Bank 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.
 - (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.

5 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.

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.

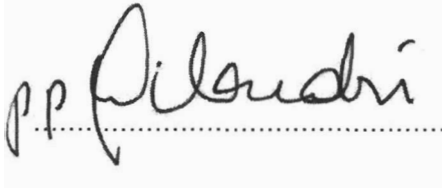
7 Further information

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 30 December 2008

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to read "Gina Cass-Gottlieb", is written over a horizontal dotted line. The signature is contained within a light gray rectangular box.

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.

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.

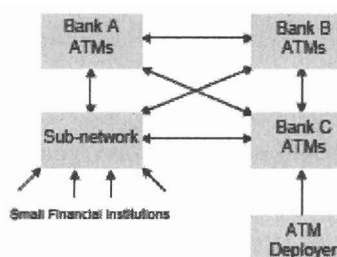
2 Background

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.

This interconnectivity in the ATM system is achieved through a series of bilateral agreements between networks (and sub-networks). The bilateral 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 system.⁴

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.

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:

- **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 has 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.

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.

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.

Westpac is proposing to enter into one such agreement (**Proposed Agreement**) with HSBC Bank Australia Limited (**HSBC Bank**).¹²

Under the Proposed Agreement, an HSBC Bank customer using a Westpac ATM will not be charged for the use of that ATM.¹³ Customers of other banks using Westpac ATMs are expected to be charged an amount (**Direct Charge Fee**).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 HSBC Bank; and
- refusing to give such discount to customers who do not have an account with HSBC Bank.

Please see further details in relation to the Proposed Agreement in the Confidential Schedule at the end of 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.

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 Access Regime was drafted so that arrangements such as the one proposed by Westpac and HSBC Bank are 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:

¹² Westpac may also negotiate similar arrangements with other financial institutions.

¹³ 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.

¹⁴ But note that customers of St George and BankSA will not be charged a Direct Charge Fee when using Westpac's ATMs.

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

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.

“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 arrangements will also have significant benefits for the customers of banks with smaller ATM networks. In this case, customers of HSBC Bank will be able to use Westpac ATMs without having to pay the Direct Charge Fee.

4.2 Public detriments

No public detriments have been identified.

Absent the Proposed Agreement, 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 HSBC Bank paying direct charge fees each time they use an ATM belonging to a bank other than HSBC Bank.

The Proposed Agreement will allow customers of HSBC Bank to avoid the Direct Charge Fee anytime they choose to use a Westpac ATM.

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

- the Proposed Agreement is one way – ie, the arrangement provides the customers of one institution – in this case HSBC Bank – with access to the ATMs operated by a second institution (ie, Westpac) but not the other way around; and
- HSBC Bank will not have any 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.

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.

Confidential Schedule

**EXCLUDED FROM
PUBLIC REGISTER**