



Australian
Competition &
Consumer
Commission

Determination

Application for revocation of A91232 and A91233 and
substitution of authorisations A91508 and A91509

lodged by

Suncorp-Metway Limited &
Bendigo and Adelaide Bank Limited

for

an agreement not to 'direct charge'
each other's cardholders for
Automatic Teller Machine transactions
at their ATMs.

Date: 1 October 2015

Authorisation numbers: A91508 and A91509

Commissioners: Sims
Cifuentes
Featherston
Walker

Summary

The ACCC has decided to re-authorise Suncorp-Metway Limited & Bendigo and Adelaide Bank Limited for an agreement not to 'direct charge' each other's cardholders for Automatic Teller Machine (ATM) transactions.

The ACCC grants authorisation until 5 October 2025.

The application for authorisation

1. On 30 July 2015 Suncorp-Metway Limited (**Suncorp**) & Bendigo and Adelaide Bank Limited (**Bendigo**) (together, the **Applicants**) applied for the revocation of authorisations A91232 and A91233, and the substitution of authorisation A91508 and A91509 (**re-authorisation**). The Applicants are seeking re-authorisation for 10 years to enable them to continue to agree not to 'direct charge' each other's cardholders for Automatic Teller Machine transactions at their ATMs (the **Conduct**).
2. Specifically, the Applicants seek re-authorisation for Conduct to:
 - continue to offer their approved cardholder customers direct charge free ATM transaction services on an electronically linked ATM network for approved transactions
 - 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
 - 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.
3. The renewed agreement will be identical in all essential and relevant aspects to the agreement previously authorised by the ACCC in 2010.
4. On 31 August 2015 the ACCC issued a draft determination proposing to grant authorisation for 10 years. A conference was not requested following the draft determination.
5. Further information in relation to the application for authorisation, including any public submissions received by the ACCC, may be obtained from the ACCC's website **www.accc.gov.au/authorisations**.

Background

6. Suncorp submits it is the fifth largest listed bank in Australia, with operations across Australia and New Zealand including its own ATM network. Bendigo is a smaller bank that is represented in all states and territories and has its own ATM network.
7. The Applicants advise they have a combined market share of 7% (or around 2100) of ATMs deployed, compared to other networks such as Direct Cash (16% or 4820 machines), Cashcard (14% or 4218 machines) and rediATM (11% or

3314 machines). Larger banks also have a large share with CBA (11% or 3314 machines), ANZ (9% or 2711 machines) and Westpac (7% or 2109 machines).

8. The Applicants' original applications for authorisation in 2010 came about as a result of a suite of reforms, undertaken by the financial services industry and the Reserve Bank of Australia (**RBA**), aimed at improving competition and efficiency in Australia's ATM system.¹ The key elements of the reform package included:

- the abolition of bilateral interchange fees paid by financial institutions to ATM owners for the provision of ATM services to the first financial institution's account holders
- providing ATM owners with the ability to charge cardholders directly for ATM withdrawals, with any charge clearly shown before the customer proceeds with the withdrawal, and
- the introduction of an objective and transparent Access Code for the ATM system setting out the conditions that new entrants are required to meet, the rights of new entrant ATM providers, and the requirements on current participants in dealing with new entrants.

9. In announcing the release of the Access Regime the RBA stated that 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.²

10. 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 considers 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.

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

² Reserve Bank of Australia, media release 2009-03, *Payment System Issues*, 24 February 2009.

Consultation

11. The ACCC invited submissions from 11 interested parties, including government and regulatory bodies, industry associations, and competing banks and ATM providers, seeking comment on the draft determination and the applications for re-authorisation. One submission was received from the Australian Securities and Investment Commission, supporting the re-authorisation.

ACCC assessment

12. The ACCC's assessment of the Conduct is in accordance with the relevant net public benefit tests³ contained in the *Competition and Consumer Act 2010* (the CCA).

13. In its assessment of the application the ACCC has taken into account:

- the application and submissions received from the applicant and interested parties
- other relevant information available to the ACCC, including information from consideration of previous matters⁴
- the likely future without the Conduct that is the subject of the authorisation.⁵ In particular, the ACCC considers that, absent the Conduct, the Applicants would be unlikely to reach agreement not to direct charge each other's cardholders for ATM transactions
- the relevant areas of competition likely to be affected by the Conduct, 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 these arrangements have been operating under an ACCC authorisation since 2010, and no concerns have been raised with the ACCC in that time.

Public benefits

14. The ACCC has previously recognised that under the reforms to the ATM system that provide for customers to be charged directly for ATM transactions by ATM operators, larger financial institutions may gain a competitive advantage over smaller financial institutions by virtue of their larger network of own branded ATMs where they can continue to offer their cardholders direct fee free transactions.

15. The ACCC is satisfied based on the information before it that the Conduct has resulted and will be likely to continue to result in some public benefit through delivering improved outcomes for consumers from increased competition between banks by assisting in ensuring that the Applicants are not at a

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

⁴ See, for example, A91429 lodged by Cashcard Australia Limited, and A91450 – A91452 lodged by Cuscal Limited.

⁵ For more discussion see paragraphs 5.20-5.23 of the ACCC's Authorisation Guidelines.

competitive disadvantage in providing ATM services to their cardholders as a result of the reforms to the ATM system.

Public detriments

16. The ACCC considers that the Conduct is likely to result in minimal, if any, detriment, because:
- the Conduct will not undermine the intent of the reforms aimed at introducing greater competition and transparency to ATM fees, and
 - direct charging arrangements will continue to apply in respect of ATM transactions undertaken by cardholders, both of the Applicants and other financial institutions, outside of the Conduct. 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.
17. The ACCC notes that there is no evidence that the existing authorisation has had an anticompetitive effect.

Balance of public benefit and detriment

18. For the reasons outlined in this determination the ACCC considers that the Conduct is likely to result in public benefit that would outweigh any public detriment, including from any lessening of competition. Accordingly, the ACCC is satisfied that the relevant net public benefit tests are met.

Determination

The application

19. Applications A91508 and A91509 were made using a Form FC, under subsection 91C(1) of the CCA. Authorisation is sought for an agreement between Suncorp-Metway Limited & Bendigo and Adelaide Bank Limited, not to 'direct charge' each other's cardholders for Automatic Teller Machine transactions at their ATMs.
20. Authorisation is sought as the Conduct may contain a cartel provision or may have the purpose or effect of substantially lessening competition or constitute the practice of exclusive dealing within the meaning of sections 45 and/or 47 of the CCA.

The net public benefit test

21. For the reasons outlined in this 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.
22. The ACCC is also satisfied, pursuant to section 90(8), that the Conduct for which authorisation is sought is likely to result in such a benefit to the public that the Conduct should be allowed to take place.

Conduct to which the ACCC grants authorisation

23. The ACCC has decided to revoke authorisations A91232 and A91233 and to grant authorisations A91508 and A91509 in substitution for the ones revoked. The authorisations are granted to Suncorp-Metway Limited & Bendigo and Adelaide Bank Limited to
- continue to offer their approved cardholder customers direct charge free ATM transaction services on an electronically linked ATM network for approved transactions
 - 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
 - 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.
24. The ACCC grants authorisation until 5 October 2025.

Date authorisation comes into effect

25. This determination is made on 1 October 2015. If no application for review of the determination is made to the Australian Competition Tribunal it will come into force on 23 October 2015.

Interim authorisation

26. The current authorisations A91232 and A91233 expire on 5 October 2015 which is before this final determination comes into force. As such, the ACCC has decided to grant interim authorisation to the Conduct described at paragraph 23.
27. In deciding to grant interim authorisation, the ACCC has taken into account relevant factors including:
- interim authorisation will permit the current arrangements to continue uninterrupted, thus avoiding costs and inconvenience to the Applicants and their customers
 - granting interim authorisation is unlikely to result in harm to any other party, and
 - the ACCC considers the arrangements are likely to result in minimal, if any, detriment and some public benefits, for the reasons outlined in this determination.
28. Interim authorisation will come into force on 5 October 2015 and will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.