

MALLESONS STEPHEN JAQUES



13 July 2009

Mr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
Melbourne VIC 3000

BY HAND

FILE No:
DOC:
MARS/PRISM:

Dear Mr Chadwick

Application for Revocation and Substitution by the Australian Payments Clearing Association in respect of the Consumer Electronic Clearing System

I refer to the telephone conversation between Tess Macrae and my colleague, Alana Kushnir, on 10 July 2009 in respect of the application for revocation of existing authorisations A30228 and A30229 for the Consumer Electronic Clearing System ("CECS") Regulations and Manual and substitution of a new authorisation in their stead, which was lodged on 8 July 2009.

As discussed, we now understand that the appropriate application form to revoke the above-mentioned existing authorisations and substitute with a new authorisation is Form FC. Accordingly, we enclose a revised application using Form FC and request that this application be substituted for the Form A used in the application lodged on 8 July 2009.

If you have any questions in relation to the enclosed application, please contact me or Alana Kushnir (03 9643 4295) in the first instance.

Yours sincerely

A handwritten signature in cursive script, appearing to read "L Huett".

Lisa Huett
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Encl 1

Form FC

Commonwealth of Australia

Trade Practices Act 1974 — subsection 91C (1)

APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Trade Practices Act 1974* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

1. Applicant

(a) Name of Applicant:

A91153 Australian Payments Clearing Association Limited (ABN 12 055 136 519)
A91154 ("APCA").

(b) Description of business carried on by applicant:

Coordinate and manage the implementation, operation and development of effective clearing and settlement systems.

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

C/- Mr Rob Cirotto, Australian Payments Clearing Association Limited,
Level 6, 14 Martin Place, Sydney NSW 2000.

2. Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

Authorisations A30228 and A30229 for the Consumer Electronic Clearing System ("CECS") Regulations and Manual ("Procedures"), which came into force on 3 November 2004 and are due to expire on 3 November 2009.

- (b) Provide details of the basis upon which revocation is sought:

Revocation is sought upon the substitution of a new authorisation in their stead.

3. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

Authorisation is sought for the following provisions of the CECS Procedures of the applicant, which might be exclusionary provisions:

- Regulations 4.14-4.14A (CECS Membership - Suspension),
- Regulations 4.15-4.19 (CECS Membership - Effects of Suspension),
- Regulations 4.20-4.24 (Termination),
- Regulations 8A.5-8A.6 (Failure to Settle – Suspension),
- Regulations 11.1 & 11.1C (Certification – Initial Certification), and
- CECS Manual clause 2.1.7 (Common Requirements and Certification – Failure to Meet Technical Requirements)

- (b) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

CECS establishes minimum standards to protect and facilitate the conduct and settlement of exchanges of consumer electronic messages, namely those resulting from EFTPOS and ATM transactions. CECS provides a forum in which its issuer, acquirer and merchant principal members agree on minimum mandatory standards and procedures for the clearing and settlement of EFTPOS and ATM transactions.

- (c) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

5 years.

4. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

See annexure 1.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

As per 3(a).

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

5. Public benefit claims

- (a) Arguments in support of application for authorisation:

See annexure 2.

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

See annexure 2.

6. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) 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):

See annexure 3.

7. Public detriments

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

See annexure 4.

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

See annexure 4.

8. Contracts, arrangements or understandings in similar terms

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

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

The authorisation is made in relation to all parties and potential parties to a contracts, arrangements or understandings constituted by the relevant provisions of the CECS Procedures.

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

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

As per 3(a).

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

9. Joint Ventures

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

Yes.

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

No.

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

Not applicable.

10. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

C/- Mr Rob Cirotto, Australian Payments Clearing Association Limited,
Level 6, 14 Martin Place, Sydney NSW 2000.

Dated..... 13 July 2009

Signed by/on behalf of the applicant


.....
(Signature)

Lisa Huett

Partner

Mallesons Stephen Jaques

on behalf of

Australian Payments Clearing Association Limited



ANNEXURE 1

Parties to the Proposed Arrangement

PARTIES OR POTENTIAL PARTIES TO CONTRACT ARRANGEMENT OR UNDERSTANDING CONSTITUTED BY THE CONSUMER ELECTRONIC CLEARING SYSTEM (CECS) REGULATIONS AND MANUAL

MEMBERSHIP OF CECS

<u>Name of Institution</u>	<u>Address</u>	<u>Business</u>
Australia and New Zealand Banking Group Limited	Level 14, 100 Queen Street, Melbourne VIC 3000	Financial Institution – CECS Issuer and Acquirer
Australian Settlements Limited	16 Thesiger Court, Deakin ACT 2607	Financial Institution – CECS Issuer and Acquirer
Bank of Queensland Limited	Level 17, BOQ Centre, 259 Queen Street, Brisbane QLD 4000	Financial Institution – CECS Issuer and Acquirer
Bank of Western Australia Limited	Level 20, Bankwest Tower, 108 St Georges Terrace Perth, Western Australia 6000	Financial Institution – CECS Issuer and Acquirer
Bendigo and Adelaide Bank Limited	The Bendigo Centre, Bendigo VIC 3550	Financial Institution – CECS Issuer and Acquirer
Cashcard Australia Limited	Level 9, 168 Walker Street , North Sydney NSW 2060	Independent ATM Deployer and Managed Service Provider – CECS Acquirer
Citigroup Pty Limited	GPO Box 40, Sydney NSW 2001	Financial Institution – CECS Issuer and Acquirer
Coles Group Limited	Level 5, Module 1, 800 Toorak Rd, Tooronga VIC 3146	Merchant/Retailer – CECS Self-Acquirer
Commonwealth Bank of Australia	Level 7, 48 Martin Place, Sydney NSW 1155	Financial Institution – CECS Issuer and Acquirer
Cuscal Limited	Level 1, Margaret Street, Sydney NSW 2000	Financial Institution – CECS Issuer and Acquirer
Indue Limited	Level 3, 601 Coronation Drive, Toowong QLD 4066	Financial Institution – CECS Issuer and Acquirer
MoneySwitch Limited	125 York street, Sydney NSW 2000	Specialist Credit Card Institution – CECS Acquirer
National Australia Bank Limited	Level 3 (UB 3350), 800 Bourke Street, Docklands VIC 3008	Financial Institution – CECS Issuer and Acquirer
St. George Bank Limited	St. George House, 4-16 Montgomery Street, Kogarah NSW 2217	Financial Institution – CECS Issuer and Acquirer
Suncorp-Metway Limited	Level 18, Suncorp Centre, 36 Wickham Terrace, Brisbane QLD 4000	Financial Institution – CECS Issuer and Acquirer
Westpac Banking Corporation	Level 20, 275 Kent Street, Sydney NSW 2000	Financial Institution – CECS Issuer and Acquirer
Woolworths Limited	1 Woolworths Way, Bella Vista NSW 2153	Merchant/Retailer – CECS Self-Acquirer

Any other organisation which satisfies the eligibility criteria for membership of the Consumer Electronic Clearing System as a CECS member as defined in the Regulations for the Consumer Electronic Clearing System.

ANNEXURE 2 - Public Benefits

(a) Arguments in support of application for authorisation

The applicant APCA Limited submits that:

- to the extent (if any) that any of the relevant suspension and termination provisions (see Paragraph 2b of Form A) of the Procedures of the applicant for the CECS is or may be an exclusionary provision within the meaning of Section 4D of the *Trade Practices Act 1974* ("the Act") such provision in all the circumstances has resulted and will continue to result in such a public benefit that the contract, arrangement or understanding constituted by such provisions of the Procedures should be allowed to remain in place.
- to the extent (if any) that any of the suspension and termination provisions of the Procedures of the applicant for the CECS has the purpose or likely effect of substantially lessening competition in a market within the meaning of Section 45 of the Act, such provision in all the circumstances has resulted and will continue to result in a benefit to the public and that benefit outweighs the detriment to the public constituted by any lessening of competition that results from any such provision.

The benefit to the public that results from the relevant provisions is as follows:

1. To function well, the economy requires the secure and efficient processing of transactions between financial institutions through a clearing framework of the kind constituted by APCA's Procedures for the CECS.
2. Access to the CECS is and will continue to be to be available to potential members on reasonable and clearly understood terms.
3. The CECS does not discriminate between different institutional types. Banks, non-bank financial institutions and other bodies corporate can participate provided they meet the required terms and conditions.
4. APCA's payments clearing framework contributes towards protecting and enhancing the integrity of payments clearance and settlement, and reducing risk within the payments system. It also contributes towards the efficiency with which payment instructions are cleared, and the timeliness and certainty with which value is provided to customers.
5. APCA's CECS can play its part effectively only if its members operate in accordance with APCA's Procedures for the CECS. Suspension and termination provide 'last resort' sanctions to ensure compliance. Without these sanctions, the efficacy and integrity of the CECS would be diminished and the confidence of members and users of the CECS would be reduced. The provisions, therefore, result in a benefit to the public by contributing to the CECS' integrity and efficacy.

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

- (i) APCA's Corporate structure**
- (ii) Payment systems**
- (iii) APCA's Clearing systems**
- (iv) EFTPOS & ATM networks**
- (v) CECS**
- (vi) Access to EFTPOS and ATM Networks**
- (vii) Benefits of the CECS arrangements**

(i) APCA's Corporate Structure

Company Form

APCA is a public company limited by guarantee. This is not a common arrangement, but it provides for the participatory rights commonly associated with unincorporated associations.

In particular, this form of public company allows multiple categories of membership with different rights and obligations without the restrictions of share ownership, and the creation of a "capital base" by way of guarantee without the need for utilisation of current resources.

Previous shareholding arrangements were removed because the criteria for membership was based on institutional types (i.e. the central bank, major banks, state and regional banks, offshore banks, building societies and credit unions) no longer reflected the current kinds of institutions participating in clearing activities. For example, Coles Group, Cashcard, MoneySwitch Limited and Woolworths are now members of the CECS, but were not eligible for the previous share membership of APCA, because they did not fall within one of the institutional groupings eligible to hold shares. The recent change to APCA's Constitution has been intended to open up membership to all organisations engaged in the kinds of clearing activities APCA manages.

Structure

APCA has "owner members" which must participate in at least one of APCA's clearing systems, "associate members," which provide for wider stakeholder involvement in APCA's affairs and "participating members" which join and participate in an APCA clearing system.

Each member incurs a guarantee liability to contribute:

- (a) for associate members, \$10;**
- (b) for owner members, \$1000, and**
- (c) for participating members, \$10,000 per clearing system used by that participating member (irrespective of the category of participation),**

on a winding-up of APCA (refer Article 1.11).

APCA's Charter

APCA was incorporated as a public company on 18 February 1992. It has specific accountability for key parts of the Australian payments system, particularly payments clearing operations. APCA's charter, as set out in its Constitution, is to coordinate, manage and ensure the implementation and operation of effective payments clearing and settlement systems, policies and procedures.

The impetus to establish APCA can be traced in part to recommendations of the Campbell Committee. While that committee did not specifically recommend the establishment of a separate body for the management and regulation of payments clearing, its recommendations that there be general oversight by the Reserve Bank of Australia ("RBA") of applications for direct participation in cheque clearing, and for the availability of agency facilities for non-clearing banks and non-bank institutions, directed banks initially towards the need to review arrangements for payments clearing and to a process some years later which led to the formation of APCA.

APCA does not process payments. It coordinates and manages 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 of APCA's clearing systems in which they participate.

APCA's reporting and decision-making structure ensures a much higher degree of coordination in the management and development of Australia's payments clearing and settlement arrangements than in the past. Membership criteria and conditions of access and participation are open to scrutiny and can be changed as circumstances change.

APCA is currently responsible for establishing and managing five payments clearing systems. Existing participants in, and new entrants to, each clearing system are provided with a single, clear body of rules and decision-making structure governing the conduct of clearing and settling. APCA's five clearing systems are described in Section III.

APCA's charter does not restrict it to its current clearing systems; APCA may establish additional clearing systems if the need arises.

The regulations and procedures for each of APCA's clearing systems have the effect of a contract under seal between APCA and each participating member in that system, and between the participating members in that system.

It is APCA's policy that trade practices authorisation should be actively sought for the activities of the Company and each of its clearing systems that might breach relevant provisions of the Act. In this regard APCA adopts a conservative approach and if there is any doubt authorisation is sought. The grounds on which such authorisation has been sought, and granted, to date are that the public benefit of the arrangement outweighs any detriment that might be caused if APCA's rules give rise to an exclusionary provision, or constitute exclusive dealing, or might substantially lessen competition within a market.

Clearing system management very much involves a participatory approach. The members of each clearing system appoint a committee of management with delegated powers and responsibilities. System members are entitled to participate in

annual meetings of the relevant systems. These provide a forum for discussion on all matters relating to the operations and management of the system.

The APCA Model

Under APCA, the common function of payments clearing and settling is co-operatively regulated across a range of institutional types. The essential principle that has enabled cross-institutional regulation is that participation in APCA's clearing systems is not based on institutional status and is entirely dependent on meeting a set of objective criteria relating to payments clearing and settlement requirements. Institutions that meet the criteria can join as participating members if they wish.

Further, each clearing system puts in place its own set of objective criteria to determine participation. While in practice a common set of objective criteria is applicable to all systems, there is also the flexibility for technological differences between payments systems to be taken into account, as necessary, in setting entry criteria.

Delegation to a committee of management of responsibility for oversight of the operations of each system enables the rules governing daily operations of clearing and settlement to be regularly reviewed and updated to take account of technological changes impacting development of clearing. The procedural rules for operating within each system can be altered by the relevant committee of management. These flexible regulatory processes have meant that, under APCA, the efficiency of each clearing system is subject to ongoing review and development.

APCA's charter allows it to be responsive to developments in payments services. It is not restricted to regulating clearing and settlement of prevailing payments services. As noted above, its charter specifically enables it to adapt to the development of new payments systems by altering the classification and structure of its existing clearing systems or creating new clearing systems as the need arises.

APCA provides a unique model for efficient regulation encompassing a range of organisations. The model does not require legislative support but operates under cooperative arrangements, with voting and decision-making structures reflecting the extent of each member's involvement.

Importantly, it allows matters of a competitive nature to remain proprietary to its members. APCA does not seek to regulate payments instruments or provision of these instruments. These are areas in which its members compete with each other.

APCA's rules do not affect competition in the provision of payment services but provide a framework for efficient and effective cooperative regulation of payments clearing and settlement - an area in which cooperation by its members is appropriate and which produces efficiencies which can be of benefit to the community at large.

Membership

APCA has three categories of membership:

- (a) owner members, which confers rights relating to the governance of the company, including rights to appoint directors and vote at company meetings;

- (b) participating members, which confers rights of participation in the relevant clearing system or systems, and rights relating to the governance of that clearing system; and
- (c) associate members which allows individuals and organisations to be kept abreast of APCA's activities.

The APCA's constitution provides for the creation of additional categories of membership if required. A new category of participating membership, for example, might be needed if technological change were to give rise to a new and different type of payment instrument.

Owner Members

Owner members must be "constitutional corporations" within the meaning of the *Payment Systems and Netting Act 1998* and must be either a participant in at least one of APCA's clearing systems or an "industry association" as defined in APCA's constitution being in essence a body nominated by participating members to represent them (the existing owner member industry associations are Cuscal Limited and Indue Limited which together represent most credit unions and Australian Settlements Limited which represents most building societies).

Owner members are responsible (through the Board of Directors) for the governance of APCA and the oversight/control of APCA's five clearing systems. Directors are nominated by:

- (a) any single owner member which has or group of owner members which collectively have at least 5% of "Adjusted NCV" ("Adjusted NCV" is defined as the aggregate of an organisation's or group of organisations' "National Clearing Volume" calculated across a specified statistical period across the three systems in which the organisation or group has its highest levels of clearing activity – reference Article 1.3);
- (b) building societies, and any building society industry association nominated by any building society(ies), acting collectively; and
- (c) credit unions and any industry association nominated by any credit union(s), acting collectively.

The RBA also has a right to nominate a director under the Constitution but chose to relinquish its automatic rights of representation on the Board and Committees of Management, subject to liaison arrangements to ensure ongoing dialogue between APCA and the RBA and a continued right of representation by the RBA on committees of management where an important operational role is played by the RBA in these clearing systems.

Participating Membership

Participating members are institutions that participate on a day-to-day operational basis in one or more of APCA's clearing systems. Participating members need not be owner members, but are encouraged to join in that capacity.

Separate participating membership exists for each clearing system, so that membership is divided into five classes based on APCA's five clearing systems. Within each of these five classes there may be different categories of participating membership depending on whether a member clears and settles directly or indirectly.

A participating member's rights and obligations on clearing and settling payment instructions are dependent on its particular category of membership. All categories of participants have the same rights to vote at meetings of the relevant clearing system, and to appoint a committee of management for that clearing system. Each clearing system has rules in place setting out these rights and obligations, and detailing operating procedures required in the system.

The requirements for participating membership vary from system to system but the eligibility rules common to each system are that a participant must:

- (a) be a body corporate which carries on business at or through a permanent establishment in Australia;
- (b) be able to comply with the applicable regulations and the procedures and related technical and operational standards;
- (c) agree to pay all applicable fees, costs, charges and expenses;
- (d) not adversely affect the integrity of exchanges or otherwise introduce a significant new risk into the system; and
- (e) not impair overall efficiency of the system.

Clearing system participants which directly settle must meet additional criteria related to their settlement obligation.

They must be able to provide finality of payment for the obligations they incur as a result of exchanging payment instructions generally, by the debiting or crediting of an Exchange Settlement Account ("ESA") at the RBA, because this is the best assured settlement mechanism available. There are exceptions effectively at the discretion of the relevant management committee. So if a member would not introduce material settlement risk a different settlement method may be sanctioned. For example, the self acquirer¹ members of CECS have been permitted to use their corporate bank accounts for settlement of their CECS settlements because in the normal course they are net receivers of settlement payments.

Associate Membership

Associate members are persons or organisations, not being owner members or participating members, who are otherwise interested in the functional integrity and efficiency of clearing systems. Associate members have no voting or participation

¹ Self-acquirers are retail merchants that directly switch transactions to card issuers.

rights but are entitled to attend Annual General Meetings and receive information about the Company and its clearing systems.

Advisory Councils

Advisory councils are comprised of “interested non-clearers”, being bodies corporate that issue payment instruments, process or switch payments messages or otherwise participate in payments transfers related to a particular clearing system.

Councils were established for the Australian Paper, Bulk Electronic and Consumer Electronic clearing systems to assist effective and efficient liaison between clearing system management committees and interested non-clearers on technical and operational matters related to the operation of each of those clearing systems.

The input of the different perspectives and expertise that advisory councils bring, strengthens the deliberative and decision-making processes in APCA. Decision-making is better informed, more attuned to the interests of all clearing system stakeholders, and more attuned to the changing payments system environment. This ensures that parties with a commercial interest in payments clearing can contribute to the development of an efficient, secure and open set of payments clearing arrangements.

Advisory councils were not established for the High Value and Australian Cash Distribution and Exchange clearing systems as it was adjudged that there was an insufficient level of interest.

Management

The Board of Directors, appointed by the owner members, is ultimately responsible for the management of the company. Day-to-day management of the company is delegated to a Chief Executive Officer.

Committees of management are appointed by the respective clearing system members to oversee the operations of each clearing system. Broadly, they are responsible for technical and efficiency standards, operating procedures and policies, supervision of observance of the clearing system rules, assessment of clearing volumes, dispute resolution, and approval of membership applications according to the rules.

The structure of management committee representation is not mandated by the Company's Constitution, and is able to be altered by the clearing system membership at general meetings, by alteration of the relevant clearing system regulations.

List of owner members

ABN AMRO Bank, NV	Deutsche Bank AG
AMP Bank Limited	HSBC Bank Australia Limited
Arab Bank Australia Limited	Indue Limited
Australia and New Zealand Banking Group Limited	ING Bank (Australia) Limited
Australian Settlements Limited (ASL)	JP Morgan Chase Bank, National Association
Bank of America National Association	Macquarie Bank Limited
Bank of China	Mizuho Corporate Bank Limited
	National Australia Bank Limited

Bank of Queensland Limited
Bank of Tokyo-Mitsubishi (Australia) Limited
Barclays Bank PLC
Bendigo and Adelaide Bank Limited
Citigroup Pty Limited
Commonwealth Bank of Australia
Cuscal Limited
Hongkong and Shanghai Banking Corporation Limited

Oversea-Chinese Banking Corporation Limited
Reserve Bank of Australia
Royal Bank of Canada
Standard Chartered Bank
State Street Bank & Trust Company
Suncorp-Metway Limited
United Overseas Bank Limited
Westpac Banking Corporation

APCA's Board of Directors

Voting directors of APCA are nominated by owner members as previously noted.

Directors hold office for 2 years. Provision is made for the appointment of alternate directors.

The chairman is a non-voting director and holds office for two years from the date of appointment, and may be re-appointed.

A nominee director may not simultaneously hold the office of chairman of the company. The company's policy since October 1999 has been to appoint an independent chairman from outside APCA's membership.

The Chief Executive Officer of APCA is also a non-voting director and acts as the Public Officer of the Company.

Voting Control

Voting is partially related to clearing volumes, while however, preserving important checks and balances which prevent particular groupings having a predominant voting position. Clearing volume is essentially the simple average of a member's percentage share of the transaction volume in each of APCA's clearing systems (for ACDES it is an average volume and value). 50 votes are attributed to those members, or groups of members, with 5% and up to 20% of clearing volumes. Those with less than 5% have a corresponding reduction in votes below 50. Those with more than 20% gain extra votes up to a maximum of 100 votes at 30% of clearing volume.

Other Matters

The Constitution of APCA contains other provisions that in most respects resemble those commonly found in the constitutions of limited liability public companies.

(ii) Payment Systems

Payment Services

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.

In Australia, banks, building societies, credit unions and some card organisations provide the means for individuals and businesses to transfer value, one to another. In that sense they all provide payment services.

Cash payments are still important in volume terms. But non-cash means of making payments predominate in value terms and are increasingly replacing cash.

The 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 instruments and delivery mechanisms. A payment instrument is the form that a payment message takes (e.g. cheque, debit card) and is the means by which one party transfers value to a third party. Such a message is typically a request by one party (such as the drawer of a cheque or, in the case of the CECS, the holder of a card) to another party (the drawee of the cheque or the card issuer) to pay a certain sum to a third party (the payee).

A delivery mechanism is the means by which payment messages are carried from one point within the payments system to another.

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 the payment instruction 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 established is called clearing and settling.

The need to clear and settle payment transactions between organisations is generated by the use of payment instruments which enable value to be transferred to third parties generally rather than only to third parties who are also customers of the organisation issuing the instrument. Debit cards issued by banks, building societies and credit unions come into this category.

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 (within what can be called "closed systems") will not, as a general rule, generate the need to clear and settle, no matter how extensive is the use of that payment instrument. Charge cards issued by organisations such as American Express and Diners come into this category.

Clearing

Clearing is the cross-institutional exchange of individual payment messages for the purposes of obtaining settlement. It 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.

The role of a clearinghouse was traditionally to provide a physical location where paper payment instructions could be exchanged, the associated balances tallied and the net balances owing to and by each member determined between them for subsequent settlement. Electronic exchanges, though different in form, give rise to the same process.

Clearing in Australia primarily falls under APCA's rules.

Settlement

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. As a general rule, settlement between financial institutions for their obligations arising from domestic clearing of payment messages is effected through transfers of balances held by those institutions with the central bank of the country concerned.

Central bank money is generally regarded as the only medium that provides finality of payment; in other words, payment which is free of default risk.

“One of the major roles of central banks is to provide a monetary asset free of default risk that can be used for making inter-bank transfers and settling inter-bank obligations.”²

Settlement between financial institutions in Australia is achieved through transfers of their ESA balances held with the RBA.

For transactions encompassed by CECS settlement is deferred, taking place on the morning of the next business day. Deferred settlement systems carry the inherent risk of an institution paying away and then not receiving due settlement.

Procedures in place to deal with a situation where an institution fails to settle are contained within APCA's rules for paper, direct entry, debit cards and high value.

² *Central Bank Payment & Settlement Services with Respect to Cross Border and Multicurrency Transactions*. Bank for International Settlements, 1993.

(iii) APCA'S Clearing Systems

Australian Paper Clearing System

The Australian Paper Clearing System ("APCS") was established in December 1993. This system has the role of coordinating, managing and ensuring the implementation and operation of policies and procedures for the conduct and settlement of exchanges of paper-based payment instructions, i.e. primarily cheques, between its participating members.

While cheques remain important, their use continues to gradually fall. Over the period 2004 to 2008, average cheque payments per day have declined in number by 32% and by 11.3% in value. Nonetheless, there are still more than 1.5 million cheque transactions each day.

Members can participate in three capacities according to whether they directly clear and directly settle to the system for their own obligations, or appoint a representative to clear and settle on their behalf (i.e. indirectly clear and settle), or appoint a representative to clear on their behalf while settling directly.

Bulk Electronic Clearing System

The Bulk Electronic Clearing System ("BECS") was established in December 1994. This system has the role of managing the conduct of the exchange and settlement of bulk electronic low value transactions in similar fashion to that applying to paper-based payment instructions in the APCS.

BECS currently covers direct entry payments. The direct entry system allows approved organisations, now numbering over 239,397,³ to make arrangements with their financial institution to debit and/or credit large numbers of customer accounts on a regular basis. Organisations can be credit users in the system making payments (direct credits) or debit users receiving payments (direct debits).

The direct entry system has had consistently strong growth for some years. The number of organisations using the direct credit system in 2008 grew by 8.8% on the previous year, with a transaction growth of 7%. The growth of direct debits has been more vigorous than that of direct credits. For the same period, direct debit transaction grew by 11%, while the number of direct debit users increased by 10.6%.

Members can participate in two capacities: either as direct clearers and settlers or as indirect clearers and settlers.

CECS

The CECS was established in December 2000 following a favourable determination issued by the Australian Competition and Consumer Commission ("ACCC") in August 2000. CECS was subsequently reauthorised by the ACCC for a period of 5 years in November 2004.

In CECS the management of clearing primarily involves setting minimum standards to protect and enhance the security, integrity and efficiency of ATM and EFTPOS interchanges. Currently, Australia has more than 27,300 ATMS and 665,000 EFTPOS terminals.⁴

³ APCA database of direct entry users as at June 2008.

⁴ APCA website (www.apca.com.au), March 2009.

Members of CECS may settle directly or indirectly but there are no separate categories of membership. Eligibility for membership is, however, based on the type of interchange activity that the member engages in. Members need to be engaging in interchange activities in either the capacity of an acquirer or an issuer of cards, or represent one or more acquirers or issuers and effect settlement directly, or be a "self acquirer". Self acquirers are retail merchants which directly switch transactions to card issuers.

The structure of EFTPOS and ATM arrangements is briefly described in part (iv) of this Annexure and more detail on CECS is provided in part (v) of this Annexure.

High Value Clearing System

The High Value Clearing System ("HVCS") was established by APCA in 1997 as part of the more general development of Real Time Gross Settlement ("RTGS") in Australia.

The mechanism for HVCS participating members exchanging payments with each other is the SWIFT Payment Delivery System ("PDS"). The SWIFT PDS uses SWIFT's FIN-Copy product (configured in Y mode) to exchange payment messages between its participating members.

When a participating member sends a payment to FIN-Copy, it is queued while a settlement request message is sent via the SWIFT network to the Reserve Bank's settlement platform the RBA Information and Transfer System ("RITS"). RITS settles the payment and forwards a settlement response to FIN-Copy. FIN-Copy matches the settlement response it receives to the queued payment. It then forwards the completed payment to the participating member that is to receive the payment.

All members settle directly for their own transactions. Consequently, there is only one category of member in the HVCS a direct clearer/direct settler. Participating members in the HVCS comprise all parties which hold ESAs with the RBA, as well as the RBA. Settlement of HVCS payments occurs on a real time (i.e. immediate) basis. The rules of the HVCS have been approved by the RBA as a multilateral netting arrangement under the *Payment Systems and Netting Act 1998*. The approval gives greater certainty that the multilateral netting undertaken in the HVCS, in a fallback situation, will survive should one of the participants in the system become insolvent.

Large value payments and payments which are time critical have substantially shifted to the HVCS. For the 2007-2008 financial year, HVCS processed more than 6.95 million transactions, a 15.5% increase on the previous year, with a total value of some \$33,139 billion.⁵

Australian Cash Distribution and Exchange System

The Australian Cash Distribution and Exchange System ("ACDES") governs the exchange and distribution of wholesale cash.

Until August 2001, notes and coins not in circulation were owned and managed by the RBA and held in more than 80 armoured carrier depots around Australia. The

⁵ RBA SWIFT PDS statistics.

establishment of ACDES followed the decision of the RBA to transfer the ownership and management responsibility for this cash to a number of banks.

ACDES was established in December 2001. The system provides a set of rules for the exchange and distribution of cash. The rules deal with matters such as buying and selling cash, minimum transaction quantities, documentation for transactions, hours of operations, the process and timing of settlement between members, the quality of notes, the packaging of notes and coin, allocating liability for late delivery and cash discrepancies, audit requirements and cash movements.

The system is open to all financial institutions and other companies wishing to join the system that participate in the cash distribution and exchange activities encompassed by the ACDES rules. There are no restrictions on dealings by members outside ACDES. As with all of APCA's clearing systems, membership of ACDES is voluntary. In other words, institutions may participate in the underlying activity of cash exchanges without becoming a member of the system.

(iv) EFTPOS and ATM Networks

EFTPOS

EFTPOS provides customers with a payment mechanism for the purchase of goods and services at the point of sale. 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 uses a plastic (debit) card with a magnetic stripe and a PIN to identify the customer. An increasing number of merchants also offer "cash out" services, where the customer's savings or cheque account is debited in return for the provision of cash from the merchant. The customer's transaction is authorised via an on-line link from the terminal to acquirer to issuer, where the authenticity of the card and PIN are validated and a check is made on funds availability.

EFTPOS terminals are owned by the merchant or by its acquiring institution. Australia has 665,054 EFTPOS terminals. Australia's EFTPOS network is universal in the sense that all issued cards can transact at all terminals.

ATMs

ATMs provide customers with a means of withdrawing funds, transferring funds between accounts and enquiring about available balances. They are typically located at a financial institution's branches, both inside and outside the branch. They are also located "off-site" as stand-alone devices in, for example, shopping malls and airports. Customers access their accounts using a plastic (debit) card with a magnetic stripe and PIN, as with an EFTPOS transaction. The customer's transaction is 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 is made on funds availability.

There are also off-site terminals which provide a more limited "cash dispenser" service. These may be connected to either the EFTPOS or ATM networks.

Australia has over 27,300 ATMs (including cash dispensers).

Debit Cards

Australian financial institutions issue their own proprietary debit cards, which can be used in ATMs and for EFTPOS transactions. They also issue two combined function credit/debit cards: Visa and MasterCard. All three cards can be used in ATMs and for EFTPOS transactions.

Participants

- (a) **Issuers** are institutions that provide their customers with a card that can be used in an EFTPOS and ATM terminal.
- (b) **Acquirers** are institutions that support merchants' participation in EFTPOS arrangements by making payments to merchants and by forwarding transactions to issuers for authentication and settlement. The equivalent acquirer role in ATM exchanges has responsibility for discharging the obligation owed by the issuer to the cardholder.

- (c) **Switching/Processing Companies** provide outsource facilities to issuers for transaction processing and switching.
- (d) **Merchants** initiate EFTPOS transactions as payment for goods and/or services and sometimes to provide cash to customers. A merchant receives value for such transactions via payment to a nominated financial institution account and is guaranteed payment, by the Acquirer, for the value processed correctly.

A merchant's participation in EFTPOS is facilitated by an Acquirer, and is subject to commercial negotiation. Merchants sometimes install their own terminals and other system components. In this case the Acquirer must certify the technology used.

Interchange

The physical components of the ATM and EFTPOS networks - the terminals, switches and communication links - are owned by individual industry participants. The availability therefore of these components to other participants is a matter for commercial negotiation between the participants concerned. The completion of such negotiations finds expression in bilateral interchange agreements between institutions that issue or acquire or do both. Interchange agreements cover a range of commercial and technical matters. These agreements fundamentally govern access to EFTPOS and ATM interchanges by enabling a card issued to a customer by one institution to be used to pay a merchant whose acquirer is a different institution or to transact at different institution's ATMs.

Commercial matters aside, secure and efficient interchange is largely dependent on the preparedness of participants to adopt leading practice common standards for message transmission, transaction processing and the manufacture of equipment. This is where CECS adds particular value.

(v) CECS

Scope of CECS

The management of clearing within CECS primarily involves setting minimum interchange procedures and standards to protect and enhance the security, integrity and efficiency of exchanges of EFTPOS and ATM messages. The standards include specifications for equipment, cards, communications links and message formats.

CECS covers ATM and EFTPOS interchanges. Providers of credit cards (Visa and MasterCard) have set their own rules for participation in their respective schemes and for clearing, where it arises. Other types of consumer electronic interchange activities if they arise (e.g. those related to stored value cards) could be covered later by determination of APCA directors on the recommendation of the CECS management committee.

The primary object of CECS (set out in Regulation 2.1) is to coordinate, manage and ensure the development, implementation and operation of effective standards, policies and procedures to facilitate the conduct of:

- (a) exchange and, where applicable, settlement of consumer electronic payment instructions falling within the scope of CECS; and
- (b) all aspects of the related clearing cycle.

Consumer electronic payment instructions currently falling within the scope of CECS are payment instructions generated within ATM or EFTPOS networks.

However, no CECS standards, policies or procedures impose any obligation on CECS members to engage with each other in business which would ordinarily give rise to obligations to exchange consumer electronic payment instructions of a kind covered by CECS.

Like the Regulations and Procedures of APCA's other clearing systems, the CECS Regulations and Manual have the effect of a contract under seal between APCA and each CECS member and between the CECS members.

It remains the case that APCA does not intend to acquire any financial assets (other than in respect of fees and charges payable by CECS members), or incur any liabilities, as result of the conduct and settlement of exchanges of payment instructions between CECS members. This is similar to the situation in relation to the other clearing systems APCA manages.

Qualifications for CECS Members

In essence, in order to be a CECS member a person must:

- be a "constitutional corporation" within the meaning of the Payment Systems and Netting Act 1988 which carries on business at or through a permanent establishment in Australia;
- participate in at least one proprietary system in which CECS members participate in Interchange Activities;

- provide for the obligations incurred by it as the result of the exchange of payment instructions under any such proprietary system to be settled in accordance with the CECS Regulations;
- be able to comply with any applicable laws, the Constitution of APCA, the CECS Regulations and the minimum applicable technical and operational standards in the CECS Manual;
- if applicable, be authorised by the Commission under section 88(1) of the Act to be party to a contract, arrangement or understanding otherwise in breach of that Act; and
- agree to pay all relevant fees, cost, charges and expenses.

Suspension and Termination

In a similar manner to APCA's four other clearing systems, membership may be suspended or terminated in certain circumstances:

Suspension:

- Where a CECS member is subject to prudential supervision and the supervisor requests suspension;
- By agreement with the member;
- Where membership requirements are no longer satisfied;
- Insolvency events;
- Breach of obligations without satisfactory explanation/rectification.

Termination:

- Resignation;
- Insolvency events;
- Ceasing to be involved in relevant activities;
- Board termination (due to unresolved suspension event);

Fees

Each new CECS member must pay an entrance fee, currently \$47,700. Entrance fees have been set to recover around 30% of the costs of establishing the Clearing System and are distributed to members in proportion to their contribution towards establishment costs.

Each CECS member must also pay APCA an annual membership fee, currently \$1,100.

A dispute resolution fee, currently \$1,270 is payable by each CECS members which is party to a dispute to be resolved in accordance with Part 10 of the Regulations under the auspices of APCA.

The operating costs of CECS are borne by the CECS members as periodic operating fees partly as a fixed share and partly in proportion to their share of national clearing volume of payment instructions sent through CECS. Entry, annual membership and dispute resolution fees received by APCA are used to reduce the periodic operating fees.

Management Committee

In a similar manner to other APCA clearing systems, the day-to-day operations of CECS are managed by a management committee consisting of the following persons:

- (a) one director nominated by the Board of APCA;
- (b) a nominee of each CECS member which individually has, or any group of members that collectively have, at least 5% of national transaction volume;
- (c) a person elected by the CECS members which are “building society members”;
- (d) a person elected by the CECS members which are “credit union members”;
- (e) a person nominated by the RBA, if no representative of the Reserve Bank of Australia has been appointed, elected or nominated under any other provision;⁶ and
- (f) if the directors so elect, a person appointed to represent the collective interests of CECS members that have not or are otherwise not entitled to appoint a director.

Members of the management committee hold office for 2 years and have duties to APCA similar to those of the directors of APCA.

The management committee is responsible for the effective operation and management of CECS, including without limitation:

- (a) technical and efficiency standards;
- (b) the amendment of the fees and charges payable by CECS members;
- (c) operating procedures and policies;
- (d) subject to a CECS member being entitled to refer any dispute (whether initially or by way of a request for review) to the directors, the resolution of disputes by arbitration or otherwise;

⁶ In 2007, the Reserve Bank of Australia chose to relinquish its automatic rights of representation on APCA’s Committees of Management. It currently retains a seat on the BECS Management Committee by virtue of its national transaction volume and exercises a continued right of representation on the HVCS and ACDES management committees where an important operational role is played by the RBA in these clearing systems.

- (e) supervision of the observance by CECS members of the Regulations and the CECS Manual;
- (f) the other matters expressly referred to in the Regulations and the CECS Manual; and
- (g) such other matters as the Board of Directors may consider necessary, desirable or expedient for the better or more secure, efficient and equitable operation of CECS.

At meetings of the management committee, each member of the management committee (other than the director nominated by the APCA Board who has no vote) is entitled to cast one vote for every 1% (or part of such percentage) of national transaction volume held by the CECS member which nominated, or the CECS members of the group which elected, that member.

The director appointed by the APCA Board is the chairman of the management committee.

The quorum for any meeting of the management committee is the attendance of at least 75% of the members of that committee. Resolutions require more than 50% of the total votes to be cast in favour of the resolution in order to be passed.

The management committee is supported by the CECS advisory council and by a number of permanent sub-committees and working groups as shown below.

Annual Meeting of CECS Members

In a similar manner to each of APCA's other clearing systems, an annual meeting of the CECS members must be held at least once every calendar year.

The purpose of the annual meeting is to provide a forum for CECS members to approve amendments to the CECS Regulations, discuss any aspect of the operations of CECS, the current level of fees and any other matters relevant to membership of CECS.

The quorum for any meeting of the CECS members who participate in CECS is 50% of the total voting entitlement and resolutions require more than 50% of the total votes cast in order to be passed.

Each CECS member is entitled to one vote for each whole 0.1% of national clearing volume attributed to that CECS member. Procedures exist for CECS members with smaller percentages to exercise a collective vote.

Advisory Council

Membership of the CECS advisory council is drawn from organisations that either issue payment instruments, process and/or switch payments messages or otherwise participate in payments transfers related to the consumer electronic clearing cycle.

Organisations eligible for appointment to the council are identified according to their function in the payments system, and are usually appointed by the APCA Board on an annual basis for 2 year terms. Membership of the current council and the functions (or "categories") that were set for appointment of that council are as follows:

Functional Category	Organisation
<i>ATM Operators</i>	- The Banktech Group Pty Limited - Customers Limited
<i>ATM Terminal Providers</i>	- Diebold Australia - NCR (Australia) Pty Limited
<i>Card Organisations</i>	- MasterCard International - Visa International
<i>Communications Providers</i>	- Optus - Telstra
<i>EFTPOS Terminal Providers</i>	- Hypercom Australia Pty Ltd - Ingenico International (Pacific) Pty Ltd - Keycorp Limited
<i>Government</i>	- Department of Human Services
<i>Processors and Switches</i>	- Cardlink Services Limited - Pulse International - Strategic Payments Services Pty Ltd
<i>Retailers</i> General <i>Oil</i>	- Australia Post - Australian Merchant Payments Forum - Caltex Australia Petroleum Pty Ltd
<i>Technology and Service Providers</i>	- ACI Worldwide (Pacific) - EDS (Australia) Pty Limited - IBM Australia Limited - Transaction Network Services Australia Pty Ltd
<i>Security Hardware</i>	- Thales
<i>Testing Laboratories</i>	- Witham Laboratories

The advisory council has been active in serving on numerous APCA working groups covering such issues as Key Injection Facility accreditation, credit EFTPOS, prepaid cards, revised device standards, EMV initiatives, ATM direct charge, CECS interchange communications facility, ATM/EFTPOS upgrade and the CECS Manual review.

Settlement

Each CECS member must, either directly or indirectly using a representative, provide for settlement of its obligations arising from exchanges in CECS. Settlement must be effected by means of debiting or crediting on ESA at the RBA or by providing finality of payment by other approved means.

CECS Manual

A large number of technical standards and operational requirements are, set out in the CECS Manual. The CECS Manual is continually reviewed with the objective of maintaining and enhancing the integrity and efficiency of the system. The management committee can amend the CECS Manual. If the amendment relates to a matter of principle or a fundamental term, it must accord with or be consequential to amendment of the Regulations or otherwise be approved by the management committee Chairman, the Chief Executive Office or the APCA Board. Amendments of a grammatical, cosmetic or minor nature may be made by the Chief Executive Officer.

Regulations

The Regulations for CECS contain provisions relating to the corporate governance of the system, which are similar to the provisions relating to corporate governance in the other APCA clearing systems.

The Regulations can only be amended on the recommendation of the management committee and with the approval of the CECS members and the APCA Board.

(vi) Access to EFTPOS and ATM networks

ATM and EFTPOS Access Codes have been established in order to reduce barriers to entry to the EFTPOS and ATM networks within the existing architecture. These Codes provide convenient and cost-effective means for eligible new entrants to connect to the networks and ensure the application of consistent and objective standards. These access arrangements were established at the behest of the RBA and other interested parties.

EFTPOS Access Code

EFTPOS Access Australia Limited (“EAAL”) was established in April 2006 and administers the EFTPOS Access Code developed by APCA. This provides a convenient and cost effective means for eligible new entrants to establish direct connections to EEAL members.

This is a guidance code developed by APCA in consultation with current and potential EFTPOS participants and the RBA. Those seeking direct connection to the EFTPOS network are entitled to use the Access Code to gain access to the service to establish a direct connection to an Access provider. This entitles an access seeker to a right of access for a capped fee within a certain timeframe.

It is not mandatory for access seekers to use the Access Code; they may negotiate with access providers outside the terms of the Code.

Access seekers that gain access to services pursuant to the Access Code must become members of EEAL and agree to grant access to the services to other access seekers.

ATM Access Code

ATM Access Australia Limited (“AAAL”) was established in 2009 and administers the ATM Access Code developed by APCA.

The ATM Access Code facilitates access to the ATM Network by providing a convenient and cost effective means for eligible new entrants to establish connections and prescribing standard interchange terms.

The ATM Access Code was developed by APCA in consultation with current and potential ATM participants and the RBA. It is a co-regulatory regime that, in conjunction with an Access Regime for the ATM system enacted by the RBA, facilitates access to the ATM network. It does this by giving eligible access seekers connectivity rights and interchange rights.

The RBA Access Regime is relevant to both Connectivity Services and ATM Interchange Activities and regulates the amount an access seeker can be required to pay to establish a connection under the Access Code and the interchange fees for ATM transactions.

It is not mandatory for access seekers to use the ATM Access Code; they may negotiate with access providers outside the terms of the Code to establish connections and engage in ATM interchange activities.

(vii) Benefits of the CECS Arrangements

The community uses EFTPOS and ATMs on a daily basis to make purchases and to conduct routine banking transactions. It is essential that the networks have a high level of availability and that customer transaction information is kept secure. CECS brings public benefits in establishing leading practice clearing standards to maintain and enhance the integrity and efficiency of the ATM and EFTPOS networks. CECS also has settlement standards, which protect the integrity and finality of settlement.

CECS has no deleterious effects on competition. In fact by setting and promulgating common standards CECS facilitates changes to commercial arrangements and new entry, without at all impeding the normal playing out of market forces.

The EFTPOS and ATM networks operate effectively because each participant operates in accordance with common standards. CECS establishes these common standards through its cooperative framework. Moreover, through CECS these standards are transparent allowing all stakeholders better information on which to make their decisions. Within this co-operative process there is also a high degree of accountability which guards against the establishment of unnecessarily restrictive standards.

Decisions taken through CECS affect all direct participants (acquirers, issuers and merchant principals) and also those who supply related goods and services. CECS takes this into account by having inclusive membership criteria for direct participants and by having an advisory council to accommodate a wider set of stakeholders.

The comments below expand on the benefits CECS brings, address some of the issues that arise and explains how these are tackled and balanced. Finally, the benefits that CECS brings are underscored by a listing of some completed and existing CECS projects.

Integrity

It is essential that the integrity of clearing and settlement is maintained and protected. All other objectives necessarily have lesser priority.

Integrity in this context means that the systems for clearing and settlement are sound and not easily compromised. Payment messages must be transmitted complete and whole. They must be received and acted on in a timely manner. The system must be secure so that the payment message can be relied upon by the recipient institution. The system must be resistant to external interference (i.e. unable to be tampered with).

CECS protects and enhances the integrity of the system by establishing leading practice technical and operational standards and by mandating that members of CECS adhere to those standards.

Operational Efficiency

Efficiency can be measured in numbers of ways. Of particular focus for CECS is the reliability and availability of the EFTPOS and ATM networks. CECS addresses these matters through contingency procedures in the CECS Manual and through capacity planning with members of the system.

Standard setting can of course at times have a variable impact on different stakeholders. APCA's policy therefore is to implement new and/or amended standards, which go to the integrity and operational efficiency of the system only after the issues have been researched and fully discussed by members and by the advisory council.

Settlement

Participation as a direct settler in each of APCA's clearing systems normally requires that settlement occur through an exchange settlement account at the Reserve Bank. This requirement to provide finality of payment when settling obligations ensures that confidence in the settlement process is maintained. However, the CECS Regulations, like those of APCA's other clearing systems, do not preclude alternative settlement arrangements which can provide the requisite finality of payment without risk of default. The APCA board on the recommendation of the management committee must approve any such alternatives. This provision does also allow special circumstances to be recognised to avoid the settlement requirement being unduly restrictive. For example, as a net receiver of settlement funds in the ordinary course of events, the merchant principal member of CECS was permitted to engage in settlement using its corporate bank account.

Competition

Competition in payments clearing and settlement arrangements has a number of facets. These can be expressed in terms of:

- the ability of institutions to establish arrangements outside of the scope of prevailing arrangements;
- the ability of institutions to participate in prevailing arrangements;
- the ability of participating institutions to change commercial relationships they may have with other participants; and
- the ability of participating institutions to compete for business on an equal footing.

Scope of Arrangements

APCA's role is to oversee payments clearing and settlement arrangements within Australia. However, APCA is not exclusionary. Nothing in the Constitution of APCA, the CECS Regulations nor the CECS Manual prevents payments clearing systems, including consumer-type electronic payments developing and operating outside of APCA. For example, in respect of consumer payment systems, clearing of credit card transactions is conducted under rules established by the various card organisations.

The scope of CECS's role is to set standards, policies and procedures to facilitate the conduct between CECS members for ATM and EFTPOS interchanges and all aspects of the related clearing cycle. This includes the promotion of efficiency, security and integrity and providing specifications and standards for equipment, cards and communications links. It does this by providing a forum within which members consider, agree and promulgate minimum agreed interchange standards. The attraction of membership, which is voluntary, is the ability to contribute to setting such standards.

Participation

Conditions of access and participation in CECS do not favour one kind of institution over another. The system is open to any organisation that issues cards used in ATM's or EFTPOS terminals or that acquires transactions through ATM's or EFTPOS terminals or, in the case of a merchant that switches EFTPOS transactions directly to the relevant card issuer.

Members of CECS have equal rights and obligations under the Regulations and Manual.

Competition on an Equal Footing

Nothing in APCA's Constitution nor in the CECS Regulations or Manual restricts the ability of participants to compete for the business of end users of payment services of the type contemplated in CECS.

Co-operation and Co-ordination

APCA's reporting and decision-making structure ensures a higher degree of co-ordination in the management and development of payments clearing arrangements than existed prior to APCA's establishment and a higher degree of accountability.

The management committee for CECS has responsibility for the effective operation and management of clearing arrangements in respect of EFTPOS and ATM interchanges. The more general oversight by the Board provides, in addition, a perspective on developments across all clearing systems, and an avenue for appeals in the event of disputes (not just among CECS members but between any CECS member and the management committee).

In assessing the role of APCA in this broad area of co-operation and co-ordination, it is important to have regard to levels of accountability and to the decision-making structure, particularly to the ability of participating members to request the APCA board to review any decision made by the CECS management committee.

As a public company, APCA has a reporting duty to all its members and has a corporate objective of communicating decisions and matters of interest to the public at large. Further, APCA directors and management committee members each have personal duties under the Corporations Act and common law to, among other things, exercise their powers for proper corporate purposes having regard to APCA members as a whole. This all guards against decisions being made which impair competition and/or seek to exclude certain parties from CECS to an unjustified extent relative to the public benefits that accrue from ensuring the efficiency and integrity of the system.

Stakeholder Participation

Principal members

Broadly speaking, any institution which acquires EFTPOS or ATM transactions or which issues cards used in EFTPOS or ATM terminals or which as merchants directly switch transactions to issuers is eligible to join CECS as a member of the system with voting rights. Membership of CECS is therefore open to all institutions, which as principals do what the system purports to oversee.

Membership of CECS now includes Coles Myer, a non-financial institution which however participates as a principal in the clearing activities APCA oversees.

Cashcard Australia Limited and Woolworths Limited previously participated on the CECS advisory council. In August 2002 and November 2007 respectively, Cashcard and Woolworths became members of the system.

Advisory members

Other stakeholders that do not clear and settle transactions in their own right, but which are involved in other capacities related to EFTPOS and ATM transactions have the opportunity to participate within CECS through the CECS advisory council.

An advisory council has been established for CECS, (as well as for two other of APCA's clearing systems) to provide input to the CECS management committee.

The CECS advisory council has representatives from processors and switches, software providers, security hardware suppliers, ATM and EFTPOS terminal suppliers, retailers, oil companies, card schemes, and ATM operators. [any others?] The categories of activities from which representatives are sourced are continually reviewed to ensure appropriate coverage.

While having no voting rights since they have no transaction volume, advisory council members have (among other rights) a right to have representation and to be heard at management committee meetings. Various initiatives have been taken since the council was established to ensure that it has operated in a progressively more integrated fashion with the management committee. One important initiative has been to invite council representation on all working groups established to support particular projects.

Balancing and Meeting Objectives

As noted in APCA's previous authorisation applications to the Commission, APCA's principal objectives must be balanced in arriving at a set of arrangements for managing Australia's payments clearing and settlement systems.

Payments clearing and settlement is at the core of the financial system and is vital to the functioning of the overall economy. APCA's objective has been to establish clearing and settlement arrangements that are more open, inclusive and competitively neutral. At the same time, this objective has and must be balanced with the objective of preserving and enhancing the efficiency and integrity of payments clearing and settlement and minimising risk.

Core to preserving this integrity and efficiency is to ensure that open and transparent access to CECS is balanced by the opportunity for CECS members to suspend and/or terminate membership of those members that may potentially impair the integrity and efficiency of the system.

Achieving this balance is a matter of ongoing review and discussion of the issues, and debate among stakeholders, particularly in the light of developments in the payments industry environment that may give rise to the need for changes to the conditions under which members may be restricted or prevented from operating within CECS.

The process of meeting objectives is an ongoing one. The management committee for CECS is charged under the CECS Regulations to review regularly the Regulations and Manual, in the light of operational experience, and to report periodically to the APCA board (and to CECS members at annual general meetings).

The existing process has so far been successful both in terms of including all direct participants and a wide range of other stakeholders in deliberative and decision-making processes **and** in maintaining and enhancing the efficiency and integrity of the system. Listed below are some of the projects within CECS that have been completed, or which are currently underway, and which clearly demonstrate the public benefit that CECS brings.

Completed Projects

Direct Charging at ATM

In August 2007, the industry and the RBA agreed to implement ATM fee reforms and asked APCA to assist the industry to introduce direct charging. Using industry consultative groups, business requirements, technical specifications and a timeframe were developed to ensure the industry would be ready to introduce the changes on 3 March 2009. The industry's focus has been on transparency and making sure charges for foreign ATM transactions are clearer to cardholders. From 3 March 2009, customers are able to see the ATM owner fee each time they use a foreign ATM.

Access arrangements for ATM and EFTPOS networks

EFTPOS and ATM Access Codes have been established in April 2006 and February 2009 respectively in order to reduce barriers to entry to the EFTPOS and ATM networks. These Codes provide convenient and cost-effective means for eligible new entrants to connect to the networks and ensure the application of consistent and objective standards. These access arrangements were established at the behest of the RBA and other interested parties.

EFTPOS Governance Project

APCA has also recently established an EFTPOS Scheme company, EFTPOS Payments Australia Limited. This is a central coordinating body with the authority to make system wide decisions, intended to give Australia's EFTPOS System a greater chance of surviving (and thriving) in a highly competitive payments environment. In APCA's view, it will lead to:

- Long-term competition for card scheme services, which benefits issuers and acquirers through competitive pricing and enhancement of scheme services;
- Indirect benefits for consumers and merchants in their use of card products and transaction services, through competitive pricing, greater choice and convenience and enhanced functionality.

The Reserve Bank of Australia has also observed that existing EFTPOS governance arrangements (which this initiative has addressed) put the system at a structural disadvantage, and that it is important to address this given the potentially important role that the system plays as a competitor to the international card schemes.

Device Evaluation

In 2005, APCA introduced a new, centralised system for device approvals that enhances the integrity of the process through the use of independent and accredited test facilities. The advantages to members and vendors include that the evaluation process is open and dependable, that only one evaluation is required per product thus saving time and money, and that any vendor can apply for approval, thus opening up competition.

Since introducing this process, various modifications have been made to reduce the time for approval and to make the process easier to understand and use. In addition, following a request from vendors and members, APCA carried out a thorough and detailed review of the security requirements for these devices, specifically to determine whether we should accept devices approved by global cards schemes for use within CECS. The results of the risk assessment showed that, for the sake of a relatively small cost, the integrity of the CECS system was best served by retaining our current standards.

Projects Underway

KIF Audit

APCA is working closely with the international card schemes to establish a central process for accrediting facilities that install keys into PIN entry devices. These Key Injection Facilities (KIFs) are central to the security of the entire Point of Sale network and therefore the industry requires strict procedures to be followed. Currently enforcing these procedures is the responsibility of individual acquirers and the individual card schemes. The proposed accreditation process will increase the trust in the security of the KIFs while reducing the number of audits required.

Pre-paid gift cards

Prepaid programs continue to expand and some programs are reliant on existing domestic EFTPOS to facilitate clearing and settling of these transactions.

The Prepaid Card Project aims to:

- Identify “Prepaid Cards” as a separate category within the CECS manual; and
- Define an appropriate operational framework for the treatment of “Prepaid Cards”.

Card not present for CECS Project

A Card Not Present (“CNP”) transaction is a transaction generated where neither the cardholder nor the card are physically present at the merchant at the time of transaction initiation. For example, mobile payments, orders by internet, mail, telephone, fax etc. APCA is undertaking the development of new standards to support m-commerce and Card Not Present transactions to meet RBA concerns.

CECS Access Project

The key objective of the CECS Access Project is to reduce the technology barriers that today prevent an “easy” entry to CECS for “new players” and thereby promote competition. Through the project a standard ‘interchange technical specification’ will be developed for use by new entrants and existing CECS Members.

LVP Networks Arrangement Project

This project supports the replacement of the existing telecommunications network for the legacy infrastructure used today to support clearing systems for paper, electronic and ATM/EFTPOS, together with the creation of the necessary Business and Technical Governance Framework to support this.

ANNEXURE 3 - Market Definition

(a) Consideration of what may constitute the relevant market is informed by analysing the parts of the economy in which CECS operates. At the most direct and limited level, CECS provides clearing regulatory infrastructure for EFTPOS and ATMs. On a broader level, CECS provides part of the architecture for the provision of retail payment services. The scope of the market for these services is determined by considering the degree of substitution between different services/products.

(b) At the broader level, the market may be defined by considering competition between different retail payment instruments themselves that rely upon the existence of clearing infrastructure established through APCA's various clearing system regulatory infrastructures or otherwise. Different instruments will have features that allow them to be more or less suitable for different types of transactions. For example, EFTPOS/ATM payment services fall within the range of payment methods where the customer is physically present, as opposed to payments that may be made remotely eg credit cards etc.

(c) Further, payments systems need to be considered as a number of related markets, when suppliers and acquirers/consumers are considered. The markets may involve:

- consumers and financial institutions or other issuers;
- merchants and financial institutions or other acquirers;
- merchants and consumers; and
- the payments platforms themselves (i.e. competition between platforms or instruments).

(d) In considering the broader market for payment systems, underpinned by the relevant clearing systems, it is helpful to focus on particular reference points where it is feasible to use more than one instrument. As a general rule, merchants make decisions as to which payment instruments to accept, and the terms under which they are accepted, and the consumer chooses which instrument to use. Merchants' decisions will be influenced by a range of factors including:

- the turnover of the retail outlet;
- the average transactions value;
- whether the purchaser is present or the purchase conducted remotely; and
- location, including across countries.

Many high turnover retail outlets accept a range of payment instruments including cash, credit and debit cards, EFTPOS, and maybe prepaid cards, the retailer's branded cards and personal cheques. For large items or if the purchase is conducted remotely, the merchant may also provide online payment instruments.

(e) The above suggests a much larger market for payment services than either the market for EFTPOS/ATM services alone or the dependent market for clearing services involving EFTPOS/ATMs payment services. However, in its earlier 2004 determination, the ACCC considered that it was appropriate to confine its consideration to the debit card network comprising of ATM and EFTPOS transactions. This was on the basis that the CECS Procedures only specify minimum standards for ATM and EFTPOS participation and interchanges. Standards for participation and interchanges of other payment instruments are either set by APCA through a different clearing system or through card scheme organisations such as Visa.

ANNEXURE 4 - Public Detriments

(a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of goods or services described at 2(c) and the prices of goods or services in other affected markets

Nothing in the CECS Procedures restricts the ability of participants to compete for the business of end users of payment services of the type contemplated by CECS.

Further, the existence of CECS does not preclude institutions from establishing other clearing arrangements outside the scope of the CECS regulatory infrastructure. Prior to the establishment of CECS and initial authorisation of its arrangements in 2000, procedures and standards for ATM and EFTPOS interchanges were subject to bilateral negotiation between issuers and acquirers.

Having said this, it is generally the case that CECS members that engage in ATM or EFTPOS interchange activity with other CECS members must satisfy the standards in the CECS Procedures. As the ACCC has previously noted, if set at an inappropriate level, minimum mandatory standards and procedures could potentially stifle innovation by network participants by potentially raising barriers to entry to the ATM and EFTPOS networks.

The detriment is therefore not great and is clearly outweighed by the public benefit. Although a participant whose membership is suspended and terminated may be adversely affected as indicated in Annexure 2, the existence of the suspension and termination provisions promotes confidence in the CECS and therefore, competition between CECS members.

(b) Facts and evidence relevant to these detriments

Requirements in CECS do not raise additional barriers to entry for either issuers or acquirers/merchant principals.

Issuers

For access as an issuer, the requirements that an organisation must be an ADI and maintain customers' deposit transaction accounts or an organisation that maintains customers' deposit-like sources of value, is not affected by the CECS Procedures. ADIs are authorised under the Banking Act 1959 and are the predominant source of value from which ATM and EFTPOS transactions are made.

The most significant barrier faced by a new entrant card issuer is the need to negotiate bilateral agreements covering technical and commercial arrangements with each merchant acquirer in the EFTPOS network. CECS does not replace these bilateral arrangements.

CECS arrangements also make provision for CECS members to bilaterally agree with other CECS members to apply divergent standards provided that the integrity, security and efficiency of CECS overall is not lessened. This enables innovation without diminishing overall integrity.

Whereas 2 members can agree to diverge from CECS requirements, no member (or non-member) can be required to apply standards other than those set out in the

CECS Procedures as a condition of engaging in ATM or EFTPOS interchange activity.

Acquirers/merchant principals

Requirements in the CECS Procedures do not raise additional barriers to acquirers' access to the ATM/EFTPOS networks – they simply reflect the practical requirements of satisfying clearing arrangements.

CECS requires that ATM or EFTPOS acquirers have their own ESA or access to another institution's ESA. This reflects the practical need of satisfying clearing obligations and does not present barrier to entry.

Access Codes

As described in Annexure 2 above, access codes developed in 2006 (EFTPOS) and 2009 (ATM) facilitate connections between CECS members by prescribing standard interchange terms. These are not mandatory – access seekers can negotiate with access providers outside the terms of the codes.