

BY COURIER AND EMAIL

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Blake Dawson

Richard Chadwick
General Manager, Adjudication
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

adjudication@accc.gov.au

T 61 2 9258 6000
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Locked Bag No 6
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27 July 2009

Dear Mr Chadwick

APPLICATION FOR AUTHORISATION: rediATM Network of ATMs

We act for Cuscal Limited (**Cuscal**) and participating members of the rediATM network of ATMs (collectively, the **Applicants**).

1. Authorisation pursuant to s88(1) of the Trade Practices Act

The Applicants seek authorisation of rediATM network direct charging arrangements and ATM deployment arrangements, pursuant to section 88(1) of the *Trade Practices Act 1974 (TPA)*.

We enclose the following applications for authorisation, on behalf of the Applicants:

- Form A – Exclusionary provisions and associated cartel provisions;
- Form B – Agreements affecting competition or incorporating related cartel provisions; and
- Form E – Exclusive dealing,

(collectively, the **Application for Authorisation**).

We also enclose a submission in support of the Application for Authorisation, on behalf of the Applicants (the **Submission**).

2. Interim Authorisation pursuant to s91(2)(d) of the Trade Practices Act

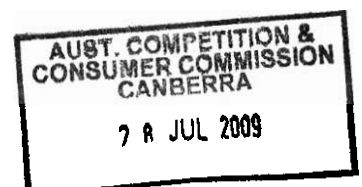
The Applicants also seek interim authorisation of rediATM network direct charging arrangements and ATM deployment arrangements, pursuant to section 91(2)(d) of the TPA.

The Submission is also provided in support of an application by the Applicants for interim authorisation.

Our reference
AAG RZ 02 2006 7951

Partner
Ayman Guirguls
T 61 2 9258 6262
M 0419 259188
Ayman.guirguls
@blakedawson.com

Contact
Ross Zaurrini
T 61 2 9258 6840
M 0411 866 953
Ross.zaurrini
@blakedawson.com



3. Confidentiality

The Submission includes certain commercially sensitive, confidential information. The Applicants request that such information be kept confidential by the ACCC and be excluded from the register kept by the ACCC in accordance with section 89(5) of the TPA.

The confidential information is indicated in the Submission by the use of bold red square parentheses ([CONFIDENTIAL]) around confidential text in the confidential version of the Submission. For convenience, this information has been deleted and replaced with '[CONFIDENTIAL INFORMATION DELETED]' in a non-confidential version of the Submission (also enclosed).

The Applicants request that only the non-confidential version of the Submission be placed on the ACCC's public register.

4. Lodgement fee

The Applicants enclose a cheque in the amount of \$10,500 as payment for the lodgement fee with respect to the Application for Authorisation.

Please do not hesitate to contact us if you would like to discuss any aspect of this letter

Yours sincerely



Ayman Guirguis

Partner

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M 0419 259 188

ayman.guirguis@blakedawson.com

Ross Zaurrini

Senior Associate

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Form A

Commonwealth of Australia

Trade Practices Act 1974 — subsections 88 (1A) and (1)

EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

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

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

The parties listed in Schedule 1 to the supporting submission, namely:

- Cuscal Limited (**Cuscal**)
- National Australia Bank Limited (**NAB**), and
- rediATM network members,

(collectively, the **Applicants**).

A91175

Each Applicant has consented to the making of this application for authorisation.

- (b) Description of business carried on by applicant:
(Refer to direction 3)

Cuscal

Cuscal is a wholesale provider of transactional banking, liquidity and capital management products to specialist financial service retailers.

Relevant to this application for authorisation, Cuscal provides wholesale and transactional services to the mutual authorised deposit-taking institutions sector.

Cuscal has a number of roles in the Australian ATM system:

- (a) it owns ATMs;
- (b) it acquires transactions from its own ATMs;
- (c) it is a direct participant in the Consumer Electronic Clearing System;
- (d) it owns and operates a subnetwork, the RediATM Network (formerly known as the Rediteller network), within which it supplies a range of services to RediATM Network Members (**Members**), including:
 - (i) acquiring transactions from Members' ATMs;
 - (ii) issuing debit and credit cards to its Members' cardholders, on their behalf;
 - (iii) switching, clearing and settling transactions;
 - (iv) providing access to the infrastructure (including computer equipment, computer software and related equipment) that enables the connectivity, exchange of information, authorisation and reconciliation of transactions between Members and between Members and other financial institutions; and
 - (v) providing access to Cuscal's interchange links with the major financial institutions.

NAB

NAB is a financial services organisation that provides a comprehensive and integrated range of financial products and services. In Australia, NAB provides retail, business, private banking and wealth management services.

Cuscal and NAB have executed an agreement by which NAB has requested to be admitted, and Cuscal has agreed to admit NAB, as an Issuer, Acquirer and Deployer, to participate as Member of the rediATM Network.

It is a condition precedent to the operation of that agreement that, among other things, NAB and Cuscal obtain necessary regulatory approvals, including ACCC approval for the conduct the subject of this application for authorisation.

Members

The Members of the rediATM Network are predominantly credit unions, who offer deposit taking, lending and other banking services to customers. Relevantly, the Members are issuers of debit and credit cards, acquirers of ATM transactions and/or owners and deployers of ATMs.

For more details, refer to the supporting submission.

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

c/o – Ayman Guirguis
Blake Dawson
Level 35
Grosvenor Place
225 George Street
Sydney NSW 2000

2. Contract, arrangement or understanding

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

(Refer to direction 4)

The Applicants (as well as each future member – as defined in the supporting submission – of the RediATM Network,) wish to make and give effect to arrangements between Cuscal and the Members about the deployment of ATMs in the RediATM Network (**ATM Deployment Arrangements**).

For more details, refer to the supporting submission.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2(a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:

(Refer to direction 4)

Refer to the supporting submission.

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

The contract, arrangement or understanding relates to:

- the deployment of ATMs; and
- ATM transaction services supplied by ATM owners to cardholders.

- (d) 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:

Authorisation is sought for a period of 5 years.

3. 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:

The ATM Deployment Arrangements will be entered into and given effect by the Applicants.

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

(Refer to direction 5)

The application is made on behalf of the Applicants and each future member (as defined in the supporting submission) of the RediATM Network.

4. Public benefit claims

- (a) Arguments in support of application for authorisation:
(Refer to direction 6)

Refer to the supporting submission.

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

Refer to the supporting submission.

5. 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):
(Refer to direction 7)

Refer to the supporting submission.

6. 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:
(Refer to direction 8)

Refer to the supporting submission.

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

Refer to the supporting submission.

7. Contracts, arrangements or understandings in similar terms

- (a) 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:

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

No.

- (c) 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:
(Refer to direction 9)

N/A

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:
(Refer to direction 10)

N/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:

N/A

8. Joint Ventures

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

No.

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

N/A

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

N/A

9. 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:

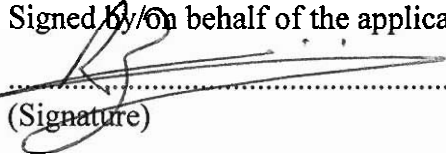
Ayman Guirguis
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Level 36
Grosvenor Place
225 George Street
Sydney NSW 2000

Telephone: (02) 9258 6262
Facsimile: (02) 9258 6999
Email: ayman.guirguis@blakedawson.com

Dated..... 27/07/2009

Signed ~~By~~/On behalf of the applicant


.....
(Signature)

Ross Zaurrini
(Full Name)

Blake Dawson
(Organisation)

Senior Associate
(Position in organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

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

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

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.

8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

Form B

Commonwealth of Australia

Trade Practices Act 1974 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

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

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

The parties listed in Schedule 1 to the supporting submission, namely:

- Cuscal Limited (Cuscal)
- National Australia Bank Limited (NAB), and
- rediATM network members,

(collectively, the Applicants).

A91176

Each Applicant has consented to the making of this application for authorisation.

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

Cuscal

Cuscal is a wholesale provider of transactional banking, liquidity and capital management products to specialist financial service retailers.

Relevant to this application for authorisation, Cuscal provides wholesale and transactional services to the mutual authorised deposit-taking institutions sector.

Cuscal has a number of roles in the Australian ATM system:

- (a) it owns ATMs;
- (b) it acquires transactions from its own ATMs;
- (c) it is a direct participant in the Consumer Electronic Clearing System;
- (d) it owns and operates a subnetwork, the RediATM Network (formerly known as the Rediteller network), within which it supplies a range of services to RediATM Network Members (**Members**), including:
 - (i) acquiring transactions from Members' ATMs;
 - (ii) issuing debit and credit cards to its Members' cardholders, on their behalf;
 - (iii) switching, clearing and settling transactions;
 - (iv) providing access to the infrastructure (including computer equipment, computer software and related equipment) that enables the connectivity, exchange of information, authorisation and reconciliation of transactions between Members and between Members and other financial institutions; and
 - (v) providing access to Cuscal's interchange links with the major financial institutions.

NAB

NAB is a financial services organisation that provides a comprehensive and integrated range of financial products and services. In Australia, NAB provides retail, business, private banking and wealth management services.

Cuscal and NAB have executed an agreement by which NAB has requested to be admitted, and Cuscal has agreed to admit NAB, as an Issuer, Acquirer and Deployer, to participate as Member of the rediATM Network.

It is a condition precedent to the operation of that agreement that, among other things, NAB and Cuscal obtain necessary regulatory approvals, including ACCC approval for the conduct the subject of this application for authorisation.

Members

The Members of the rediATM Network are predominantly credit unions, who offer deposit taking, lending and other banking services to customers. Relevantly, the Members are issuers of debit and credit cards, acquirers of ATM transactions and/or owners and deployers of ATMs.

For more details, refer to the supporting submission.

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

c/o – Ayman Guirguis
Blake Dawson
Level 35
Grosvenor Place
225 George Street
Sydney NSW 2000

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

The Applicants (as well as each future member – as defined in the supporting submission – of the RediATM Network) wish to:

- (a) make and give effect to arrangements between Cuscal and the Members to not directly charge Member Issuers' cardholders for the supply of ATM transaction services at a RediATM (**No Direct Charge Arrangements**); and
- (b) make and give effect to arrangements between Cuscal and the Members to not charge cardholders of Issuers who are not Members (**Foreign Cardholders**) a Direct Charge which exceeds a maximum Direct Charge for the supply of ATM transaction services at a RediATM (**Maximum Foreign Direct Charge Arrangements**).
- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

Refer to the supporting submission.

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

The arrangements relate to:

- ATM interchange services supplied by ATM owners to issuers of debit and other cards;
 - ATM transaction services supplied by ATM owners to cardholders; and
 - Retail banking services supplied by issuers to cardholders.
- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation is sought for a period of 5 years.

3. 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:

The No Direct Charge Arrangements and the Maximum Foreign Charge Arrangements will be entered into and given effect by the Applicants.

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

(Refer to direction 5)

The application is made on behalf of the Applicants and each future member (as defined in the supporting submission) of the RediATM Network.

4. Public benefit claims

- (a) Arguments in support of authorisation:
(Refer to direction 6)

Refer to the supporting submission.

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

Refer to the supporting submission.

5. 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):
(Refer to direction 7)

Refer to the supporting submission.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, 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:

(Refer to direction 8)

Refer to the supporting submission.

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

Refer to the supporting submission.

7. Contract, 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?

No

- (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:

(Refer to direction 9)

N/A

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

N/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:

N/A

8. Joint Ventures

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

No.

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

N/A

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

N/A

9. Further information

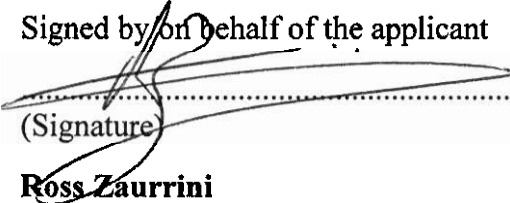
- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Ayman Guirguis
Blake Dawson
Level 36
Grosvenor Place
225 George Street
Sydney NSW 2000

Telephone: (02) 9258 6262
Facsimile: (02) 9258 6999
Email: ayman.guirguis@blakedawson.com

Dated.....27/07/2009.....

Signed by/on behalf of the applicant


.....
(Signature)

Ross Zaurrini
(Full Name)

Blake Dawson
(Organisation)

Senior Associate
(Position in organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

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

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

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.

8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

Form E

Commonwealth of Australia

Trade Practices Act 1974 — subsection 88 (8)

EXCLUSIVE DEALING: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (8) of the *Trade Practices Act 1974* for an authorisation under that subsection to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to direction 2)

The parties listed in Schedule 1 to the supporting submission, namely:

- Cuscal Limited (**Cuscal**)
- National Australia Bank Limited (**NAB**), and
- rediATM network members,

(collectively, the **Applicants**).

Each Applicant has consented to the making of this application for authorisation.

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

Cuscal

Cuscal is a wholesale provider of transactional banking, liquidity and capital management products to specialist financial service retailers.

Relevant to this application for authorisation, Cuscal provides wholesale and transactional services to the mutual authorised deposit-taking institutions sector.

Cuscal has a number of roles in the Australian ATM system:

- (a) it owns ATMs;
- (b) it acquires transactions from its own ATMs;
- (c) it is a direct participant in the Consumer Electronic Clearing System;

A91177

- (d) it owns and operates a subnetwork, the RediATM Network (formerly known as the Rediteller network), within which it supplies a range of services to RediATM Network Members (**Members**), including:
- (i) acquiring transactions from Members' ATMs;
 - (ii) issuing debit and credit cards to its Members' cardholders, on their behalf;
 - (iii) switching, clearing and settling transactions;
 - (iv) providing access to the infrastructure (including computer equipment, computer software and related equipment) that enables the connectivity, exchange of information, authorisation and reconciliation of transactions between Members and between Members and other financial institutions; and
 - (v) providing access to Cuscal's interchange links with the major financial institutions.

NAB

NAB is a financial services organisation that provides a comprehensive and integrated range of financial products and services. In Australia, NAB provides retail, business, private banking and wealth management services.

Cuscal and NAB have executed an agreement by which NAB has requested to be admitted, and Cuscal has agreed to admit NAB, as an Issuer, Acquirer and Deployer, to participate as Member of the rediATM Network.

It is a condition precedent to the operation of that agreement that, among other things, NAB and Cuscal obtain necessary regulatory approvals, including ACCC approval for the conduct the subject of this application for authorisation.

Members

The Members of the rediATM Network are predominantly credit unions, who offer deposit taking, lending and other banking services to customers. Relevantly, the Members are issuers of debit and credit cards, acquirers of ATM transactions and/or owners and deployers of ATMs.

For more details, refer to the supporting submission.

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

c/o – Ayman Guirguis
Blake Dawson
Level 35
Grosvenor Place
225 George Street
Sydney NSW 2000

2. Contract, arrangement or understanding

- (a) Description of the conduct that would or may constitute the practice of exclusive dealing:
(Refer to direction 4)

The Applicants wish to refuse to give a discount to a Foreign Cardholder in relation to the supply of ATM transaction services at a rediATM (**Refusal of Discount to Foreign Cardholder Arrangements**).

- (b) Description of the goods or services in relation to the supply or acquisition of which this application relates:

This application for authorisation relates to the supply of ATM transaction services by Members who are ATM acquirers and to retail bank customers and the charging of a fee (**Direct Charge**) for those services.

- (c) The term for which authorisation of the conduct is being sought and grounds for supporting this period of authorisation:

Authorisation is sought for a period of 5 years.

3. Parties to the proposed arrangement

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

The conduct relates to retail customers of any issuer of debit or credit cards, who have been issued with a card and PIN code to use with an ATM, and who choose to use that card at a rediATM.

- (b) Number of those persons:

- (i) At present time:

Greater than 50.

- (ii) Estimated within the next year:

(Refer to direction 6)

Greater than 50.

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

N/A

4. Public benefit claims

- (a) Arguments in support of authorisation:
(Refer to direction 6)

Refer to the supporting submission.

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

Refer to the supporting submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (b) 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):
(Refer to direction 7)

Refer to the supporting submission.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:
(Refer to direction 8)

Refer to the supporting submission.

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

Refer to the supporting submission.

7. Joint Ventures

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

No.

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

N/A

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

N/A

8. Further Information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

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Dated..... 27/7/2009

Signed by/on behalf of the applicant


.....
(Signature)

Ross Zaurrini
(Full Name)

Blake Dawson
(Organisation)

Senior Associate
(Position in organisation)

DIRECTIONS

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

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

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business in the course of which the conduct is engaged in.
4. Provide details of the conduct (whether proposed or actual) which may constitute the practice of exclusive dealing in respect of which this authorisation is sought.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. 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.
 7. Provide details of the market(s) likely to be effected by the 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 authorisation.
 8. Provide details of the detriments to the public which may result from the conduct including quantification of those detriments where possible.

**NON-CONFIDENTIAL
VERSION**

27 July 2009

**Submission in support of
application for
authorisation of rediATM
Network direct charging
and ATM deployment
arrangements**

Cuscal Limited
ACN 087 822 455

and

Other parties listed in Schedule 1

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Submission in support of application for authorisation of rediATM Network direct charging and ATM deployment arrangements

1. DEFINITIONS

This submission uses the following definitions.

TERM	MEANING
ACCC	Australian Competition and Consumer Commission.
Access Regime	The Access Regime for the ATM System, comprising: <ul style="list-style-type: none"> • the Access Code developed by APCA; and • the access regime imposed by the RBA under the <i>Payment Systems (Regulation) Act 1998</i>.
Acquirer	An institution that acquires an ATM transaction.
ADI	Authorised deposit-taking institutions.
Agreements	The [CONFIDENTIAL INFORMATION DELETED] year Master Services Agreement, the CMS Agreement, and the CIS Agreement.
APCA	The Australian Payments Clearing Association.
Applicants	The parties listed in Schedule 1.
ATM Deployment Arrangements	Arrangements between Cuscal and all other Members (including Future Members) about the deployment of ATMs in the rediATM Network.
ATM Deployment Rules	Those rediATM Rules which deal with the deployment of ATMs in the rediATM Network.
Cashcard	Cashcard Australia Limited
Cashcard Authorisation	The application for authorisation lodged by Cashcard Australia Limited and Bank of China (Australia) limited in respect of a 'Feesmart' joint venture agreement.
CECS	Consumer Electronic Clearing System.
CIS Agreement	Card Issuer Services Agreement, which is a [CONFIDENTIAL INFORMATION DELETED] year agreement that a Member who is an Issuer must enter into with Cuscal (as the owner and operator of the rediATM Network) in order to join the rediATM Network and be provided services by Cuscal.
CMS Agreement	A Cash Management Services Agreement, which is a [CONFIDENTIAL INFORMATION DELETED] year agreement that a Member who is an Acquirer must enter into with Cuscal (as

TERM	MEANING
	the owner and operator of the rediATM Network) in order to join the rediATM Network and be provided services by Cuscal.
Cuscal	Cuscal Limited.
Cuscal/NAB Agreement	The agreement between NAB and Cuscal pursuant to which NAB has requested to be admitted, and Cuscal has agreed to admit NAB, as an Issuer, Acquirer and Deployer, to participate as a Member of the rediATM Network.
Deployer	The independent owner / operator of an ATM.
Direct Charge	The element of the RBA's reform package providing Acquirers with the ability to charge cardholders directly for ATM transaction services, including withdrawals and balance enquiries, with any charge disclosed to the cardholder before he or she proceeds with the transaction.
Foreign Cardholders	Cardholders of Issuers who are not Members.
Future Member	A future member of the rediATM Network. For the purpose of the authorisation application a Future Member will <u>not</u> include Commonwealth Bank of Australia Limited, Westpac Banking Corporation Limited, Australian and New Zealand Banking Corporation Limited, Cashcard Australia Limited, Customers Ltd or any of their related bodies corporate. The Applicants undertake to seek prior separate authorisation if any of the above organisations seek to participate in the rediATM Network.
Issuer	The institution that issues an ATM card to a cardholder.
Joint Study	The RBA and the ACCC's study of interchange fees.
Maximum Foreign Direct Charge Arrangements	Arrangements between Cuscal and all other Members (including Future Members) to not charge Foreign Cardholders a Direct Charge which exceeds a specified maximum Direct Charge for the supply of ATM transaction services at a rediATM.
Members	rediATM Network members.
NAB	National Australia Bank Limited.
NAB Network	The ATM network operated by NAB.
No Direct Charge Arrangements	Arrangements between Cuscal and the Members (including Future Members) to not directly charge Member Issuers' cardholders for the supply of ATM transaction services at a rediATM.
Proposed Arrangements	The arrangements for which interim and final authorisation is sought under this application.
RAC	rediATM Advisory Council.
RBA	Reserve Bank of Australia.
RBA Consultation Paper	The RBA's paper "Access Regime for the ATM System: a consultation document", published in December 2008.

TERM	MEANING
rediATM Network	The subnetwork that Cuscal owns and operates pursuant to the Access Regime, under the "rediATM" brand (formerly known as the rediteller network).
rediATM Rules	Detailed rules which deal with the operation of the rediATM Network
rediATM Scheme	The cooperative approach and mechanism under the Agreements and the rediATM Rules, by which the rediATM Network is operated.
Refusal of Discount to Foreign Cardholder Arrangements	Arrangements between Cuscal and all other Members (including Future Members) to refuse to give a discount to a Foreign Cardholder in relation to the supply of ATM transaction services at a rediATM.
Reserved Sites	Sites at which NAB presently intends to deploy NAB ATMs within 18 months of the date of the Cuscal/NAB Agreement.
Retail ATM Markets	Local markets for the supply of ATM transaction services to ATM cardholders.
Retail Banking Market	The markets for retail banking services, as defined in the ACCC's public competition assessment of the proposed acquisition of BankWest and St Andrew's Australia by Commonwealth Bank of Australia.
Subnetwork Exception	The exception to the abolition of bilateral interchange fees paid by Issuers to Acquirers for the provision of ATM services under the Access Regime, that applies where the interchange fee is being paid by a participant that is a member of an ATM subnetwork to another member of that subnetwork, and the fee is the common interchange fee payable between the members of the subnetwork.
TPA	<i>Trade Practices Act 1974 (Cth).</i>
TPA Exemption	The exemption to the <i>Payment Systems (Regulation) Regulations 2006</i> , introduced on 13 March 2009, which provides for an exemption from Part IV of the TPA for anything done in accordance with the Access Regime.
Wholesale ATM Market	The national wholesale market for the deployment and operation of ATMs.

2. INTRODUCTION

2.1 Application for authorisation

This submission is made by Cuscal Limited (**Cuscal**) and the parties listed in Schedule 1 (collectively, the **Applicants**) in support of an application for authorisation pursuant to section 88(1) of the *Trade Practices Act 1974 (Cth)* (**TPA**).

Authorisation is sought to make and give effect to direct charging and ATM deployment arrangements that may, but for an authorisation, be regarded as containing provisions

which may contravene sections 45, 47, 44ZZRF, 44ZZRG, 44ZZRJ and/or 44ZZRK of the TPA (the **Proposed Arrangements**).

The Proposed Arrangements are described in more detail in section 6 below.

In lodging the applications to which this submission is annexed, the Applicants do not concede that the Proposed Arrangements contravene the TPA, but wish to have the certainty and protection afforded by an authorisation.

The Applicants seek authorisation for a period of 5 years.

The Applicants also seek interim authorisation, as set out in part 3 below.

2.2 Applicable legislation

The Applicants note that the amendments to the TPA introduced by the *Trade Practices Amendment (Cartel and Other Measures) Act 2009* (Cth) that are relevant to this submission took effect from 24 July 2009.

Accordingly, this submission has been prepared on the basis of the law as amended by the *Trade Practices Amendment (Cartel and Other Measures) Act 2009* (Cth).

2.3 Confidentiality

This submission includes certain commercially confidential information. Disclosure of that information could result in material financial loss and prejudice to the competitive position of the Applicants. The Applicants request that this information be kept confidential by the ACCC and be excluded from the register kept by the ACCC in accordance with section 89(5) of the TPA.

The Applicants authorise the ACCC to disclose confidential information to the Reserve Bank of Australia (RBA) only. In addition, the Applicants authorise the ACCC to discuss the confidential information set out at subparagraphs (a) and (b) on page 35 of this submission, with those entities identified in those subparagraphs.

For convenience, the confidential information is indicated by the use of bold red square parentheses ([**CONFIDENTIAL**]) around confidential text in the confidential version of the submission. This information has been deleted and replaced with '[**CONFIDENTIAL INFORMATION DELETED**]' in the non-confidential version of the submission provided to the ACCC.

The Applicants request that only the public version of this submission be placed on the ACCC's public register.

3. APPLICATION FOR INTERIM AUTHORISATION

3.1 Application for interim authorisation

The Applicants seek interim authorisation as a matter of urgency.

Pursuant to section 91(2)(d) of the TPA, the Applicants seek interim authorisation of the Proposed Arrangements, specifically:

- the No Direct Charge Arrangements;
- the Maximum Foreign Direct Charge Arrangements;
- the Refusal of Discount to Foreign Cardholder Arrangements; and
- the ATM Deployment Arrangements.

The Applicants seek interim authorisation as soon as possible, and in any event, from the date on which the ACCC decides whether to grant interim authorisation until such time as the ACCC makes a final decision on the application for authorisation.

For the purposes of the application for interim authorisation, the Applicants rely on the description of the conduct sought to be authorised (section 6), the description of the relevant markets (section 7), the counterfactual analysis (section 8) and the description of public benefits and detriments (sections 9 and 10) set out elsewhere in this submission.

Section 3 of this submission is provided in support of that application for interim authorisation.

The Applicants note that the granting of interim authorisation has no effect on the ACCC's due consideration of the application for final authorisation.

3.2 Factual context for application for interim authorisation

Stated briefly, the factual background giving rise to the Applicants' need to seek interim authorisation is as follows.

The RBA's recent reforms (as outlined in section 4.3 below) and recent mergers between Westpac and St. George and between Commonwealth Bank and BankWest have had the effect that larger ATM networks have significantly increased in size, and now have significantly more ATMs than the Applicants, which they can offer to cardholders direct charge-free. This means that the ATM network footprint required to compete effectively with these large ATM networks has significantly expanded over a short period.

[CONFIDENTIAL INFORMATION DELETED]

This factual context is relevant to the consideration of the principles addressed in the following section of this submission.

3.3 Principles governing decision whether to grant interim authorisation

General principles

The Applicants acknowledge that it is "unwise, if not impossible" to attempt to define all relevant principles that govern the grant of interim authorisation, as "much depends on the facts of the particular case, the urgency of the occasion and the conduct of the application by the parties".¹

This section of the submission addresses some of the key factors that the Australian Competition Tribunal and the ACCC have previously taken into account when considering applications for interim authorisation.

Likely effect of arrangements sought to be authorised

The Applicants acknowledge that a key purpose of the TPA is, as reflected in the objects set out in s2 of the TPA, "to enhance the welfare of Australians through the promotion of competition", and that, since the policy underlying the TPA is opposed to arrangements that lessen competition, interim authorisation is less likely to be granted to agreements that would be "highly anti-competitive".²

The Proposed Arrangements are not "highly anti-competitive"; rather, they are likely to be significantly pro-competitive (as discussed in this submission) and immediately so. As such, the Proposed Arrangements would not be contrary to the policy underlying the TPA.

International Air Transport Association and Alitalia Linea Aerea Italiana SPA (1985), 40-537 at 46,336.

² ACCC, *Guide to Authorisations*, March 2007, at [6.8].

Impact on the relevant markets

The Applicants recognise that the ACCC is less likely to grant interim authorisation where the arrangements for which authorisation is sought would have a permanent effect on the competitive dynamics of the relevant markets, or would have the effect of preventing the markets from returning to the state they were in, pre-interim authorisation, if the ACCC decided not to grant final authorisation. The Applicants further recognise that the ACCC is likely to be more inclined to grant interim authorisation where interim authorisation is likely to maintain the status quo.

A more detailed consideration of the relevant markets is set out in section 7 below; however, it is unnecessary to analyse those markets in detail here, as the Applicants submit that interim authorisation of the Proposed Arrangements would be likely to have little, if any, consequence for participants in the Australian ATM system other than Members and their cardholders.

Should interim authorisation be granted for the Proposed Arrangements, NAB will join the rediATM network. This will provide Members, their cardholders and banking customers more generally with a number of benefits, which are discussed in detail elsewhere in this submission. Should final authorisation not be granted, there is little downside because the arrangements can be easily unwound. NAB would cease participating in the network and the current Members would return to operating on the more limited, existing basis on which the rediATM Network is currently operating.

Further, the characteristics of the markets themselves mean that the Proposed Arrangements are unlikely to have a lasting impact on the market if interim authorisation is granted, but final authorisation is denied. In particular, the rediATM Network of ATMs accounts for approximately only 5% of all ATMs in Australia, and the NAB Network accounts for approximately only 6% of all ATMs. In the period during which any interim authorisation is in place, both networks will remain subject to competitive pressure from those ATM networks with a larger ATM footprint, and the operations of other financial institutions.

Further, the recent and rapid changes to the regulatory and competitive environment, as set out above, mean that the likely effect of interim authorisation would be to preserve the status quo, by preserving the Applicants' ability to compete, and enabling the rediATM Network to retain existing Members and ATM cardholders.

Accordingly, interim authorisation is needed to preserve the competitive status quo while the ACCC considers the application for final authorisation. Interim authorisation is not likely to have a significant impact on the participants in any of the relevant markets, and therefore would not have a lasting impact on the relevant markets themselves if interim authorisation was granted but final authorisation was denied.

Possible harm to the Applicants from denial of interim authorisation

The Applicants acknowledge that one of the factors that the ACCC will take into account when considering an application for interim authorisation is the likely harm to the Applicants if that application is denied. The Applicants submit that they are likely to suffer substantial and immediate detriment in the event that the application for interim authorisation is denied.

This harm would arise because the Proposed Arrangements are necessary to enable the Applicants to address their immediate and pressing need to respond to their changing competitive environment, as outlined above.

The Applicants submit that the denial of interim authorisation would cause immediate, direct and irreparable harm to the Applicants, as interim authorisation is necessary to ensure the very efficacy and viability of the rediATM Network during the ACCC's consideration of the application for final authorisation. In particular, it is necessary for the

Applicants to be able to engage in the conduct contemplated by the Proposed Arrangements as soon as possible, in order to:

- give proper effect to the RBA's reforms, which have already come into effect, including the Subnetwork Exception (which raises the possibility of double charging of cardholders); and
- continue to increase the efficiency of the rediATM Network in the period while the ACCC considers the Applicants' application for final authorisation.

If interim authorisation is not granted, the Applicants will lose competitiveness during the approximate 6 month period which might be required in order for the ACCC to make its decision on final authorisation. In particular, without the protection afforded by interim authorisation, existing Members and NAB will lose cardholders, and as a result, are likely to lose retail banking customers more generally, as ATM transaction services are an important driver of the retail banking relationship. If this occurred, it would likely be impossible for the Members to win back cardholders and retail banking customers, and so the damage to the Applicants' competitive positions during this period would likely be irreversible.

It is also likely that, as a result of not being able to develop the NAB and rediATM Networks to a scale adequate to compete effectively with the ATM networks with a larger footprint, the rediATM Network would face the risk of losing both existing and potential future Members, as discussed above. It would be impossible in the present competitive environment for the rediATM Network to rebuild its membership base.

Should the rediATM Members lose cardholders and Members begin to leave the rediATM Network, this is likely to have a spiral effect, undermining the competitiveness of the rediATM Network. As more Member ATMs leave the network, the network becomes less attractive for existing Members and their cardholders, as fewer ATMs are available. In turn, more cardholders are likely to become disgruntled and complain to their issuing Members. This in turn drives Members to seek alternative networks, fuelling further diminution of the network.

Interim authorisation will halt this spiral effect and preserve the status quo until a final determination has been reached. The Applicants stand to suffer direct, immediate and irreparable harm if interim authorisation is denied, or is not granted in a reasonably short time period.

Urgency

The Applicants recognise that the ACCC will, in considering whether to grant interim authorisation, consider whether it would have been realistically possible for the Applicants to lodge an application for authorisation in advance of the implementation of the Proposed Arrangements such that an application for interim authorisation would have been unnecessary.

As set out in the preceding section, this application for interim authorisation is urgent, in light of the harm that the Applicants have already suffered in the context of recent competitive and regulatory developments, and the increased harm they are likely to suffer if they are not able to implement the Proposed Arrangements urgently.

The Applicants submit that the timing of the RBA's reforms limited the ability of the Applicants to lodge an application for authorisation at an earlier time (in order to obviate the need for interim authorisation). In particular, the RBA designated the Access Regime on 23 February 2008, including the Subnetwork Exception, but the RBA's reforms only came into effect on 3 March 2009, and the TPA Exemption did not come into effect until 13 March 2009. The TPA Exemption does not exempt the arrangements outlined in this submission. Only once the scope of the TPA Exemption was known could the Applicants properly assess whether there was any need to seek authorisation and, if so, in relation to which proposed arrangements. The Applicants note that Cuscal was, in the period

between the release of the RBA's Consultation Paper on 8 December 2008 and the announcement of the TPA Exemption, engaging with the ACCC on the issue of direct charging in the rediATM Network.

From NAB's perspective the change in customer behaviour following introduction of the reforms highlighted the need for NAB to rapidly expand the number of ATMs available to its customers. NAB then considered a number of commercial solutions and was attracted to the proposition of joining the Cuscal operated rediATM Network. The commercial negotiations between Cuscal and NAB in relation to NAB's entry to the rediATM Network have only recently been finalised. In these circumstances, the Applicants are only now in a position to apply for authorisation.

It is also noted that this application is submitted at this time in order to obtain authorisation under the amended provisions of the TPA (with respect to cartel conduct), which only came into force on 24 July 2009.

Possible harm to other parties

Another factor relevant to the ACCC's decision whether to grant interim authorisation to the Proposed Arrangements is whether the Proposed Arrangements would cause harm to parties other than the Applicants – for example, to customers or competitors of the Applicants – if interim authorisation was granted or denied.

Competitors

As outlined above, the grant of interim authorisation of the Proposed Arrangements would be likely to preserve the status quo, and would be unlikely to have any significant impact on the relevant markets. Accordingly, the Applicants submit that it is unlikely that the Proposed Arrangements would have any impact on, let alone cause harm to, competitors of the Applicants relative to the status quo.

There are approximately 27,108 ATMs in Australia³, of which:

- Commonwealth Bank owns approximately 4000 (15%);
- Westpac owns approximately 2800 (10%);
- ANZ owns approximately 2500 (9%);
- National Australia Bank owns 1,651 (6%);
- approximately 5500 (20%) are in the Cashcard network;
- 1440 (5%) are in the rediATM Network (of which, Cuscal owns **[CONFIDENTIAL INFORMATION DELETED]** ATMs);
- approximately 5400 (20%) are in the Customers Ltd network; and
- the remainder (approximately 3817 (14%)) are owned by independent Deployers.

Accordingly, it is likely that, following NAB's entry into the rediATM Network, the rediATM Network's combined share of total Australian ATMs would be approximately 11%.

Accordingly, competitors of the Applicants are unlikely to be significantly affected by the outcome of the application for interim authorisation, regardless of what that outcome is.

Data from APCA – as at June 2009 and publicly available information from company websites

Consumers

Further, the Applicants submit that interim authorisation would result in a benefit to, rather than inflict harm on, cardholders of the NAB and rediATM Networks, as consumers of ATM transaction services, given that interim authorisation would enable these consumers to have access to a larger network of Direct Charge-free ATM services. If interim authorisation was not granted, these consumers would not be able to benefit from the increased scale and coverage of the rediATM Network, and would be likely to incur higher ATM fees as a result (rather than benefitting from increased Direct Charge-free ATM access).

Further, the Applicants note that a concern has arisen, since the Cuscal/NAB Agreement was announced, that NAB cardholders and cardholders of Members may experience confusion as to when that agreement takes effect. Accordingly, it is possible that during the period between execution of and giving effect to that agreement (i.e. satisfaction of the conditions precedent, including the grant of interim authorisation), NAB cardholders will use ATMs in the rediATM Network, and cardholders of Members of the rediATM Network will use ATMs in the NAB Network, expecting not to be charged a fee (although such a fee will be payable, absent interim authorisation). This harm would not arise were interim authorisation granted.

Accordingly, consumers are likely to suffer harm if interim authorisation is not granted, and to experience significant benefit if interim authorisation is granted.

Possible benefit or detriment to the public

The Applicants note that a further factor that the ACCC is likely to take into account when considering an application for interim authorisation is any benefit or detriment to the public that is likely to arise as a result of a decision to grant or deny interim authorisation, assessed as at the time of considering the request for interim authorisation. The Applicants recognise, however, that, in making its determination on interim authorisation, the ACCC is not required to determine whether or not the Proposed Arrangements would satisfy the authorisation test under section 90 of the TPA.

The Applicants submit that interim authorisation of the Proposed Arrangements would give rise to benefits to the public, as outlined above, and in particular, would:

- enable more cardholders to access Direct Charge-free transactions at a greater number of ATMs, with a broader coverage than is currently available under either the rediATM Network or the NAB Network;
- allow Foreign Cardholders to access rediATMs with Direct Charges capped at the Maximum foreign Direct Charge;
- facilitate the ongoing viability of the rediATM Network during the period in which the ACCC undertakes its consideration of the final authorisation decision (as outlined above, there is a very real risk that, in the absence of interim authorisation, the rediATM Network will continue to lose Members); and
- in turn, ensure that Members are not placed at a competitive disadvantage in providing ATM services or retail banking services more generally as a result of the recent reforms to the ATM system.

The RBA has acknowledged that the direct charge arrangements that operate in sub-networks serve to increase competition in the provision of ATM services, increase the transparency of the price of ATM services and promote choice and the provision of ATM services in areas that do not currently have ATMs.⁴ The ACCC has previously cited the

Reserve Bank of Australia, *Access Regime for the ATM System* February 2009, pp4-5

RBA's determination of the benefits of fee-free arrangements in its consideration of similar arrangements.⁵

The RBA has recognised, in considering these arrangements, that the RediATM Scheme, including NAB's participation, is consistent with the spirit of the RBA's Access Regime, introduced following the reforms described below.⁶

Accordingly, the Applicants submit that interim authorisation would be likely to provide benefits, and no detriment, to members of the public.

3.4 Conclusion on application for interim authorisation

The Applicants submit that, in light of the factors set out in this section 3, the ACCC can be satisfied that it is appropriate to grant interim authorisation of the Proposed Arrangements.

4. BACKGROUND TO THE AUSTRALIAN ATM SYSTEM AND REFORMS

4.1 The ATM network and participants

This section provides a brief summary of the participants in an ATM network and the identity of those networks in Australia.

There are 4 participants in an ATM transaction:

- (a) the cardholder or customer;
- (b) the institution that issues the card to the cardholder (**Issuer**);
- (c) the institution that acquires the ATM transaction (**Acquirer**); and
- (d) the independent owner / operator of the ATM (**Deployer**).

Generally speaking:

- The major banks act as Issuers, Acquirers and Deployers on a national basis. They have extensive ATM networks, with the primary objective of servicing their own cardholders.
- Regional banks act as regional Issuers, Acquirers and Deployers, with ATMs located around their cardholder base.
- Institutions such as credit unions and building societies are generally smaller Issuers and Deployers. They have smaller numbers of ATMs which are focussed on servicing their cardholders. Most of these institutions are members of 'subnetworks', such as the rediATM network.
- There are independent Deployers who are not financial institutions, but whose sole business is to provide ATM services.

There are approximately 27,108 ATMs in Australia⁷, of which:

- Commonwealth Bank owns approximately 4000 (15%);

⁵ Australian Competition and Consumer Commission, Final determination, application for Authorisation lodged by Cashcard Limited and Bank of China Limited (4 June 2009), at 6.61.

Reserve Bank of Australia, letter to Cuscal Limited, dated 13 July 2009.

⁷ Data from APCA – as at July 2009 and publicly available information from company websites.

- Westpac owns approximately 2800 (10%);
- ANZ owns approximately 2500 (9%);
- National Australia Bank owns 1,651 (6%);
- approximately 5500 (20%) are in the Cashcard network;
- 1440 (5%) are in the rediATM Network (of which, Cuscal owns **[CONFIDENTIAL INFORMATION DELETED]** ATMs);
- approximately 5400 (20%) are in the Customers Ltd network; and
- the remainder (approximately 3817 (14%)) are owned by independent Deployers.

4.2 The Australian ATM system before 3 March 2009

The following description of the Australian ATM system, as it operated prior to reforms which were implemented on 3 March 2009, is taken largely from the Reserve Bank of Australia's (RBA) paper "Access Regime for the ATM System: a consultation document", published in December 2008 (**RBA Consultation Paper**).

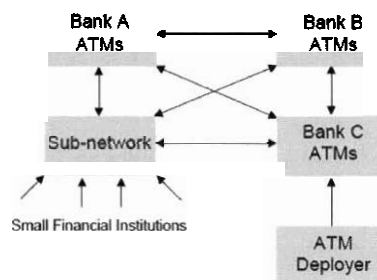
The Australian ATM system is comprised of a number of ATM networks, linked together through a series of bilateral agreements. Most of these individual networks are owned by large banks and were initially established to provide their customers with access to cash withdrawals and some account management functionality.

There are also two 'subnetworks', operated by Cashcard and Cuscal, which were initially set up to serve building societies and credit unions (respectively), but now have wider membership. These subnetworks effectively link together ATMs of a large number of smaller institutions so that those institutions can provide their customers with access to a larger network of ATMs without the significant investment required to establish the physical infrastructure to expand their own ATM network.

In addition, in recent years, a large number of ATMs have been deployed by independent Deployers. The ATMs owned by these independent Deployers are also linked into the ATM system, typically through one of the financial institutions.

Figure 1 provides a stylised representation of the Australian ATM system.

Figure 1



When ATMs were first introduced in Australia in the early 1980s, cardholders could only use the ATMs of their own financial institution. Gradually, however, these individual networks were connected so that bank customers could use their ATM card at a wider range of ATMs. By the 1990s, these interconnections had progressed to the point where most cardholders had universal access to ATMs – most ATM cards can now be used in any ATM in Australia, regardless of who owns the ATM.

When cardholders use ATMs other than those provided by their own financial institution, cross-institution clearing and settling is required. This is done through the Consumer Electronic Clearing System (**CECS**), which is used to settle the exchange of value between Issuers and Acquirers.

The interconnection of ATM networks was facilitated through bilateral agreements between network owners that allow each institution's cardholders to use the other institution's ATMs. Among other things, these bilateral agreements provided for the payment of 'interchange fees' from the Issuer to the Acquirer in compensation for the service that the Acquirer provided to the Issuer's cardholder.

Since interchange fees were set through bilateral negotiation they were typically confidential to the parties to the agreement. In 2000, however, the RBA and the ACCC undertook a study of interchange fees (**Joint Study**), including those for ATMs, which found that interchange fees for a cash withdrawal varied between \$0.80 and \$1.30, averaging around \$1.00. There had been little change in these fees by the time of the RBA Consultation Paper.

As interchange fees were a cost to the Issuer, many financial institutions charged their customers a 'foreign fee' when they used an ATM belonging to another financial institution (or other third party). Those fees were, however, typically significantly higher than interchange fees. At the time of the RBA Consultation Paper, the four largest banks charged a 'foreign fee' of \$2.00, significantly higher than the average of \$1.35 at the time of the Joint Study.

As interchange fees had not changed since the Joint Study, the increase in foreign fees represented a substantial rise in the margin earned by Issuers over interchange fees. Many smaller financial institutions, however, chose to absorb the cost of the interchange fee for their customers, effectively providing them with fee-free access to a large number of ATMs.

As acknowledged by the RBA, the ability to use ATMs of other networks is an important public benefit, providing cardholders with choice and convenience, as well as helping promote competition between financial institutions. Of the 850 million cash withdrawals from ATMs undertaken in the year to June 2008, almost half were conducted at ATMs not owned by the cardholder's financial institution. This is despite the fact that, as noted above, many banks charged their customers a "foreign fee" for using such ATMs.

4.3 RBA Reforms

As a result of, among other things, the perceived lack of competitive pressure on interchange fees, the RBA and many industry participants saw a need to improve arrangements in the Australian ATM system, and began working on a package of reforms.

The key elements of the reform package included:

- with two exceptions, the abolition of bilateral interchange fees paid by Issuers to Acquirers for the provision of ATM services to the Issuers' cardholders;
- providing Acquirers with the ability to charge cardholders directly for ATM withdrawals, with any charge disclosed to the cardholder before he or she proceeds with the withdrawal (**Direct Charge**); and
- the introduction of an Access Code setting out the conditions that new entrants to the ATM system are required to meet, the rights of new entrants and the requirements on current participants in dealing with new entrants.

In the RBA Consultation Paper, the RBA stated that the reforms are aimed at:

- making the cost of cash withdrawals more transparent to cardholders and placing downward pressure on the cost of ATM withdrawals;

- helping ensure continued widespread availability of ATMs by creating incentives to deploy ATMs in a wide variety of locations, providing consumers with choice and convenience. It noted that without a change in the current arrangements, the number of ATMs was likely to decline over time as non-bank Deployers find it uneconomic to install and maintain ATMs;
- promoting competition between financial institutions; and
- making access less complicated for new entrants, and therefore strengthening competition.

The reforms, which came into effect on 3 March 2009, were implemented through the ATM Access Code developed by APCA and the RBA's Access Regime imposed by the RBA under the *Payment Systems (Regulation) Act 1998*.

On 13 March 2009, the *Payment Systems (Regulation) Regulations 2006* were amended to provide for an exemption from Part IV of the TPA for anything done in accordance with the Access Regime prescribed by the RBA (**TPA Exemption**).

Relevantly, the Access Regime abolishes bilateral interchange fees⁹ paid by Issuers to Acquirers for the provision of ATM services, with two exceptions:

- (a) where the interchange fee is being paid by a participant with a one way arrangement to access one, and only one, other participant's ATMs and the fee is paid in respect of that arrangement; or
- (b) where the interchange fee is being paid by a participant that is a member of an ATM subnetwork⁹ to another member of that subnetwork, and the fee is the common interchange fee payable between the members of the subnetwork (**Subnetwork Exception**).

As a result of the TPA Exemption, the setting and charging of interchange fees in subnetworks is not subject to Part IV of the TPA.

However, while the RBA reforms facilitate Direct Charging, they do not compel ATM owners to impose Direct Charges on customers for use of ATMs. As such, the imposition of Direct Charges appears not to be "in accordance with the Access Regime" and therefore not to be covered by the TPA Exemption. Arrangements with respect to Direct Charges thereby remain subject to Part IV of the TPA.

4.4 The ATM system after 3 March 2009

The Australian ATM system currently operates in the same way as it did before 3 March 2009, subject to the important differences described below.

As was the case before 3 March 2009, most financial institutions do not charge their customers for use of their own ATMs. However, with the abolition of interchange fees, there has been a significant change to the pricing of ATM transactions conducted through a foreign ATM (that is, an ATM not owned by the cardholder's Issuer).

Previously, when a cardholder used a foreign ATM, the cardholder's Issuer paid an interchange fee to the Acquirer, and the cardholder, in turn, paid a foreign fee to the Issuer.

An interchange fee is defined in the Access Regime for the ATM System as "a wholesale fee which is payable by an ATM Issuer to an ATM Acquirer when a cardholder of the ATM Issuer undertakes an ATM transaction that is acquired by the ATM Acquirer"

An ATM subnetwork is defined in the Access Regime for the ATM System as "a component of the ATM system for which access is provided on a multilateral basis, rather than by bilateral negotiation, and for which there is a common, multilateral interchange fee".

Now, the cardholder pays a Direct Charge to the Acquirer. The Applicants understand that Direct Charges presently vary between Acquirers and also depending on the location of the ATM, but are generally in the order of approximately \$1.50 to \$2.00.

The Applicants understand that some smaller Issuers have entered into arrangements with larger networks to provide fee-free access or access at a discounted Direct Charge to ATMs for their customers.

Interchange fees continue to be paid by Issuers in subnetworks, such as the Cashcard network and the rediATM network, to Acquirers who are members of those subnetworks, in accordance with the Subnetwork Exception. In light of those interchange fees, the subnetworks operate on a Direct Charge-free basis, with cardholders of members of those subnetworks not being charged a Direct Charge for using another member's ATM. (The Direct Charge-free aspect of these arrangements is one of the subjects of this application for authorisation.) Acquirers who are members of subnetworks, however, charge Direct Charges to cardholders of Issuers who are not members of the subnetwork as there are no interchange fee arrangements in place with Issuers that are not members of the subnetwork.

The Applicants understand that, in some cases, Issuers continue to charge their cardholders a foreign fee for use of a foreign ATM.

5. THE APPLICANTS

5.1 Cuscal Limited

Cuscal is a wholesale provider of transactional banking, liquidity and capital management products to specialist financial service retailers.

Relevant to this application for authorisation, Cuscal provides wholesale and transactional services to the mutual ADI sector, including ATM management services

Cuscal has a number of roles in the Australian ATM system:

- (a) it owns [CONFIDENTIAL INFORMATION DELETED] ATMs;
- (b) it acquires transactions from its own ATMs;
- (c) it is a direct participant in CECS;
- (d) it owns and operates a subnetwork, under the "rediATM" brand (**rediATM Network**) (formerly known as the rediteller network), within which it supplies a range of services to rediATM Network members (**Members**), including:
 - (i) acquiring transactions from Members' ATMs;
 - (ii) facilitating the issuing, by Members, of debit cards to their respective cardholders using Cuscal's membership with Visa International;
 - (iii) switching, clearing and settling transactions;
 - (iv) providing access to the infrastructure (including computer equipment, computer software and related equipment) that enables the connectivity, exchange of information, authorisation and reconciliation of transactions between Members and between Members and other financial institutions; and
 - (v) providing access to Cuscal's interchange links with the major financial institutions.

Cuscal launched the "rediATM" brand in 2008 to bring all Members of the network together under a single brand. Cuscal's ATMs form part of, and Cuscal is a Member of, the rediATM Network.

Although Cuscal does not currently operate as an Issuer, it may become one in the foreseeable future.

5.2 Members

A list of current and presently proposed future Members is provided in Schedule 1 (all Members listed in Schedule 1 are also Applicants).

While the vast majority of the 94 current Members are credit unions which are Issuers, Acquirers or both Issuers and Acquirers, the rediATM Network is not limited to credit unions and Cuscal receives expressions of interest in joining the subnetwork from building societies and other Issuers and ATM Deployers. Members, typically, have only a limited geographical presence, for example within a particular State or regional area within a State. A small number of Members have Australia-wide operations, largely as a result of mergers between credit unions.

The existing Members have joined the rediATM Network, among other reasons, because:

- they do not wish to directly participate in the CECS interchange; and
- they wish to offer their cardholders access to a larger network of ATMs.

5.3 The Existing rediATM Network

The rediATM Network is presently a collaboration between 52 ATM owners operating approximately 1,440 ATMs around Australia and 94 card issuing institutions, with more than 3.5 million cardholders.¹⁰

rediATMs are presently spread across metropolitan and rural areas of Australia, as follows¹¹:

[CONFIDENTIAL INFORMATION DELETED]

The table below illustrates the distribution of ATM ownership among existing Members of the rediATM Network. The vast majority of those Members own only a small number of ATMs. The table indicates that [CONFIDENTIAL INFORMATION DELETED].

Distribution of rediATMs per owner

[CONFIDENTIAL INFORMATION DELETED]

rediATMs are located in branches operated by Members, shopping centres and central business districts and other "high street" locations.

The rediATM Network serves as an entry point for new card issuing and acquiring institutions by offering access to the Australian payments system without the need for those institutions to negotiate individual interchange agreements (as was the case prior to the RBA ATM reforms). Cuscal, through the rediATM Network, provides Members with access to each other's ATMs and interchange access to participants in the Australian payments system who are not members of the rediATM Network.

¹⁰ Some institutions are both ATM owners and card issuers. The estimated number of cardholders here includes Cuscal but excludes NAB.

¹¹ Cuscal management.

Each Member who is an Acquirer acquires ATM transactions in its own right and uses the rediATM Network to provide customers with access to ATMs beyond the scope of its own, often regionally based, ATM networks. Similarly, each Member who is an Issuer issues cards in its own right, and offers its cardholders access to all ATMs in the rediATM Network.

ATM transactions between Members are cleared and settled within the rediATM Network according to agreements between Cuscal and each Member. The agreements, among other things, provide for the payment of interchange-type fees known as "rediATM Access Fees" by Member Issuers to Cuscal and by Cuscal to Member Acquirers. (The imposition and setting of the rediATM Access Fees are covered by the TPA Exemption.)

Where an ATM transaction involves a cardholder of a direct participant in the CECS and the ATM of a Member, Cuscal represents the Member to the CECS, the counterparty settles with Cuscal and Cuscal in turn settles with the Member. Likewise, where a Member's cardholder uses an ATM belonging to a direct participant in the CECS, Cuscal is treated as the counterparty in the transaction and the Member settles with Cuscal.

5.4 National Australia Bank

Cuscal and National Australia Bank Limited (**NAB**) have executed an agreement by which NAB has requested to be admitted, and Cuscal has agreed to admit NAB, as an Issuer, Acquirer and Deployer, and to participate as a Member of the rediATM Network (**the Cuscal/NAB Agreement**).

It is a condition precedent to the operation of the Cuscal/NAB Agreement that, among other things:

- (a) NAB and Cuscal have obtained all regulatory approvals (including ACCC approval) required for the operation of the rediATM Scheme (as to which see further below) and NAB's participation in the rediATM Network; and
- (b) Cuscal obtains interim authorisation for the rediATM Scheme, and NAB's participation in the rediATM Scheme, from the ACCC.

NAB is a financial services organisation that provides a comprehensive and integrated range of financial products and services. In Australia, NAB provides retail, business, private banking and wealth management services.

NAB presently owns and operates approximately 1,651 ATMs around Australia and has over 2.5 million cardholders. NAB's ATMs are spread across metropolitan and rural areas of Australia as follows:

[CONFIDENTIAL INFORMATION DELETED]

NAB's ATMs are located in NAB branches, shopping centres, central business districts, in other "high street" locations and in some APCO and Coles Express service stations.

5.5 The rediATM Network with the addition of NAB

Subject to the authorisation of the Proposed Arrangements, it is proposed NAB will become a Member of the rediATM Network.

NAB will operate as an Issuer, Acquirer and Deployer, within the rediATM Network.

NAB is seeking to participate in the rediATM Network in order to access the increased ATM footprint that can be obtained through such participation. NAB's ATM fleet is small relative to its issuing size, when compared with the other major banks in Australia. This means that NAB ATMs are under-represented around Australia, particularly in NSW, SA, ACT, Tasmania and NT, and particularly in rural and regional areas.

Participation in the rediATM Network will allow NAB to access adequate scale and provide appropriate ATM access to its cardholders, at a significantly lower cost than if NAB were to invest itself in an equivalent expansion of the NAB Network.

The Applicants also consider that the existing ATM footprint of the rediATM Network is largely complementary with that of the NAB Network.

From Cuscal's perspective, the same rationale applies for admitting NAB as a participant in the rediATM Network, namely, that the addition of NAB achieves sufficient national scale, cost effectively, in order to compete with other ATM networks. In particular, in order to organically grow their respective networks to a size similar to that achieved by NAB joining the rediATM Network, significant costs would be incurred. **[CONFIDENTIAL INFORMATION DELETED]** For both Cuscal (and the existing Members) and NAB to so expand organically would result in an inefficient duplication of expenditure.

With respect to branding, it is proposed that over time, existing and future ATMs owned/operated by Members other than NAB will carry "rediATM" branding but not any NAB branding. Over time, existing and future NAB ATMs and ATM receipts will carry NAB and "rediATM" co-branding.

If NAB joins the rediATM Network, the total number of rediATMs in the network fleet will be 3,091. The total number of cardholders able to use the rediATM Network will be over 6 million.

The following table shows that the "combined" rediATM Network will be spread across metropolitan and rural areas of Australia.¹²

[CONFIDENTIAL INFORMATION DELETED]

The "combined" rediATM Network will account for approximately 11% of all ATMs available in Australia. The table below illustrates the size of the "combined" rediATM Network compared to other ATM networks.

Institution	Number of ATMs	Percentage of all ATMs in Australia
Commonwealth Bank	4000	15%
Westpac	2800	10%
ANZ	2500	9%
NAB/rediATM Network	3091	11%
Cashcard network	5500	20%
Customers Limited	5400	20%
Independent Deployers	3817	14%

5.6 rediATM Network operating framework

As a general rule, in order to join the rediATM Network and be provided services by Cuscal, each Member must enter into the following agreements with Cuscal (as the owner and operator of the rediATM Network):

¹² Cuscal and NAB management.

- a **[CONFIDENTIAL INFORMATION DELETED]** year Master Services Agreement;
- if the Member is an Acquirer, a **[CONFIDENTIAL INFORMATION DELETED]** year rediATM and Cash Management Services Agreement (**CMS Agreement**); and
- if the Member is an Issuer, a **[CONFIDENTIAL INFORMATION DELETED]** year rediATM Card Issuer Services Agreement (**CIS Agreement**),

(collectively, the **Agreements**).

The Agreements set out the terms of access to the rediATM Network, the services which Cuscal will provide to the Members, and the obligations of Members participating in the rediATM Network.

In addition to the Agreements, Members are required to agree to rules which deal with the operation of the rediATM Network in more detail (**rediATM Rules**) (collectively, **rediATM Scheme**). The rediATM Scheme is a general term used to describe the cooperative approach and mechanism under the Agreements and the rediATM Rules, by which the rediATM Network is operated.

All participants in the rediATM Scheme must abide by the rediATM Rules as they are amended from time to time. The purpose of the rediATM Rules is to establish a common ground for operations that will create an effective, efficient and published platform for the rediATM Scheme.

The rediATM Rules cover matters such as promoting the rediATM Network to cardholders, marketing and brand-related rights and obligations of Members, ATM deployment and technological standards to be met by Members in respect of devices, transaction sets and communications

Cuscal manages and operates the rediATM Scheme in accordance with the terms of the Agreements and the rediATM Rules, in consultation with the rediATM Advisory Council (**RAC**).

The RAC is a representative body of participants in the rediATM Network. It is constituted by representatives of each Member type, with designated voting rights as per the RAC Charter. The RAC has a maximum of 12 Members, including a representative of Cuscal (known as the rediATM Scheme Manager).

The rediATM Scheme Manager manages the day-to-day operation of the rediATM Scheme.

The RAC is expected to meet every 6 to 8 weeks, and discuss issues that are relevant to the industry and the operation of the rediATM Scheme. As the operator of the rediATM Network, Cuscal relies on the consultative role of the RAC in order to better manage the rediATM Network.

The rediATM Rules, as well as any decisions regarding the operation of the network, are made, implemented and enforced by Cuscal, as the owner and operator of the rediATM Network. However, as the rediATM Network is based on a cooperative model, Cuscal consults with and seeks input from the Members of the network, through the RAC, in order to make rules governing, and decisions regarding, the efficient operation of the rediATM Network.

The RAC is responsible for the administration and management of the operations and rules of the rediATM Scheme. In particular, the RAC has responsibility to manage and monitor rediATM Scheme operations, including product development, marketing, cost management, technology, issuer responsibilities and ATM deployment.

Pursuant to the RAC Charter, the RAC's powers and functions presently are:

- (a) to assist Cuscal in administering the rediATM Scheme rules (including as to marketing, branding, technology, cost management and general rules), and recommend amendments if applicable;
- (b) to prescribe the branding and technical requirements of the rediATM Scheme;
- (c) to undertake periodic reviews of, and if necessary recommend amendment to, the specific rules, eg. cost management, marketing and ATM deployment requirements;
- (d) to review the rediATM Scheme fees and ascertain their appropriateness to the need of the RAC in serving the rediATM Scheme. The RAC may recommend to Cuscal to increase the rediATM Scheme fees;
- (e) to address any other matter referred to the RAC by the rediATM Scheme participants if that matter falls within the powers of the RAC or to refer the matter to Cuscal with appropriate recommendations if the matter falls outside the powers of the RAC; and
- (f) to review and approve recommendations and proposals as prepared by the marketing sub-committee.

Once the conditions precedent in the Cuscal/NAB Agreement are satisfied, NAB will become a member of the RAC, with voting rights based on the volume share attributed under the RAC Charter. However, NAB's voting rights are limited to 50% under the RAC Charter, even though its share by volume exceeds 50%.

All rediATM Network participants' voting rights will be recalculated upon NAB's admission to the rediATM Network. That recalculation will be based on share of May 2009 transaction volumes, including NAB transaction volumes as if NAB was a participant in the rediATM Network as at May 2009.

Voting rights of Members serve two purposes:

- (a) to determine Member eligibility for appointment to the RAC; and
- (b) calculation of voting rights percentage if a Member is appointed to the RAC.

Voting rights are generally recalculated on an annual basis to determine Member eligibility for appointment to the RAC.

Only RAC representatives present at a RAC meeting will have the right to vote on the questions considered during that meeting of the RAC.

Once the Cuscal/NAB Agreement becomes operative, RAC approval by special majority (>75% of all votes eligible to be cast) is required for any amendment to the rediATM Rules, save for any changes made by Cuscal, relevantly, to:

- (a) the maximum Direct Charge imposed by Member Acquirers on cardholders of Issuers who are not Members; and
- (b) rediATM branding.

6. CONDUCT FOR WHICH AUTHORISATION IS SOUGHT

6.1 Overview

Authorisation is sought to provide the Applicants (as well as each Future Member¹³ of the rediATM Network) with certainty regarding the following arrangements:

- (a) make and give effect to arrangements between Cuscal and all other Members to not directly charge Member Issuers' cardholders for the supply of ATM transaction services at a rediATM (**No Direct Charge Arrangements**);
- (b) make and give effect to arrangements between Cuscal and all other Members to not charge cardholders of Issuers who are not Members (**Foreign Cardholders**) a Direct Charge which exceeds a specified maximum Direct Charge for the supply of ATM transaction services at a rediATM (**Maximum Foreign Direct Charge Arrangements**);
- (c) refuse to give a discount to a Foreign Cardholder in relation to the supply of ATM transaction services at a rediATM (**Refusal of Discount to Foreign Cardholder Arrangements**); and
- (d) make and give effect to arrangements between Cuscal and all other Members about the deployment of ATMs in the rediATM Network (**ATM Deployment Arrangements**).

Cuscal envisages that a range of other financial institutions may choose to join the rediATM Network in the future. Each Future Member will make and give effect to the No Direct Charge Arrangements, the Maximum Foreign Direct Charge Arrangements, the Refusal of Discount to Foreign Cardholder Arrangements and the ATM Deployment Arrangements. Cuscal seeks that the authorisation extend to those Future Members.

6.2 No Direct Charge Arrangements

The No Direct Charge Arrangements are a necessary element of any viable subnetwork following the RBA's ATM reforms. These arrangements allow the rediATM Network to match the Direct Charge-free structure of those ATM networks with a large ATM footprint.

Without the No Direct Charge Arrangements, there is the potential for Members to charge each other interchange fees as well as charging Members' cardholders directly at the ATM. This creates the possibility of some Members' cardholders being double charged by the imposition of foreign fees by some Member Issuers (in order to at least recover the interchange fees), in addition to the Direct Charges imposed by the Member Acquirer. Such potential double charging is avoided if the No Direct Charge Arrangements are implemented.

The Applicants submit that any requirement not to impose a Direct Charge on a cardholder of a Member Issuer is imposed unilaterally by Cuscal in its capacity as the owner and operator of the rediATM Network and not in its capacity as a Member Acquirer.

The Applicants believe that the No Direct Charge Arrangements do not have the purpose or effect of "fixing, controlling or maintaining" the price charged by the Applicants for ATM services. The arrangements do not fix or control a price because the arrangements necessarily involve a requirement not to charge for ATM services.

¹³ "Future Member" for the purpose of the authorisation will not include Commonwealth Bank of Australia Limited, Westpac Banking Corporation Limited, ANZ Banking Group Limited, Austra an and New Zealand Banking Corporation Limited, Cashcard Australia Limited, Customers Limited or any of their bodies related corporate. The Applicants undertake to seek prior separate authorisation if any of the above organisations seek to participate in the rediATM Network.

The No Direct Charge Arrangements do not restrict the fundamental pricing freedom of participating members but rather merely require them to exercise this freedom in respect of Interchange Fees and retail bank fees rather than through direct charges.

Nonetheless, the Applicants recognise that a possible alternative characterisation is that an agreement not to charge might be regarded as "fixing, controlling or maintaining" price. Accordingly, the Applicants seek authorisation to mitigate any potential risk in relation to the No Direct Charge Arrangements.

Authorisation is sought to the extent that the conduct may be characterised as:

- (a) making or giving effect to a contract or arrangement, or arriving at or giving effect to an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of the TPA, by reason of section 44ZZRD(2) of the TPA; and/or
- (b) making a contract or arrangement, or arriving at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45(2)(a)(ii) and 45(2)(b)(ii) of the TPA.

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This authorisation will allow Cuscal to discuss and agree with other Members, not to impose Direct Charges on cardholders of Member Issuers allowing all Members, who are typically smaller financial institutions, to offer their cardholders access to a larger network of ATMs located around Australia on a Direct Charge-free basis.

6.3 Maximum Foreign Direct Charge

Members of the rediATM Network must agree not to charge a Direct Charge in excess of the Maximum Foreign Direct Charge (subject only to two exceptions described below), to any Foreign Cardholder. Of course, each Member Acquirer is entitled, in its discretion, to charge any Direct Charge up to the Maximum Foreign Direct Charge, to any Foreign Cardholder.

Cuscal, as the owner and operator of the rediATM Network, has to date unilaterally determined the Maximum Foreign Direct Charge to be imposed by Member Acquirers on Foreign Cardholders for the supply of ATM transaction services at rediATMs. These charging arrangements have been incorporated as "requirements" in each Member Acquirer's CMS Agreement.

The Maximum Foreign Direct Charge has presently been set by Cuscal at \$2.00 for a withdrawal and \$1.00 for a balance enquiry. At present, 41% of existing Members charge Foreign Cardholders less than the \$2.00 Maximum Foreign Direct Charge set by Cuscal.

[CONFIDENTIAL INFORMATION DELETED]

The Maximum Foreign Direct Charge Arrangements are intended to protect the competitive position and ensure the economic viability of individual Members and the rediATM Network following the RBA's ATM reforms. These Arrangements are necessary to ensure:

- uniformity of the maximum Direct Charges to Foreign Cardholders across the rediATM Network, while preserving an individual Member's freedom to price below the maximum; and
- that Direct Charges to Foreign Cardholders by Member Acquirers are competitive with Direct Charges imposed by competitors, including the major banks other than NAB and other financial institutions.

However, Cuscal wishes to consult with the Members or Members' representatives on the RAC in relation to the appropriate level at which the Maximum Foreign Direct Charge should be set now and from time to time in the future.

In particular, Cuscal has the right, from time to time, to initiate a review of the Maximum Foreign Direct Charge. Member Acquirers will be advised of such a review and required to co-operate with Cuscal and provide such information and assistance as requested by Cuscal in order to complete the review and determine the appropriate Maximum Foreign Direct Charge.

Once the Cuscal/NAB Agreement becomes operative, in determining the Maximum Foreign Direct Charge, Cuscal must have regard to the competitive market with a view to maintaining rediATM's position as a "high street" brand equivalent to that of the ATM networks operated by the major banks other than NAB.

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[CONFIDENTIAL INFORMATION DELETED] As the Maximum Foreign Direct Charge is a price cap, rather than a price floor, individual Members are still free to compete by offering lower direct charges to Foreign Cardholders.

On one view, the Maximum Foreign Direct Charge Arrangements would not contravene the TPA to the extent that Cuscal and its Members may not be relevantly competitive in relation to the supply of ATM transaction services to consumers.

Alternatively, the Maximum Foreign Direct Charge Arrangements may be viewed as a maximum resale price within the meaning of sections 45(5), 48 and 44ZZR.

However, the Applicants acknowledge that there is a possibility that if Cuscal and its Member Acquirers could be regarded as relevantly competitive in relation to the supply of the Maximum Foreign Direct Charge Arrangements. Accordingly, in order to ensure certainty regarding the arrangements, authorisation is sought to the extent that the conduct might be characterised as:

- (a) making or giving effect to a contract or arrangement, or arriving at or giving effect to an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of the TPA, by reason of section 44ZZRD(2) of the TPA; and/or
- (b) making a contract or arrangement, or arriving at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45(2)(a)(ii) and 45(2)(b)(ii) of the TPA.

6.4 Refusal of Discount to Foreign Cardholder Arrangements

Member Acquirers participating in the rediATM Network agree not to impose a Direct Charge on cardholders of Member Issuers, on the basis that the Member Acquirer instead generates a return on the provision of ATM transaction services to the cardholder by way of an interchange fee ("the rediATM Access Fee") paid to the Member Acquirer by the relevant Member Issuer in respect of the cardholder's transaction.

As stated in section 4.4, interchange fees between members of ATM subnetworks are permitted under the Subnetwork Exception. This is an exception to the general rule contained in the Access Regime that abolishes interchange fees paid by Issuers to Acquirers for the provision of ATM services. As Member Acquirers do not receive interchange fees from Issuers that are not members of the rediATM Network, it follows that, in order to generate a return on the provision of ATM transaction services to Foreign Cardholders, Member Acquirers are likely to charge Direct Charges to those Foreign Cardholders.

On one view this conduct could potentially be construed as each Member Acquirer refusing to give a discount in relation to the supply of ATM transaction services to a Foreign Cardholder (being the difference between the \$0 Direct Charge to cardholders of Member Issuers and the direct charge to the Foreign Cardholder), for the reason that the Foreign Cardholder has not acquired card issuing services from a Member Issuer.

The Applicants consider that the better view is that this conduct does not contravene the TPA. Firstly, the refusal of a discount to Foreign Cardholders is because a Direct Charge will be levied. The discount (from the Direct Charge amount, down to zero) is not being refused for the reason that the Foreign Cardholder has not acquired services from a specified other person, within the meaning of section 47(7) of the TPA.

Nonetheless, authorisation is sought to mitigate any risk that the Refusal of Discount to Foreign Cardholder Arrangements may be regarded as exclusive dealing in contravention of section 47(7) of the TPA.

6.5 ATM Deployment Arrangements

The Applicants consider that the ATM Deployment Arrangements (namely, discussions and agreements between Cuscal and all other Members, with respect to the deployment of ATMs in the rediATM Network) are necessary:

- for the efficient allocation of the limited deployment resources of the Members;
- for the expansion of the rediATM Network in a commercially sensible, efficient and equitable manner; and
- to ensure the rediATM Network remains viable and competitive against those financial institutions which operate an ATM network with a large footprint.

The ATM Deployment Arrangements will ensure that gaps in the rediATM Network are readily identified and that resources are deployed to fill those gaps as efficiently as possible, rather than resources being wasted by Members preparing to deploy at the same new site (and only one Member being successful), or rediATMs being deployed sub-optimally, for example, in locations which are in close proximity to other rediATMs or which are already highly concentrated.

It is in the interests of the rediATM Network, the Members and Members' cardholders that the geographic coverage of the rediATM Network is expanded. The presence of rediATMs at a greater number of locations (as opposed to increased concentration in existing locations) increases convenience for Member Issuers' cardholders, which in turn improves the competitive position of those Member Issuers and the rediATM Network as a whole.

As noted above, all Members are required to agree to and comply with the rediATM Rules, including rules which regulate the deployment of ATMs by Members (known as the ATM Deployment Rules).

The ATM Deployment Rules require a Member Acquirer who wishes to place a new ATM into the rediATM Network (or relocate an existing rediATM) to follow a deployment approval process, which involves the submission of a completed "Deployment Approval Form" to Cuscal in its capacity as the owner and operator of the rediATM Network.

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The ATM Deployment Rules also provide for Cuscal, in consultation with the RAC, to determine disputes arising between Members in respect of the deployment of rediATMs including, for example, in relation to the application of **[CONFIDENTIAL INFORMATION DELETED]**.

Once the Cuscal/NAB Agreement becomes operative, the ATM Deployment Rules will be amended as follows:

- (a) **[CONFIDENTIAL INFORMATION DELETED];**
- (b) **[CONFIDENTIAL INFORMATION DELETED];**
- (c) **[CONFIDENTIAL INFORMATION DELETED];**
- (d) **[CONFIDENTIAL INFORMATION DELETED];**
- (e) **[CONFIDENTIAL INFORMATION DELETED];**
- (f) **[CONFIDENTIAL INFORMATION DELETED];**
- (g) **[CONFIDENTIAL INFORMATION DELETED];**
- (h) **[CONFIDENTIAL INFORMATION DELETED];**
- (i) **[CONFIDENTIAL INFORMATION DELETED];**
- (j) **[CONFIDENTIAL INFORMATION DELETED];** and
- (k) **[CONFIDENTIAL INFORMATION DELETED].**

Cuscal wishes to be able to discuss and agree with the Members all matters in relation to the deployment of ATMs in the rediATM Network. For example:

- (a) the geographic coverage of the rediATM Network, with a view to identifying gaps in the network (that is, locations where there are no or few rediATMs);
- (b) how to fill gaps in the geographic coverage of the rediATM Network most efficiently and effectively, and which Member is best placed to do so;
- (c) whether a proposed new rediATM is **[CONFIDENTIAL INFORMATION DELETED]** and whether to allow the installation of the new rediATM;
- (d) the determination of disputes arising between Members in respect of the deployment of rediATMs; and
- (e) with respect to integrating existing NAB ATMs into the existing rediATM Network, rationalisation of the "new" rediATM Network to avoid any duplication and overlap. This is likely to involve the identification of any rediATMs or NAB ATMs that overlap in location, for potential deployment from their existing locations to other locations where a rediATM is required for the expansion of the network. It is not the intention of the Applicants to remove altogether those "overlapping" ATMs from the rediATM Network fleet of ATMs, but rather to re-deploy them to other locations where a rediATM is required.

As set out above, the aim of the discussions and agreements envisaged above is not to prevent any individual Member from pursuing their own ATM deployment strategy but to ensure those strategies are communicated to Cuscal and the RAC to ensure they are in the interests of the network as a whole, and to minimise and resolve any conflicts which may arise. In addition, the aim is to significantly increase the number of rediATMs, in a

way that is optimal for the rediATM network and maintains the financial viability of the rediATM Network as a whole.

The Applicants consider that the arrangements do not have the purpose of preventing, limiting or restricting the supply of ATM transaction services (or any other goods or services) by any Member. Nor, it is submitted, is there a purpose of preventing or restricting the acquisition of services acquired in competition between Members, as there is significant doubt whether the Members acquire any relevant services in competition with each other.

However, to address any risk that Cuscal and the Member Acquirers could be regarded as relevantly competitive in relation to the deployment of ATMs, and that the ATM Deployment Arrangements might, but for authorisation, be regarded as:

- making or giving effect to a contract or arrangement, or arriving at or giving effect to an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of the TPA;
- making or giving effect to a contract or arrangement, or arriving at or giving effect to an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45(2)(a)(ii) and 45(2)(b)(ii) of the TPA; and/or
- making or giving effect to a contract or arrangement, or arriving at or giving effect to an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45(2)(a)(i) and 45(2)(b)(i) of the TPA,

the Applicants have decided to seek authorisation in relation to the ATM Deployment Arrangements.

7. RELEVANT MARKETS

The ACCC has previously noted that in some cases it is not essential to precisely define the markets likely to be affected by the conduct for which authorisation is sought if it is apparent that a net public benefit would or would not arise regardless of the scope of the market. The Applicants submit that this is such a case.

The Applicants submit that the following areas of competition may be affected by the arrangements sought to be authorised:

- (a) local markets for the supply of ATM transaction services to ATM cardholders (**Retail ATM Markets**);
- (b) a national wholesale market for the deployment and operation of ATMs (**Wholesale ATM Market**); and
- (c) the markets for retail banking services, as defined in the ACCC's public competition assessment of the proposed acquisition of BankWest and St Andrew's Australia by Commonwealth Bank of Australia (**Retail Banking Market**).

The Applicants submit that non-cash payment methods, such as credit cards and EFTPOS, could also be substitutable for ATM transaction services, for customers in some circumstances. However, for the purposes of considering this application for authorisation, the Applicants limit the relevant markets to the Retail ATM Markets.

The Applicants note that the ACCC considered that the markets identified above were the relevant markets in its final Determination relating to the application for authorisation lodged by Cashcard Australia Limited and Bank of China (Australia) Limited (4 June 2009) in respect of a 'Feesmart' joint venture agreement (**Cashcard Authorisation**). The

conduct described in the Cashcard Authorisation is identical to the No Direct Charge Arrangements described in this submission, and broadly similar to the other arrangements described in this submission.

8. 'FUTURE WITH' AND 'FUTURE WITHOUT' ANALYSIS

8.1 Future with and future without the No Direct Charge Arrangements

Future with

If the No Direct Charge Arrangements are made and given effect to:

- the rediATM Network will offer a mechanism by which financial institutions, including many small financial institutions who are Members, may acquire scale and geographic coverage to compete with those financial institutions with a large ATM footprint; and
- Member Acquirers will not charge Member Issuers' cardholders Direct Charges, and will instead be paid an interchange fee by the Member Issuer.

The likely outcomes of the No Direct Charge Arrangements in terms of competition, efficiency and public benefit are addressed below.

Future without (counterfactual)

In light of the uncertainty about whether the No Direct Charge Arrangements raise concerns under the TPA, absent the immunity afforded by authorisation, the Applicants will not make or give effect to the No Direct Charge Arrangements, and, in particular, NAB will not become a participant in the rediATM Network.

Without the No Direct Charge Arrangements, there is potential for Member Acquirers to impose Direct Charges on Member Issuers' cardholders. These Direct Charges would be additional to the interchange fee payable by the Member Issuer to the Member Acquirer (which may in turn be charged as a foreign fee by the Member Issuer to its cardholder, in order to recover the interchange fee payable to the Member Acquirer).

In effect, this could result in the double charging of a Member Issuer's cardholder who acquired ATM transaction services at the rediATM of another Member.

This is likely to:

- create confusion among Member Issuers' cardholders;
- provoke disputes among Members; and
- increase fees payable by Member Issuers' cardholders for ATM transaction services at rediATMs.

The absence of the No Direct Charge Arrangements is also likely to lead to:

- lower use of Member Acquirers' ATMs by Member Issuers' cardholders;
- Member Issuers' cardholders moving to institutions with larger ATM networks, such as the Commonwealth Bank, ANZ, Westpac and Cashcard, for access to a Direct Charge-free network of ATMs;
- Member Issuers having difficulty attracting new retail banking customers because they are unable to provide sufficient access to a Direct Charge-free network of ATMs;

- decreased choice and convenience for Member Issuers' cardholders;
- Member Issuers seeking to join larger ATM subnetworks such as Cashcard or seeking agreements with other financial institutions with larger ATM networks such as the Commonwealth Bank, ANZ or Westpac; and
- decreased ability of the rediATM Network to attract new members because of the lack of certainty in the charging model in the network.

Each of the above concerns will be exacerbated by the fact that NAB will not be a participant in the rediATM Network. As discussed above, should the Members lose cardholders and Members begin to leave the rediATM Network, this is likely to have a spiral effect, undermining the competitiveness of the rediATM Network, resulting in further Members leaving and a continued downward decline.

In light of the above, and without NAB, the economic viability of Members and the rediATM Network would be put at risk, and the competitive pressure which the rediATM Network places on those financial institutions with large ATM footprints in Retail ATM Markets, the Wholesale ATM Market and the Retail Banking Market would be significantly lessened.

8.2 Future with and future without the Maximum Foreign Direct Charge

Future with

If the Maximum Foreign Direct Charge Arrangements are made and given effect to, Member Acquirers will not impose on any Foreign Cardholder a Direct Charge greater than the determined Maximum Direct Charge. Member Acquirers will retain discretion to set the actual Direct Charge imposed on Foreign Cardholders, provided it does not exceed the maximum.

The likely outcomes of the Maximum Direct Charge Arrangements in terms of competition, efficiency and public benefit are addressed below.

Future without (counterfactual)

In light of the uncertainty about whether the Maximum Foreign Direct Charge Arrangements raise concerns under the TPA, absent the immunity afforded by authorisation, the Applicants will not make or give effect to the Maximum Foreign Direct Charge Arrangements and, in particular, NAB will not become a participant in the rediATM Network.

Without the Maximum Foreign Direct Charge Arrangements there is potential for Member Acquirers to impose on Foreign Cardholders Direct Charges which are greater than the Maximum Foreign Direct Charge. This would potentially increase the fees payable by Foreign Cardholders and also increase the variability/range of possible Direct Charges within the rediATM Network.

Higher fees would make it less likely that those cardholders would use rediATMs over other ATMs and, given that all rediATMs in the rediATM Network share common branding, such an increase in fees and increase in the variability of Direct Charges with the network is likely to have a negative effect on all Member Acquirers and the rediATM network as a whole.

This is likely to create concerns about the operation of the rediATM Network similar to those outlined above with respect to the No Direct Charge Arrangements. Each of those concerns will be exacerbated by the fact that NAB will not be a participant in the rediATM Network.

In light of the above, and without NAB, the economic viability of Member Issuers and the rediATM Network would be put at risk, and the competitive pressure which the rediATM Network places on those financial institutions with large ATM footprints in Retail ATM

Markets, the Wholesale ATM Market and the Retail Banking Market would be significantly lessened.

8.3 Future with and future without the Refusal of Discount to Foreign Cardholder Arrangements

This conduct is necessarily a consequence of the conduct described at paragraphs 8.1 and 8.2 above. Accordingly, the Applicants submit that no further factual/counterfactual analysis is required with respect to this conduct.

8.4 Future with and future without the ATM Deployment Arrangements

Future with

If the ATM Deployment Arrangements are made and given effect to, Members will be able to assist Cuscal, as the owner and operator of the rediATM Network, to make the most efficient and effective decisions on ATM deployment for the benefit of the network as a whole.

Members will be able to discuss with Cuscal:

- gaps in the geographic coverage of the rediATM Network, how to fill those gaps in the rediATM Network most efficiently and effectively, including which Member is best placed to do so;
- which Member will seek approval from Cuscal in respect of the deployment of a rediATM at a particular site, saving other Members from wasting resources on unsuccessful applications for deployment approval and allowing other Members to focus their resources on developing other potential opportunities;
- the best and most efficient manner in which to deploy rediATMs;
- disputes arising between Members in respect of the deployment of rediATMs, including as to their determination; and
- the manner in which the existing NAB ATMs will be integrated into the existing rediATM Network, including the rationalisation required to avoid duplication and overlap.

The likely outcomes of the ATM Deployment Arrangements in terms of competition, efficiency and public benefit are addressed below.

Future without (counterfactual)

Absent the immunity afforded by authorisation, the Applicants will not make and give effect to the ATM Deployment Arrangements described in this submission, and, in particular, NAB will not become a participant in the rediATM Network.

Without the ATM Deployment Arrangements it will be very difficult for Cuscal to expand the rediATM Network adequately in order to remain competitive (both for retail banking customers and in attracting new members) and to make the best informed and most efficient decisions about the deployment of rediATMs. This is because Cuscal will, at best, be limited to discussing ATM deployment separately with each relevant Member, which is in a practical sense, slow and unfeasible, and this may in any event raise TPA concerns given Cuscal's role as an Acquirer Member and ATM Deployer.

Over time, it is likely that multiple Members will seek to deploy new ATMs in areas in which there is already sufficient rediATM coverage, including at the same location and that significant geographic "gaps" will persist in the rediATM Network. While Cuscal, as the owner and operator of the rediATM Network, will be in a position to reject the deployment of new rediATMs in a concentrated area or in respect of the same new site, Member

Acquirers will spend time and money considering sites for deployment which will ultimately not be approved. This will result in the inefficient allocation and wastage of resources by Members of the rediATM Network.

In light of the above, and without NAB, the economic viability of Members and the rediATM Network would be put at risk, and the competitive pressure which the rediATM Network places on those financial institutions with large ATM footprints in Retail ATM Markets, the Wholesale ATM Market and the Retail Banking Market would be significantly lessened.

9. PUBLIC BENEFITS

The RBA has acknowledged that the direct charge arrangements that operate in sub-networks serve to increase competition in the provision of ATM services, increase the transparency of the price of ATM services and promote choice and the provision of ATM services in areas that do not currently have ATMs.¹⁴ The ACCC has previously cited the RBA's determination of the benefits of fee-free arrangements in its consideration of similar arrangements.¹⁵

The RBA has recognised, in considering these arrangements, that the RediATM Scheme, including NAB's participation, is consistent with the spirit of the RBA's Access Regime, introduced following the reforms described in this submission.¹⁶

Enclosed with this submission at Schedule 2 are copies of the confidential letter provided by Cuscal to the RBA on 26 June 2009 and the letter from the RBA to Cuscal on 13 July 2009.¹⁷

Preservation of smaller financial institutions in the retail banking market

The number and distribution of ATMs is an important element of a financial institution's service and a determinant of choice for deposit account services and other retail banking services.

Providing direct-charge free ATM services to Member cardholders ensures that smaller financial institutions are able to provide a competitive offering in the retail banking market. It ensures smaller institutions are not at a competitive disadvantage relative to larger institutions whether in relation to providing ATM services or retail banking services more generally. The inclusion of NAB in the rediATM Network serves to increase these benefits, by increasing the footprint of ATMs that are available free of direct charges. Indeed, the RBA has acknowledged that NAB's involvement in the rediATM Scheme is consistent with the RBA reforms and that, "the expansion of the rediATM Network would increase the capacity of many small financial institutions to compete with the banks offering the largest networks".¹⁸

Maintaining viable, smaller financial institutions will provide long-run public benefits. Firstly, it provides consumers with choice regarding their retail banking. Additionally, preservation

¹⁴ Reserve Bank of Australia, *Access Regime for the ATM System* February 2009, pp4-5.

¹⁵ Australian Competition and Consumer Commission, Final determination, application for Authorisation lodged by Cashcard Limited and Bank of China Limited (4 June 2009), at 6.61.

¹⁶ Reserve Bank of Australia, letter to Cuscal Limited, dated 13 July 2009.

¹⁷ The Applicants note that the ATM figures quoted in Cuscal's confidential letter to the RBA on 26 June 2009 are now out of date and the ATM figures referred to in this submission are the most up to date figures available as at the date of this submission.

¹⁸ Reserve Bank of Australia, letter to Cuscal Limited, dated 13 July 2009.

of smaller financial institutions ensures that the retail banking market more generally will be subject to continued competitive pressure in the future.

Regional effects

Many rediATM Members have a limited geographic footprint, with ATMs deployed in a small number of areas. Regional consumers may prefer to deal with an institution with a regional focus, particularly where there may not be alternative institutions with a physical presence. Absent the Proposed Arrangements, the RBA reforms could potentially lead to a reduction in choice in financial service providers in regional areas. Accordingly, to the extent that the rediATM Network ensures the continued viability of regional issuers and provides access to their cardholders, benefits flow to regional communities more generally. This is of particular importance to the extent that regional communities are already burdened with less convenient access to financial services as a whole.

Indeed, the ACCC acknowledged in its consideration of the application for Authorisation lodged by Cashcard Limited and Bank of China Limited, that allowing similar arrangements would provide a public benefit by improving the competitive position of participants in that network (that network also focussed on smaller and regionally based institutions).¹⁹

9.1 No Direct Charge Arrangements

Removal of possibility for double charging of Member Issuers' cardholders

As noted above, in the absence of the No Direct Charge Arrangements, there is some possibility that some Member Issuers' cardholders may be double charged when using a Member Acquirer's rediATM – firstly, by the Member Acquirer imposing the Direct Charge for the supply of the ATM transaction services at the rediATM and, secondly, by the Member Issuer imposing a foreign fee in order to recover the interchange fee paid by the Member Issuer to the Member Acquirer.

The No Direct Charge Arrangements ensure that over 6 million cardholders of Member Issuers are not double charged.

Customer savings on ATM transaction services

Existing Members of the rediATM Network presently impose on Foreign Cardholders (including those of NAB) Direct Charges of:

- (a) between \$1.50 and \$2 for ATM withdrawals; and
- (b) between \$0 and \$1 for ATM balance enquiries.

NAB presently imposes on Foreign Cardholders (including those of Member Issuers), Direct Charges of:

- (a) \$1.50 for ATM withdrawals; and
- (b) \$0.50 for ATM balance enquiries.

On this basis:

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Indeed, Members' customers will be charged a fee for ATM transactions far less frequently than would otherwise be the case, due to the increased number of ATMs available, thereby enhancing customer satisfaction.

¹⁹ Australian Competition and Consumer Commission, Final determination, application for Authorisation lodged by Cashcard Limited and Bank of China Limited (4 June 2009), at 6.39.

Removal of competitive disadvantage of Members

The introduction of the RBA's Direct Charging reforms has presented those financial institutions with a large ATM footprint with a significant competitive advantage. It is an opportunity for those institutions to further differentiate themselves on the aspects of customer convenience, fee avoidance and fees charged to customers using their own ATM networks.

Financial institutions with a smaller ATM footprint, including each of the Members, are thereby placed at a competitive disadvantage. As noted above, most banks will continue to offer ATM transactions to their own customers free of Direct Charges. As a result, financial institutions with a larger network of ATMs, and therefore a larger range of locations where their cardholders can transact free of Direct Charges, may be at a competitive advantage to the Members under the direct charging regime. In the absence of the final authorisation, each Member would be limited to providing \$0 Direct Charges to their own cardholders only.

The Applicants consider that:

- (a) there are four critical success factors to the long-term viability of an ATM subnetwork, namely, attractive branding, superior services to Members and Members' customers, competitive pricing and sufficient scale. Without the authorisation the subject of this submission, the rediATM Network is unable to provide adequate services to its Members and Members' cardholders and cannot achieve sufficient scale to compete effectively; and
- (b) adequate access to an ATM is considered by customers to be a mandatory service standard. Fewer ATMs within a network relative to competitors' networks reduces the level of customer service and convenience. With the authorisation, all Members will be able to offer their cardholders Direct Charge-free access to 3,091 ATMs around Australia. By way of example, see the websites of the Commonwealth Bank of Australia, Westpac and ANZ for recent promotions aimed at retail banking customers, focussing on the convenience, size and savings associated with each of their ATM networks.

Issuers can facilitate access to a larger range of ATMs for their cardholders free of Direct Charges by forming or joining a subnetwork such as the rediATM Network. The Subnetworks Exception with respect to interchange fees (as described above) is specifically designed to facilitate such arrangements.

The rationale for the Subnetworks Exception is that where a financial institution without a large ATM footprint gains access to a larger range of ATMs through joining a subnetwork, if the institution pays an interchange fee for transactions undertaken by its cardholders at ATMs operated by other members of the subnetwork, those ATM operators will have less need or incentive to levy a Direct Charge on the institution's cardholders at the point of the transaction.

While the Access Regime allows interchange fee arrangements within the rediATM Network, thereby facilitating access to Direct Charge-free transactions at rediATMs, the benefits of the Subnetworks Exceptions cannot fully be realised without the Members making and giving effect to the No Direct Charge Arrangements. As stated above, the absence of such No Direct Charge Arrangements could potentially lead to double charging.

The Applicants submit that the No Direct Charge Arrangements will be pro-competitive²⁰, providing a public benefit by assisting in ensuring that Members are not at a competitive disadvantage in providing ATM transaction services to cardholders of other Members as a

²⁰

This proposition was accepted by the ACCC in Final Determination, application for Authorisation lodged by Cashcard Limited and bank of China Limited (4 June 2009), at 6.35.

result of the RBA's ATM reforms. In particular, the Members will acquire the scale and geographic coverage to rival other financial institutions with a large ATM footprint. The RBA has already provided its approval for the Proposed Arrangements.²¹

In addition, in respect of some broader retail banking products, such as for example transaction accounts, the extent of a financial institution's ATM network is taken into account by consumers in choosing between financial institutions.²² Accordingly, to the extent that the No Direct Charge Arrangements assist in ensuring that Members are not at a competitive disadvantage in providing ATM services, they will also assist in ensuring that Members are not at a competitive disadvantage in attracting and maintaining retail banking customers more generally as a result of the RBA's reforms to the ATM system.

This competitive disadvantage also applies to Cuscal's attempts to attract new participants to and retain existing Members of the rediATM Network. Since the introduction of the RBA's reforms:

- (a) **[CONFIDENTIAL INFORMATION DELETED];**
- (b) **[CONFIDENTIAL INFORMATION DELETED];** and
- (c) **[CONFIDENTIAL INFORMATION DELETED].**

Ensuring that Members are not at a competitive disadvantage will also assist the rediATM Network in attracting new members to grow the network, further reinforcing the competitive pressure on those financial institutions with a large ATM footprint. Those new members may otherwise struggle to enter the relevant markets in any meaningfully competitive way, and to maintain or grow cardholder numbers, as they would be unable to provide sufficient ATM access to their cardholders.

If the Members were at a competitive disadvantage as a result of the RBA's reforms to the ATM system it could potentially lead to a reduction of choice of ATM providers and potentially a reduction in the number of ATMs and convenience to consumers. The No Direct Charge Arrangements will assist in ensuring this is not the case.

Geographical spread and regional effects

Many of the Members have a regional focus, with rediATMs located accordingly. Consumers in regional areas may prefer to deal with a locally based financial institution, particularly in regional areas where major bank branches are not present. Absent the No Direct Charge Arrangements, the reforms could potentially lead to a reduction in choice in financial service providers, which would be particularly pronounced in regional areas.

By benefiting the competitiveness of the regional Member Issuers and their cardholders, the No Direct Charge Arrangements benefit regional communities already faced with less convenient access to financial services.

It is also the case that the existing rediATM Network and NAB have a largely complementary footprint. Each has a particularly strong presence in geographic areas where the other is weaker. The rediATM Network fleet, once NAB becomes a Member (which is conditional on this authorisation), will be well represented in all States and Territories of Australia, both in metropolitan and rural areas (see, for example, the tables in section 5.5).

In particular:

²¹ Reserve Bank of Australia, letter to Cuscal Limited, dated 13 July 2009.

²² This proposition was accepted by the ACCC in Final Determination, application for Authorisation lodged by Cashcard Limited and bank of China Limited (4 June 2009), at 6.36.

- (a) NAB ATMs are well represented in NSW, VIC, WA and Queensland; and
- (b) existing rediATM Network ATMs are well represented in NSW, SA, Tasmania, ACT and NT.

9.2 Maximum Foreign Direct Charge Arrangements

The Maximum Direct Charge Arrangements will result in lower Direct Charges being paid by Foreign Cardholders transacting via a Member Acquirer's rediATM.

The Maximum Direct Charge Arrangements (whichever is ultimately implemented) are intended to make rediATMs more competitive by ensuring that Direct Charges imposed on Foreign Cardholders are not excessive. This is intended to encourage more widespread use of rediATMs in the rediATM Network.

The Applicants submit that both the existing rediATM Network and NAB have a history of competitive, market leading pricing. The Maximum Foreign Direct Charges will initially be \$2 for withdrawals and \$1 for balance enquiries, but all Members will maintain a complete discretion to impose Direct Charges on Foreign Cardholders below the maximum. At present, 41% of existing Members charge Foreign Cardholders less than the \$2.00 Maximum Foreign Direct Charge set by Cuscal.

The applicants submit that the setting of the Maximum Foreign Direct Charges will result in lower average prices to Foreign Cardholders than would otherwise be the case.

The Maximum Foreign Direct Charge Arrangements will provide Foreign Cardholders with certainty with respect to the maximum fees they will be charged for ATM transaction services at a rediATM, and will assist them to make more informed decisions when choosing between the use of a rediATM or another ATM. It is likely that the setting of a Maximum Foreign Direct Charge will make rediATMs more accessible and more attractive to Foreign Cardholders than would otherwise be the case.

The use of a Maximum Foreign Direct Charge will increase the uniformity and consistency across the rediATM Network. This is important from the perspective of the "look and feel" of the rediATM Network and its ability to compete against those financial institutions with larger ATM footprints. Such uniformity is likely to lead to increased use of rediATMs and to further expansion of the rediATM Network as potential new members will benefit from the certainty and stability of, and the consistency in, the charging model. This, in turn, will strengthen the competitive position of the rediATM Network and allow it to, or better position it to, place more competitive pressure on rival ATM networks.

9.3 Refusal of Discount to Foreign Cardholder Arrangements

This conduct is necessarily a consequence of the conduct described at paragraphs 9.1 and 9.2 above. The Applicants propose to set the Direct Charge at \$0 for the cardholders of Member Issuers only. This necessarily means that Foreign Cardholders will not receive the same discount as cardholders of those Member Issuers. In the absence of the authorisation, however, each Member would be restricted to providing the discount to their own cardholders only.

The public benefits of this conduct are as described at paragraphs 9.1 and 9.2 above.

9.4 ATM Deployment Arrangements

It is in the interests of the rediATM Network, each Member and each Member's cardholders that the geographic coverage of the rediATM Network of ATMs is expanded in a commercially sensible and efficient manner. This includes avoiding duplication and overlap and filling "black spots" as effectively as possible. It is also in their interests to avoid uneconomic deployment of ATMs by each Member separately. With a membership of over 100 institutions, it is important that Cuscal, as the owner and operator of the network, is able to make decisions as quickly as possible about the efficient allocation of

the pooled resources of the participants in the network, for the benefit of the network as a whole. The best way to gather information in order to make such decisions, is to allow Cuscal to discuss proposed deployment with the Members. The ATM Deployment Arrangements seek to avoid the uneconomic deployment of rediATMs by Members separately, without reference to the rediATM Network as a whole.

The ability of Cuscal to coordinate deployment with the Members means that more rediATMs will be available (some in areas that might otherwise not be the case), across a wider geographic area. The presence of rediATMs at a greater number of locations will increase convenience and choice for Member Issuers' and other institutions' cardholders and, accordingly, will make the rediATM Network a stronger competitor against those financial institutions with a larger ATM footprint.

Coordination of deployment will also help protect the economic viability of each individual rediATM by preventing Members from "cannibalising" each other's supply of ATM transaction services. This, in turn, protects the competitive position of Members and the rediATM Network as a whole, allowing them to place competitive pressure on those financial institutions with a larger ATM footprint, in more geographic markets than would otherwise be the case.

The ATM Deployment Arrangements will also lead to transactional and administrative costs savings for Cuscal and the Members:

- they will allow Cuscal to discuss deployment issues collectively rather than incurring the expense of having separate discussions with each Member; and
- they will ensure the Members do not incur expenses in seeking to deploy rediATMs at the same new site. For those Members who are not successful in deploying at the new site, they will otherwise have wasted those resources scoping and applying for deployment approval. With the ATM Deployment Arrangements, those resources will be deployed pursuing alternative opportunities for the deployment of a rediATM at an alternative site.

With particular reference to the addition of NAB as a participant in the rediATM Network, discussions and agreements between NAB and Cuscal (and the existing Members) seeking to rationalise the combined ATM fleet by:

- (a) identifying duplication and overlap between NAB and rediATM sites; and
- (b) eliminating that duplication and overlap by re-deploying those ATMs to an alternative site where no other rediATM already competes,

are pro-competitive. Such discussions will increase choice for cardholders in the new areas to which the "overlap" ATMs are re-deployed and will also generate savings for the rediATM Network.

In addition to the transaction and cost savings described more generally above, the addition of NAB to the existing rediATM Network allows each of them to expand in a more cost effective way than each investing directly in expanding their respective networks.

The Applicants submit that in order to organically grow their respective networks to a size similar to that achieved by NAB joining the rediATM Network, significant costs would be incurred. **[CONFIDENTIAL INFORMATION DELETED]** This would have resulted in an inefficient duplication of expenditure, for little public benefit. If this authorisation application is successful, that proposed capital investment can be diverted into other areas. Whilst the Applicants intend to continue expanding their network, the deployment of new ATMs will occur in an efficient and targeted manner. This approach will ensure the public benefits of a more efficient, effective, scale ATM network are delivered.

10. PUBLIC DETRIMENTS

10.1 No Direct Charge Arrangements

The Applicants submit that there are no detriments associated with the No Direct Charge Arrangements. The number of ATMs in the rediATM Network, including NAB, will account for only about 11% of all ATMs in Australia.

The Applicants submit that the proposed arrangements will not undermine the intent of the RBA's reforms aimed at introducing greater competition and transparency to ATM fees. Indeed, the Access Regime envisages that smaller institutions and those without a sufficiently large ATM footprint will develop arrangements such as the No Direct Charge Arrangements to facilitate access to Direct Charge-free transactions at a wider range of ATMs for their cardholders.

In addition, Direct Charges will continue to apply in respect of ATM transactions undertaken by cardholders, both of Members and other financial institutions, outside these arrangements. That is, the objectives of the RBA's reforms will continue to be promoted by Direct Charging applying in respect of foreign ATM transactions in the ATM system more generally.

Moreover, apart from Direct Charges, all Members will remain free to charge fees to their customers as they see fit. Accordingly, the Applicants submit that the removal of any discretion in relation to Direct Charges, is unlikely to have any material detrimental effect on competition.

10.2 Maximum Foreign Direct Charge Arrangements

Each Member retains absolute discretion to impose on a Foreign Cardholder a Direct Charge lower than the maximum. As a result, Member Acquirers will have the ability to engage in price competition by setting fees at levels below the Maximum Foreign Direct Charge. Such decisions are likely to be influenced by an individual Member's consideration of factors such as the identity of the Foreign Cardholder's Issuer and the location of the rediATM, including the number of other ATMs (whether rediATM or other) in the vicinity. Accordingly, the Maximum Foreign Direct Charge Arrangements do not remove that pricing discretion or potential price competition.

Cuscal is aware that not all Member Acquirers are presently charging the Maximum Direct Charge set by Cuscal and that various Member Acquirers are charging less than the Maximum Direct Charge. NAB is currently charging below the Maximum Foreign Direct Charge. This indicates that the Member Acquirers are competing and will continue to compete on price, ie. exercising discretion in setting Direct Charges for Foreign Cardholders (subject only to the maximum set).

It is important to note that only 11% of all ATMs in Australia (those in the rediATM Network, including NAB) will be subject to the Maximum Foreign Direct Charge Arrangements in any event.

10.3 Refusal of Discount to Foreign Cardholder Arrangements

The Applicants submit that there are no public detriments which arise from the proposed arrangements. The refusal to provide any discount only arises because of the discount to be given by each Member to each other Member's cardholders (as sought to be authorised).

Subject to the Maximum Foreign Direct Charge Arrangements, those Foreign Cardholders will be charged Direct Charges as envisaged by the RBA's reforms.

10.4 ATM Deployment Arrangements

The Applicants acknowledge that there is some potential for the ATM Deployment Arrangements to lessen competition among Members to deploy rediATMs at the same new site or in similar locations, should it be the case that Members are relevantly competitive in this regard.

However, the Applicants submit that any such effect on competition in any relevant markets would be competitively insignificant because:

- if, pursuant to the ATM Deployment Arrangements, a Member can pursue a new site or location without fear that another Member will compete against them, the Member has an increased incentive to invest in the deployment opportunity. This is because the risk that they will ultimately be wasting resources because their application for approval will not be approved by Cuscal, is lower;
- each Member will remain subject to competition for leasing space from each other deployer of ATMs in Australia. Again, rediATMs will account for approximately only 11% of all ATMs in Australia; and
- the ATM Deployment Arrangements will, on the whole, make Members of the rediATM Network more competitive for deployment against those financial institutions and Deployers with large ATM footprints.

10.5 Membership of the rediATM Network

The Applicants submit that there is no detriment associated with NAB joining the rediATM Network. In particular:

- (a) NAB must comply with the rediATM Rules in the same manner as each other Member;
- (b) no single Member (other than Cuscal, in its capacity as owner and operator of the rediATM Network), including NAB, is able to make decisions on behalf of the rediATM Network as a whole. NAB's voting rights are capped at 50% and a minimum of 75% of votes cast is required for decisions at RAC meetings;
- (c) NAB will not be able to increase prices in the rediATM Network above competitive rates because:
 - (i) all other Members can charge any Direct Charge to Foreign Cardholders (up to the maximum) or any other fee to their own or foreign cardholders, that they see fit;
 - (ii) NAB itself is subject to the Maximum Foreign Direct Charge; and
 - (iii) all Members, including NAB, remain subject to vigorous price and non-price competition from the ATM networks of other financial institutions, particularly those with a large ATM footprint; and
- (d) neither Cuscal nor NAB will be able to nor have any incentive to prevent further entry by smaller financial institutions into the rediATM Network. In particular, the RBA's subnetwork rules require that access to the rediATM subnetwork remains open, particularly to new market entrants. There are no proposed changes to the ability of any new participant to join the subnetwork.

11. BALANCE OF PUBLIC BENEFIT AND DETRIMENT

The Applicants submit that the ACCC can be satisfied, in all the circumstances, that the following arrangements ought to be authorised pursuant to section 90 of the TPA:

- the No Direct Charge Arrangements;
- the Maximum Foreign Direct Charge Arrangements;
- the Refusal of Discount to Foreign Cardholder Arrangements; and
- the ATM Deployment Arrangements.

Given the public benefits outlined above, and the lack of any discernible detriment:

- the public benefits of the No Direct Charge Arrangements, the Maximum Foreign Direct Charge Arrangements, and the Refusal of Discount to Foreign Cardholder Arrangements will far outweigh any potential detriment; and
- the ATM Deployment Arrangements are likely to result in such public benefits that those arrangements should be allowed to take place.

Under the RBA's reforms, which provide for customers to be charged directly for ATM transactions by ATM operators, financial institutions may gain a competitive advantage over others by virtue of being able to continue to offer their cardholders Direct Charge-free transactions.

The rediATM Network has been established to give effect to the RBA's reforms. Consistently with the RBA's objectives to promote competition in the Australian payments system, the rediATM Network seeks to promote the interests of Members in a manner which will allow them to compete against the larger ATM networks.

The Proposed Arrangements for which authorisation is sought will be pro-competitive by allowing the Members of the rediATM Network to compete more effectively against those institutions with a large ATM footprint.

In particular, the Proposed Arrangements will:

- allow Members to facilitate access to Direct-Charge free ATM transactions for their cardholders at a wider range of ATMs;
- remove the possibility for double charging of Member Issuers' cardholders;
- provide certainty and consistency of Direct Charging by Members to Foreign Cardholders; and
- allow for the expansion of the rediATM Network in the most efficient manner, and in the best interests of the network as a whole.

12. LENGTH OF AUTHORISATION

The Applicants seek that the ACCC authorise the No Direct Charge Arrangements, the Maximum Foreign Direct Charge Arrangements, the Refusal of Discount to Foreign Cardholder Arrangements and the ATM Deployment Arrangements, for a period of 5 years.

Schedule 1

APPLICANTS (each of which are Members or proposed members of the rediATM Network)

1. Alliance One Credit Union Ltd
2. Allied Members Credit Union Limited
3. AMP Credit Union Limited
4. Australian Central Credit Union Ltd
5. Australian Country Credit Union Limited
6. Australian Defence Credit Union Limited
7. AWA Credit Union Ltd
8. B&E Ltd
9. Bankstown City Credit Union Ltd
10. Berrima District Credit Union Ltd
11. Big Sky Credit Union Ltd
12. CAPE Credit Union Limited
13. Capricornia Credit Union Ltd
14. Central Murray Credit Union Limited
15. Central West Credit Union Limited
16. Circle Credit Co-Operative Limited
17. Community Alliance Credit Union Limited
18. Community CPS Australia Limited
19. Community First Credit Union Limited
20. Companion Credit Union Limited
21. Country First Credit Union Ltd
22. Credit Union Australia Ltd
23. Cuscal Limited
24. Defence Force Credit Union Limited
25. EECU Limited
26. Electricity Credit Union Ltd
27. ENCOMPASS Credit Union Limited
28. Family First Credit Union Limited

29. Fire Brigades Employees' Credit Union Limited
 30. Fire Service Credit Union Limited
 31. Firefighters & Affiliates Credit Co-Operative Ltd
 32. First Choice Credit Union Ltd
 33. First Option Credit Union Limited
 34. Fitzroy & Carlton Community Credit Co-Op Limited
 35. Ford Co-Operative Credit Society Limited
 36. Gateway Credit Union Ltd
 37. Goldfields Credit Union Limited
 38. Gosford City Credit Union Ltd
 39. Goulburn Murray Credit Union Co-Operative Limited
 40. Heritage Isle Credit Union Ltd
 41. Holiday Coast Credit Union Ltd
 42. Horizon Credit Union Ltd
 43. IMB
 44. Industries Mutual Credit Union Limited
 45. Intech Credit Union Ltd
 46. Karpaty Ukrainian Credit Union Limited
 47. La Trobe Country Credit Co-Operative Limited
 48. La Trobe University Credit Union Co-Operative Ltd
 49. Laboratories Credit Union Limited
 50. Lysaght Credit Union Ltd
 51. Macarthur Credit Union Ltd
 52. Macquarie Credit Union Limited
 53. Manly Warringah Credit Union Limited
 54. Maritime, Mining & Power Credit Union Ltd
 55. Maroondah Credit Union Ltd
 56. mecu Limited
 57. Melbourne University Credit Union Limited
 58. Memberfirst Credit Union Limited
 59. MyState Financial Credit Union of Tasmania Limited
-

60. National Australia Bank Limited²³
61. New England Credit Union Ltd
62. Northern Inland Credit Union Limited
63. Nova Credit Union Limited
64. NSW Teachers Credit Union Ltd
65. Orange Credit Union Limited
66. Plenty Credit Co-operative Limited
67. Police & Nurses Credit Society Limited
68. Police Credit Union Limited
69. Powerstate Credit Union Ltd
70. Pulse Credit Union Ltd
71. Queensland Teachers' Credit Union Limited
72. Queenslanders Credit Union Limited
73. R.T.A. Staff Credit Union Limited
74. Resources Credit Union Limited
75. Satisfac Direct Credit Union Limited
76. Savings and Loans Credit Union (S.A.) Limited
77. Select Credit Union Limited
78. Service One Credit Union Ltd
79. SGE Credit Union Limited
80. Shell Employees' Credit Union Ltd
81. South West Slopes Credit Union Ltd
82. Southern Cross Credit Union Ltd
83. South-West Credit Union Co-Operative Limited
84. St Marys Swan Hill Co-Operative Credit Society Ltd
85. Sutherland Credit Union Ltd
86. Sydney Credit Union Ltd
87. Tartan Credit Union Limited
88. The Broken Hill Community Credit Union Ltd

²³ The Cuscal/NAB Agreement is conditional on the parties obtaining all relevant regulatory approvals, including authorisation from the ACCC for the arrangements described in this submission.

- 89. The Police Department Employees' Credit Union Ltd
- 90. The Summerland Credit Union Limited
- 91. The University Credit Society Limited
- 92. Warwick Credit Union Ltd
- 93. WAW Credit Union Co-Operative Limited
- 94. Woolworths Employees' Credit Union Limited
- 95. Wyong Council Credit Union Ltd

Schedule 2

CORRESPONDENCE BETWEEN THE RESERVE BANK OF AUSTRALIA AND CUSCAL LIMITED

[CONFIDENTIAL INFORMATION DELETED]



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RESERVE BANK OF AUSTRALIA

Financial System Group

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13 July 2009

Mr Craig Kennedy
Managing Director
Cuscal Limited
GPO Box 4720
Sydney NSW 2001

Dear Mr Kennedy

PROPOSED NAB MEMBERSHIP OF THE REDIATM NETWORK

Cuscal has sought guidance from the Reserve Bank on whether National Australia Bank's (NAB's) proposed membership of Cuscal's RediATM network would be consistent with the spirit of the *Access Regime for the ATM System*, which came into effect on 3 March 2009.

While the *Access Regime* in general prevents the payment of interchange fees in the ATM system, it provides two exceptions. These are intended to promote competition by allowing financial institutions to offer their customers fee free access to a wider network of ATMs than they could provide in their own right. The payment of a common interchange fee between members of a sub-network is one of these exceptions, in acknowledgement of sub-networks' role in promoting competition.

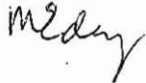
While discussion of sub-network membership has generally focussed on smaller institutions, reflecting the existing make-up of these networks, the Payments System Board does not believe that, in principle, a major bank joining a sub-network raises any particular concerns, provided that it joins on the same terms as other members. In this particular case, the expansion of the RediATM network would increase the capacity of many small financial institutions to compete with the banks offering the largest networks. The Board is also satisfied that, unlike bilateral interchange fees, the exchange of interchange fees by a major bank within a sub-network does not give rise to access concerns, provided that those fees are common to all members and criteria for membership of the sub-network are fair, objective and transparent.

In line with the Board's broader objective of improving access to the ATM system, the Board expects that the integration of NAB into the RediATM network will occur in a way that simplifies the connection process for current or prospective Direct Connectors to the ATM system. The Board would appreciate written confirmation

from RediATM that such an outcome will be included in the longer-term integration plans for the NAB and RediATM ATM networks.

In summary, the Board is satisfied that the NAB joining the RediATM network is consistent with the spirit of the *Access Regime* and will benefit not only the customers of NAB and RediATM members, but also promote competition between card issuers.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M Edey', written in a cursive style.

Malcolm Edey
Assistant Governor (Financial System)

cc: Geoff Bebbington, National Australia Bank