

Form FC

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 91C (1)

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

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Competition and Consumer Act 2010* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of applicant:

A91508 & A91509 Suncorp-Metway Limited ABN 66 010 831 722 (**Suncorp**) and
Bendigo and Adelaide Bank Limited ABN 11 068 049 178 (**Bendigo**),
(collectively, the **Applicants**)

(b) Description of business carried on by applicant:

The Applicants each carry on business as retail banks.

Suncorp is an authorised deposit-taking institution and a member of the Suncorp Group, which is a diversified financial services group and a market leader in general insurance, life insurance, wealth management and banking. It has operations in Australia and New Zealand. Suncorp is the fifth largest listed bank in Australia.

Bendigo is an authorised deposit-taking institution that provides banking and wealth management services to individuals and small to medium businesses. It is represented in all States and Territories with more than 190 company-owned branches, 250 locally-owned community bank branches, 90 agencies and its own ATM network.

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

Suncorp-Metway Limited
Level 28 Brisbane Square
266 George St
Brisbane QLD 4000

2. Revocation of authorisation

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

Authorisation numbers A91232 and A91233 (**Current Authorisations**) granted authorisation to the Applicants to agree to:

- i. offer their approved cardholder customers direct charge free ATM transaction services on an electronically linked ATM network for approved transactions;
- ii. refuse to give foreign cardholders direct charge free ATM transaction services on their electronically linked ATM network for the supply of ATM transaction services; and
- iii. not restrict the amount that can be charged to foreign cardholders or the manner, location or timing of the deployment of ATMs by either Applicant.

The term “foreign cardholders” referred to the holders of an ATM card issued to that cardholder by an issuer other than either of the Applicants.

The authorisations were granted for a period of five years (**Current Authorisations**).

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

The Current Authorisations were granted for a period of five years, from 5 October 2010, and will expire on 5 October 2015. The Applicants wish to renew their agreement after this date, and on this basis, seek revocation for the Current Authorisations and substitution of a new authorisation.

In support of this application for revocation and substitution and a new authorisation, the Applicants:

- i. request that the detailed submissions filed in support of the Current Authorisations including requests that certain information be kept confidential, not be placed on the ACCC’s public register; and
- ii. refer and rely upon, the ACCC’s detailed evaluation and conclusions contained in the Current Authorisations.

3. Substitution of authorisation

(a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:

The Applicants wish to enter into and give effect to a renewed agreement between them by which they will:

- i. continue to offer their approved cardholder customers direct charge free ATM transaction services on an electronically linked ATM network for approved transactions;
- ii. continue to refuse to give foreign cardholders direct charge free ATM transaction services on their electronically linked ATM network for the supply of ATM transaction services; and
- iii. continue not to restrict the amount that can be charged to foreign cardholders or the manner, location or timing of the deployment of ATMs by either Applicant.

The renewed agreement will be identical in all essential and relevant aspects to the ATM Network Licence Agreement dated 23 March 2011, which was made pursuant to the Current Authorisations.

The renewed agreement has not yet been drafted.

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

The services to which the renewed agreement relates are:

- i. offering the Applicants' approved cardholder customers direct charge free ATM transaction services on an electronically linked ATM network for approved transactions;
- ii. refusing to give foreign cardholders direct charge free ATM transaction services on their electronically linked ATM network for the supply of ATM transaction services; and
- iii. not restricting the amount that can be charged to foreign cardholders or the manner, location or timing of the deployment of ATMs by either Applicant.

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

Authorisation is sought for a period of ten years.

The Current Authorisations have assisted to:

- i. lessen the competitive disadvantages of the Applicants when competing with larger financial institutions;
- ii. increase the competition of the Applicants with larger financial institutions; and

- iii. provide a public benefit by giving the Applicants' respective approved cardholder customers direct charge free ATM transaction services at a greater number of ATMs spread through metropolitan, regional and rural communities.

4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:**

The proposed arrangement 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:**

The proposed arrangement will be entered into and given effect by the Applicants.

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

Not applicable.

5. Public benefit claims

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

The Current Authorisations have been in place for nearly five years and have resulted in a procompetitive net public benefit because:

- i. approved cardholders have had a significant benefit in that they have been provided with greater choice and convenience in being able to access a broader range of ATMs across the country without incurring a direct charge;
- ii. the Applicants, which both have a relatively smaller ATM network, have been able to compete better with financial institutions that have a larger ATM network, by providing more direct charge free ATM options to existing and potential customers via a wider network of ATM's than would be available by each Applicant alone. This arrangement has increased the Applicants' appeal as a financial institution of choice, giving consumers more choices to meet their retail banking requirements; and

- iii. the arrangement has improved choices for customers of financial service providers.

Further, re-authorisation is consistent with the intent of the access regime for the ATM System prescribed by the Reserve Bank of Australia, to facilitate access to direct fee free transactions at a broader range of ATMs for cardholders without introducing additional competition or efficiency issues based on the current market.

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

- i. The Application seeks to continue to provide the Applicants' cardholders access to each other's ATM network so no additional or direct fee is paid by either cardholder base when they use each these respective ATM networks. An industry study sponsored by the Australian Bankers' Association and conducted by research company UMR in February 2015 found that fees and charges were the second most concerning unprompted issue nominated by consumers when questioned on issues about banking in Australia.
- ii. A broader ATM network has and will enable the Applicants to compete with larger authorised deposit-taking institutions to attract and retain deposit customers. Additionally, authorisation will avoid a potential situation whereby the Applicants would be placed in a position of competitive disadvantage.
- iii. The Current Authorisations have enabled the Applicants' cardholders (combined) to make in excess of 5,260,000 direct charge free withdrawals through their shared ATM network. The Applicants consider that this volume of direct charge free withdrawals is more than a negligible benefit and has been solely and directly achieved only as a result of the Current Authorisations. In addition to the 5,260,000 direct charge fee free withdrawals, the Applicants' cardholders (combined) have also made in excess of 2,000,000 balance inquiries fee free on each other's networks. The Applicants are confident in the view that, if the substitute application is authorised, the level of public benefit will be maintained at near historical transactional volume levels.
- iv. An industry study sponsored by the Australian Bankers' Association and conducted by research company UMR in February 2015 provides high level independent evidence that enhanced "fee free" access to ATM networks, and consumers' ability to transact at ATMs without fees, is well received and considered.

6. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (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):

The provision of ATM transaction services to the Applicants' approved cardholder customers.

The Applicants' respective approved cardholder customers are geographically located nationally within metropolitan, regional and rural communities.

7. Public detriments

(a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:

- i. The arrangement for which this substitute authorisation is sought has not, during the (almost) initial five year period, undermined the intent of the ATM system reforms (2009 changes to the Payments System (Regulation) Act 1998). This is evidenced by the number of ATMs deployed in the Australian market. There were 30,092 ATMs deployed in Australia in December 2010. The number of ATMs has increased to 31,514 in March 2015.
- ii. The ATM market structure and respective network ownership has remained stable during the initial period of the authorised arrangement between the Applicants. Financial institution ATM ownership has remained broadly constant at 45% with 'independent deployers' owning 55% of all ATMs domestically.
- iii. It is the Applicants' view that these statistics demonstrate that neither the Applicants nor broader market participants have been competitively advantaged or disadvantaged through the existence of the Applicants' authorised agreement, in so far as the Applicants do not direct charge each other's cardholders for ATM transactions.

(b) Facts and evidence relevant to these detriments:

- i. Growth in the number of ATM Terminal devices in Australia which is published on the website of the Australian Payments Clearing Associations (APCA) <http://www.apca.com.au> > Payment Statistics > Transaction Statistics > ATM and Eftpos.

- ii. The 2013 Australian ATM and Branch Automation Market Study Report outlines that there has been minimal change in market structure and market share during the term of the arrangement for which this substitute authorisation is sought:

Figure 3-5 on Page 12: Market Share by Deployer Category

	30/6/2008	30/6/2010	30/6/2013
Large Banks	39%	37%	35%
Other Banks	7%	7%	8%
BS & Credit Unions	7%	5%	6%
Independent Deployers	48%	51%	52%
No. of ATMs	25,658	28,764	30,130

Figure 3-9 on Page 16: Market Share by Brand

(number of ATMs at 30/6/2013 n=30,130)

Brand	Share	Brand	Share
Direct Cash	16%	Bendigo Bank	4%
Cashcard	14%	Bankwest	3%
CBA	11%	Suncorp Bank	3%
rediATM	11%	St George Bank	2%
ANZ	9%	Coles	2%
Westpac	7%	All non-respondents	9%
CashConnect	5%	Other (n=10)	5%

- iii. The Applicants continue to each have amongst the smallest ATM fleets in the Australian market.

8. **Contracts, arrangements or understandings in similar terms**

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

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

The Applicants wish to enter into and give effect to a renewed agreement between them by which they will:

- i. continue to offer their approved cardholder customers direct charge free ATM transaction services on an electronically linked ATM network for approved transactions;
- ii. continue to refuse to give foreign cardholders direct charge free ATM transaction services on their electronically linked ATM network for the supply of ATM transaction services; and

- iii. continue not to restrict the amount that can be charged to foreign cardholders or the manner, location or timing of the deployment of ATMs by either Applicant.

The renewed agreement will be identical with regard to the essential and relevant aspects of the existing agreement.

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

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

Not applicable.

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:**

Not applicable.

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

Not applicable.

9. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?**

Yes.

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

No.

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

Not applicable.

10. Further information

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

Paul Evans
EM Payments & Physical Channels
Suncorp Bank

Level 28 Brisbane Square
266 George St
Brisbane QLD 4000
Ph: (07) 07 3167 9693 Mobile: 0407 430 044

Dated..... 29th July, 2015

Signed by/on behalf of Suncorp
.....
(Signature)

TANYA BAKENS
.....
(Full Name)

Suncorp-Metway Limited ABN 66 010 831 722

EXECUTIVE MANAGER, BUS PERFORMANCE
.....
(Position in Organisation) PROCESS MANAGEMENT.

Signed by/on behalf of Bendigo
.....
(Signature)

DENNIS BICE
.....
(Full Name)

Bendigo and Adelaide Bank Limited ABN 11 068 049 178 (Bendigo)

EXECUTIVE RETAIL
.....
(Position in Organisation)

DIRECTIONS

1. 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. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
 - (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where substitute 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 contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), 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 substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). 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.