



Australian
Competition &
Consumer
Commission

Draft Determination

Application for revocation of authorisations
A91175 - A91177 and substitution of new
authorisations A91450 - A91452

lodged by

Cuscal Limited

in respect of

rediATM direct charging arrangements and
ATM deployment arrangements

Date: 13 November 2014

Authorisation numbers: A91450 - A91452

Commissioners: Sims
Rickard
Schaper
Court
Featherston
Walker

Summary

The ACCC proposes to re-authorise, for 10 years, arrangements between Cuscal Limited and the current and future members of the rediATM network, whereby among other things they agree not to directly charge each other's cardholders for ATM transactions conducted at rediATMs.

The ACCC will seek submissions in relation to this draft determination before making its final decision.

The application for authorisation

1. On 2 September 2014, Cuscal Limited (**Cuscal**) and rediATM network members applied for the revocation of authorisations A91175 - A91177, and their substitution with authorisations A91450 - A91452 (re-authorisation). Cuscal is seeking re-authorisation for 10 years to give effect to arrangements between Cuscal and current and future members of the rediATM network:
 - not to impose a direct fee on each other's cardholders for ATM transactions at rediATMs;
 - to not charge cardholders of non-members a direct charge which exceeds a specified maximum direct charge for ATM transactions at rediATMs; and
 - about the deployment of ATMs in the rediATM network.
2. The arrangements have been authorised by the ACCC since 2009. Authorisation is due to expire on 18 February 2015.

Background

3. Cuscal initially sought authorisation in 2009 following a suite of reforms, undertaken by the financial services industry and the Reserve Bank of Australia (**RBA**). The reforms were aimed at improving competition and efficiency in Australia's ATM system.¹ According to the RBA the reforms would:
 - make the cost of cash withdrawals more transparent to cardholders and place downward pressure on the cost of ATM withdrawals;
 - help to ensure continued widespread availability of ATMs by creating incentives to deploy them in a wide variety of locations, providing consumers with choice and convenience;
 - promote competition between financial institutions; and
 - make access less complicated for new entrants, and therefore strengthen competition.
4. The reforms themselves had a number of elements, including:
 - an industry-developed access code implemented through APCA;

¹ Reserve Bank of Australia, media release 2008-28, *Payment System Reform*, 10 December 2008.

- ATM owners having the freedom to charge cardholders directly for the use of an ATM, with any charge being disclosed to the cardholder prior to the withdrawal being made;
 - zero interchange fees between direct connectors;
 - sub-networks being able to retain their multilateral interchange fees;
 - an ability for institutions to enter into arrangements to rebate the direct charge for their customers at the time of the transaction; and
 - a dispute resolution and disclosure regime.
5. In implementing the reforms the RBA noted that most ATM operators did not charge their own cardholders fees. There was concern that smaller financial institutions could be disadvantaged by the ATM reforms as they did not have an extensive network of their own branded ATMs with which to offer cardholders direct fee free transactions. To address this issue the RBA reforms provided for smaller financial institutions to develop sub-networks where they agree not to charge each other's cardholders ATM fees. The RBA considered that multilateral interchange fees in these circumstances may help smaller institutions to compete on a more equal footing with the larger players in the industry.

The RediATM network

6. The rediATM network currently has 92 members (see Attachment B), the majority of which are credit unions that typically only have a small network of their own ATMs covering a limited geographic area.
7. The rediATM network currently deploys approximately 3 100 ATMs and enables members to provide their cardholders with access to ATMs beyond their own proprietary ATM network.
8. The rediATM network represents approximately 10% of the 30 883 ATMs that are deployed throughout Australia.²

Consultation

9. The ACCC invited submissions on the applications for re-authorisation from 15 parties, including the RBA, Australian Securities Investments Commission, and other financial institutions. The ACCC received two submissions - from the RBA and Citigroup Pty Ltd (**Citibank**) both of which were supportive of the continuation of the arrangements. These submissions are discussed in the ACCC's evaluation of the arrangements.
10. Further information in relation to the application for re-authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website by following the links at: <http://registers.accc.gov.au>.

² Australian Payments Clearing Association, *Payment Statistics: Transaction Statistics*, <http://apca.com.au/payment-statistics/transaction-statistics/atm-and-efpos>, accessed 12 November 2014.

ACCC assessment

11. The ACCC's assessment of the arrangements is in accordance with the relevant net public benefits tests³ contained in the *Competition and Consumer Act 2010* (the **CCA**). While there is some variation in the language of the tests, in broad terms, the ACCC is required to identify and assess the likely public benefits and detriments, including those constituted by any lessening of competition, and weigh the two. Generally the ACCC may grant authorisation if it is satisfied that the likely benefit to the public would outweigh the likely detriment to the public.
12. In its assessment of the application for re-authorisation the ACCC has taken into account:
 - the application and submissions received from the applicants and interested parties;⁴
 - other relevant information available to the ACCC, including information from consideration of previous matters;⁵
 - the likely future without the conduct that is the subject of the re-authorisation.⁶ In particular, the ACCC considers that, absent the arrangements for which authorisation is sought, members of the rediATM network would not reach collective agreement on fees to be charged to cardholders. This is likely to result in cardholders of the rediATM network having more limited access to fee free ATM transactions. The ACCC also considers that, absent the arrangements for which authorisation is sought, members of the rediATM network may be unlikely to reach collective agreement to co-ordinate the deployment of ATMs within the network;
 - the relevant areas of competition likely to be affected by the arrangements, particularly competition for the supply of ATM transaction services to ATM cardholders; the wholesale deployment and operation of ATMs; and the supply of retail banking services;
 - the 10 year authorisation period requested; and
 - the fact that the arrangements have been operating under an ACCC authorisation since 2009.

Public benefits

13. Public benefit is not defined in the CCA. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.⁷
14. Cuscal submits that the rediATM network arrangements result in greater overall coverage for the ATM network, improved efficiency in the network, greater choice

³ Subsections 90(5A), 90(5B), 90(6), 90(7) and 90(8) of the CCA.

⁴ Please see the ACCC's Public Register for more details, including a list of parties consulted.

⁵ See *Determination of application for revocation of authorisation A91119 and substitution of new authorisation A91429 lodged by Cashcard Australia Ltd*, 27 August 2014.

⁶ For more discussion see paragraphs 5.20-5.23 of the ACCC's Authorisation Guidelines.

⁷ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

for customers in undertaking ATM transactions, and has provided cardholders of smaller financial institutions with the ability to access a wider range of ATM's, consistent with the RBA Access Regime.⁸

15. Cuscal also submits the rediATM network arrangements have been in place for five years and have improved the competitiveness of the rediATM network and promoted competition between ATM transaction service providers more generally.
16. The RBA submits that re-authorisation of the rediATM fee arrangements would be consistent with the intent of the Access Regime for the ATM System as it relates to sub-networks, and will not introduce any additional competition or efficiency issues based on the current market.
17. Citibank is of the view the arrangements increase competition and benefit consumers. Citibank submits that in the absence of such arrangements it would be impossible for smaller banks to effectively compete against larger banks that have the resources to deploy a large ATM network. Customers of small financial institutions inevitably rely on ATMs deployed by other parties to access cash because their own institution is likely to only have very few ATMs of its own in limited locations. Unlike their larger competitors, smaller banks would be unable to offer widespread fee-free (or discounted) ATM access to their customers because in the absence of interchange payments, such customers would be subject to direct charges at the 'foreign' ATMs on which they rely.
18. The ACCC considers that the arrangements have resulted, and will be likely to continue to result, in public benefits through the promotion of consumer choice and enhanced competition for ATM transaction services.

Promotion of consumer choice through enhanced competition

19. The ACCC recognises that large financial institutions may have a competitive advantage over smaller financial institutions by virtue of their larger network of own branded ATMs where they can offer their cardholders direct fee free transactions.
20. The ACCC considers that the arrangements between rediATM network members are likely to promote competition. In particular, the members of the rediATM network have agreed to offer fee free transactions to each other's cardholders. This allows smaller institutions to provide their cardholders with access to a wider network of ATMs on a fee free basis than they would be able to individually.
21. The fee free arrangements may also assist smaller financial institutions in attracting and/or maintaining customers more generally. For example, in respect of the provision of retail banking products, such as transaction accounts, the extent of a financial institution's ATM network may be taken into account by consumers in choosing between financial institutions.
22. The cap on ATM transaction fees charged to non-member or foreign cardholders is also designed to assist in promoting the use of the rediATM network to foreign cardholders. Cuscal submits that the cap on the ATM transaction fees charged to

⁸ Cuscal Limited, *Application for revocation of authorisation and substitution of a new authorisation – Attachment 1*, p8.

foreign cardholders provides greater certainty about fees and increases the uniformity and consistency of charges within the rediATM network.

23. The ACCC considers that the cap on fees charged for foreign cardholder transactions provides greater certainty for consumers by addressing the potential for 'fee shock'. The ACCC considers that this is likely to assist in promoting the rediATM brand and inter-network competition more generally.
24. Cuscal has noted that the deployment arrangements are designed to ensure the efficient expansion of the rediATM network and to allow coordination in managing the geographical coverage of the network while avoiding duplication and overlap.
25. The deployment arrangements include:
 - the geographical coverage of the rediATM network, with a view to identifying gaps in the network;
 - how to fill gaps in the network most effectively and efficiently, including which member is best placed to do so; and
 - the determination of disputes arising between members in respect of the deployment of rediATMs.
26. The ACCC considers that coordination of the deployment of ATMs among members of the rediATM network is likely to assist in achieving greater coverage of the network in a more efficient manner. For example, by coordinating the placement of ATMs, the duplication of machines within a small area can be reduced and new ATMs can be deployed where there are identified gaps. This is likely to contribute to the overall competitiveness of the rediATM network and the competitiveness of its members in supplying retail banking services to consumers.

Public detriments

27. Public detriment is also not defined in the CCA but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁹
28. Cuscal submits the arrangements will not result in any public detriment and are consistent with the intent of the RBA's reform of the ATM payment system.
29. The ACCC considers that any reduction in competition amongst members of the rediATM network resulting from the agreements about the fees they charge for ATM transactions and the deployment of ATMs are likely to result in minimal, if any, public detriment.

Reduced intra-network competition

30. Under the proposed arrangements members of the rediATM network agree to offer fee free transactions to each other's cardholders and set a cap, or maximum amount, that a member of the rediATM network may charge foreign

⁹ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

cardholders for ATM transactions. They also agree on the deployment of ATMs within the network. While this reduces intra-network competition, the ACCC considers that the arrangements for which authorisation has been sought are likely to result in minimal, if any, public detriment.

31. As discussed in the ACCC's consideration of the public benefits of the proposed arrangements, larger financial institutions may have a competitive advantage over smaller financial institutions under the direct charging regime for ATM transactions introduced in 2009. Consequently, the RBA reforms explicitly provide for smaller financial institutions to develop arrangements such as those proposed in the current application to facilitate access to fee free transactions at a wider range of ATM's for their cardholders.
32. The ACCC notes that the direct charging measures apply to foreign ATM transactions undertaken by cardholders of other financial institutions and to rediATM network members' cardholders when undertaking transactions at non-rediATM network ATMs. That is, the objectives of the reforms will continue to be promoted by direct charging applying in respect of foreign ATM transactions in the ATM system more generally.
33. Under the fee cap arrangements, rediATM members agree not to impose a direct charge on non-member cardholders for ATM transactions which exceeds a specified maximum fee. Subject to ATM fees not exceeding this cap, members of the rediATM network individually determine the fees that apply to foreign cardholders.
34. The ACCC considers that competition from institutions outside the rediATM network is likely to constrain collective decisions about the level of the maximum cap and individual decisions about the actual fees to charge foreign cardholders.
35. Further, the ACCC notes that the arrangements are unlikely to facilitate coordination between the members on other issues relevant to the provision of retail banking services more generally.
36. Finally, the coordination of the deployment of ATMs within the network is unlikely to result in public detriment given the limited number of ATMs affected by the arrangements. Further, the ACCC notes that the aim of the ATM deployment arrangements is not to prevent any individual member from pursuing their own ATM deployment strategy, but rather, to ensure that the interests of the network as a whole are considered in deployment decisions.

Balance of public benefit and detriment

37. The ACCC considers that the arrangements are likely to promote consumer choice and enhance competition by allowing the members of the rediATM network to offer fee free ATM services to cardholders via a larger network of ATMs. The arrangements are also likely to promote inter-network competition by allowing the rediATM network to manage the risk of price shock by placing a cap on the fees that individual members may charge foreign cardholders and to deploy ATMs within the network more efficiently. Balanced against this the loss of intra-network competition is likely to result in minimal public detriment.
38. For the reasons outlined in this draft determination the ACCC considers that the proposed arrangements are likely to result in public benefit that would outweigh the public detriment constituted by any lessening of competition. The ACCC is

also satisfied that the proposed arrangements are likely to result in such a benefit that they should be allowed to take place or given effect to. Accordingly, the ACCC is satisfied that the relevant net public benefit tests are met.

Length of Authorisation

39. Cuscal seeks re-authorisation for 10 years.
40. Given the ACCC's conclusion on the balance of public benefits and public detriments and the fact that the arrangements have been authorised since 2009 without any concerns being raised, the ACCC is proposing to re-authorise the arrangements for a further 10 years as requested by Cuscal. The ACCC seeks feedback from industry participants regarding the proposed period of authorisation.

Draft determination

The applications

41. Applications A91450 - A91452 were made using a Form FC, Schedule 1 of the *Competition and Consumer Regulations* 2010. The applications were made under section 91C of the CCA.
42. Cuscal has sought re-authorisation on behalf of itself and current and future members of the rediATM Network to continue to give effect to arrangements that, among other things, relate to agreements to not charge each other's cardholders for ATM transactions (as outlined at paragraph 1).
43. Authorisation is sought as the arrangements may contain a cartel provision or may have the purpose or effect of substantially lessening competition or may be regarded as exclusive dealing within the meaning of Part IV the CCA.

The net public benefit test

44. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to sections 90(5A), 90(5B), 90(6) and 90(7) of the CCA, that in all the circumstances the conduct for which authorisation is sought is likely to result in a public benefit that would outweigh any likely detriment to the public constituted by any lessening of competition arising from the conduct.
45. The ACCC is also satisfied, pursuant to section 90(8) of the CCA, that the arrangements are likely to result in such a benefit to the public that they should be allowed to take place or given effect to.

Conduct which the ACCC proposes to authorise

46. The ACCC proposes to revoke authorisations A91175 - A91177 and grant authorisations A91450 - A91452 in substitution. The re-authorisation is granted to enable Cuscal Limited and the current and future members of the rediATM network to make and give effect to arrangements:
 - not to impose a direct fee on each other's cardholders for ATM transactions at rediATMs;

- to not charge cardholders of issuers who are not members a direct charge which exceeds a specified maximum direct charge for the supply of ATM transaction services at a rediATM; and
- about the deployment of ATMs in the rediATM network.

47. The ACCC proposes to re-authorise the arrangements for 10 years.

48. This draft determination is made on 13 November 2014.

Next steps

49. The ACCC now seeks submissions on the draft determination. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the CCA.

Attachment A - Public benefit tests in CCA

Subsections 90(5A) and 90(5B) provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

Subsections 90(6) and 90(7) state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of subsection 90(7) has resulted or is likely to result from giving effect to the provision.

Subsection 90(8) states that the ACCC shall not:

- make a determination granting:
 - an authorisation under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
 - an authorisation under subsection 88(7) or (7A) in respect of proposed conduct; or
 - an authorisation under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
 - an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- make a determination granting an authorisation under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.

Attachment B – Members of the rediAtm network

Advantage Financial Services Pty Ltd	Liberty Financial Pty Ltd
AFG Securities Pty Ltd	Lombard Finance Pty Ltd
Allied Members Credit Union Ltd	Lysaught Credit Union Ltd
AMP Bank Limited	Macarthur Credit Union Ltd
Australian Central Credit Union Ltd	Macquarie Credit Union Limited
Australian Defence Credit Union Limited	Manly Warringah Credit Union Limited
AWA Credit Union Limited	Maritime Mining and Power Credit Union Limited
B&E Personal Banking	mecu Limited
Bank of Queensland Limited	My Credit Union Limited
Bank of Sydney Ltd	MyState Financial Limited
Bankstown City Credit Union Ltd	NAB
Berrima District Credit Union Ltd	Northern Inland Credit Union Limited
Big Sky Building Society Limited	Nova Credit Union Limited
CAPE Credit Union Limited	Once Credit Pty Limited
Central Murray Credit Union Limited	Orange credit Union Limited
Central West Credit Union Limited	Police & Nurses Limited
Challenger Limited	Police Bank Ltd
Circle Credit Co-Operative Limited	Police Credit union Limited (SA)
Citibank	Pulse Credit Union Limited
Community Alliance Credit Union Limited	QT Mutual Bank Limited
Community CPS Australia Limited	Quay Credit Union
Community First Credit Union Limited	Queensland Police Credit Union Limited
Country First Credit Union Limited	Queensland Professional Credit Union Ltd
Credit Union Australia Ltd	Queenslanders Credit Union Limited
Credit Union SA Ltd	Railways Credit Union Limited
Cuscal Ltd	Rural Finance Corporation of Victoria
Defence Bank Limited	Select Credit Union Ltd
Delphi Bank	Service One Credit Union Limited
EECU Limited	Shell Employees' Credit Union Limited

eMerchants Limited	South West Slopes Credit Union Ltd
Encompass Credit Union Limited	South-West Credit Union Co-Operative Limited
Family First Credit Union Limited	Sutherland Credit Union Ltd
Fire Brigades Employees' Credit Union Limited	Swan Hill Credit Union Limited
Fire Service Credit union Limited	Sydney Credit Union Ltd
Firefighters and Affiliates Credit Co-Operative Limited	Teachers Mutual Bank Limited
First Choice Credit Union Ltd	The Broken Hill Community Credit Union Ltd
First Option Credit Union Limited	The Capriconian Ltd
Ford Co-operative Credit Society	The University Credit Society Limited
Goldfields Money Limited	Traditional Credit Union Limited
Goulbourn Murray Credit Union Co-Operative Limited	Transport Mutual Credit Union Ltd
Greater Building Society Ltd	VIRGIN MONEY
Heritage Isle Credit Union Limited	Vision Super Pty Ltd
Holliday Coast Credit Union Ltd	Warwick Credit Union Ltd
Horizon Credit Union Ltd	WAW Credit Union Co-Operative Limited
Intech Credit Union Limited	Woolworths Employees' Credit Union Limited
Laboratories Credit Union Limited	Wyong Shire Credit Union Ltd