



Draft Determination and Interim Authorisation

Application for revocation of A91312 and the substitution of authorisation A91593

lodged by

Australian Bankers Association Inc.

in respect of

the continuation of an arrangement to provide fee-free ATM balance enquiries and withdrawals in selected very remote Indigenous communities

Date: 26 October 2017

Authorisation number: A91593

Commissioners:
Sims
Rickard
Schaper
Court
Featherston

Summary

The ACCC proposes to re-authorise the Australian Bankers' Association to extend an Implementation Agreement which will continue to provide fee free access to ATM services in certain very remote Indigenous communities (the ATM Fee Arrangement).

The ATM Fee Arrangement was set up in 2012 in response to concerns around the high levels of total ATM fees paid by people in very remote Indigenous communities. The arrangement enables participating financial institutions to offer fee free withdrawals and balance enquiries to their customers at selected ATMs in those communities.

Under the ATM Fee Arrangement, ATM deployers provide customers of the participating banks and financial institutions with access (at no cost) to ATM services at certain identified ATMs. The participating banks and financial institutions pay subsidies to the ATM deployer to contribute to the costs of operating the identified ATMs.

The ACCC considers that the ATM Fee Arrangement is likely to result in significant public benefit by providing a solution to address high ATM fee expenditure incurred in very remote Indigenous communities. The ACCC considers that this benefit will outweigh the likely minimal public detriment.

Accordingly, the ACCC proposes to re-authorise the conduct for a further ten years.

The ACCC has granted interim authorisation to allow the parties to continue to give effect to the ATM Fee Arrangement pursuant to the existing Implementation Agreement beyond the expiry date of A91312 of 1 December 2017, pending final determination by the ACCC.

Next Steps:

The ACCC invites submissions in relation to this draft determination before making its final decision. The Applicants and interested parties may also request the ACCC to hold a pre-decision conference to allow oral submissions on the draft determination.

The application for authorisation

1. On 1 August 2017, the Australian Bankers' Association Inc. (the **ABA**) (the **Applicant**) lodged with the ACCC an application for the revocation of authorisation (A91312) and its substitution with authorisation (A91593) (re-authorisation). The Applicant also requested interim authorisation to enable it to engage in the proposed conduct while the ACCC is considering the substantive application.

The conduct

2. The Applicant seeks authorisation to extend the duration of, and continue to give effect to, an Implementation Agreement (the Implementation Agreement). The Applicant seeks authorisation for a further five years on behalf of itself and current and future parties to the Implementation Agreement.
3. The Implementation Agreement provides for:
 - Fee free balance enquiries and withdrawals to the parties' customers at particular ATMs in a number of very remote Indigenous communities (the ATM Fee Arrangement)
 - The sharing of aggregate customer transaction data and costing information to the extent necessary to facilitate the ATM Fee Arrangement.
4. Under the ATM Fee Arrangement, ATM deployers provide customers of the participating banks and financial institutions with access (at no cost) to ATM services at certain identified ATMs. The participating banks and financial institutions pay subsidies to the ATM deployer to contribute to the costs of operating the identified ATMs.

The Applicant

5. The ABA is an industry advocacy group representing 24 Australian member banks.¹ The ABA provides input into matters affecting the banking industry including regulation, policy development and financial literacy.

The participating parties

6. Currently there are 12 banks participating in the ATM Fee Arrangement,² and a single ATM deployer.³ It is envisaged that other banks may choose to participate in the ATM Fee arrangement over time and the Implementation Agreement allows for the addition or removal of participating banks. Similarly, the Implementation Agreement will be amended to allow for the addition of further ATM deployers.

¹ A list of the current members of the ABA is available at <https://www.bankers.asn.au/about-us/members/>

² Australia and New Zealand Banking Group Limited, Bank of Queensland Limited, Bank of Western Australia Limited, Bendigo and Adelaide Bank Limited, Citigroup Pty Limited, Commonwealth Bank of Australia, HSBC Bank Australia Limited, ING Bank (Australia) Limited, Members Equity Bank Pty Limited, National Australia Bank Limited, Suncorp-Metway Limited, and Westpac Banking Corporation.

³ Cardtronics Australia Limited (trading as DC Payments).

The ATM Fee Arrangement

7. The ATM Fee Arrangement was a proposal by the ABA to address the findings of a taskforce setup in 2010 by the Australian Government to address the issues arising from ATM fees in very remote communities.
8. The ATM taskforce found that while ATM fees paid in most remote indigenous communities were generally on parity with those in metropolitan and regional areas, this was not the case in very remote communities. The taskforce found that this was due, in part, to the fact that people in very remote Indigenous communities tended to use ATMs with greater frequency than other groups and often lacked access to alternative methods for making balance enquiries or cash withdrawals.
9. Under the Implementation Agreement, the parties agree to provide fee free balance enquiries and withdrawals to customers of the parties who use certain identified ATMs.
10. In order for an ATM to be included in the ATM Fee Arrangement, it must meet the following eligibility criteria.
 - Each identified ATM is located in a genuinely very remote community based on indicators of remoteness provided by the Australian Bureau of Statistics.
 - The ATM is located in a community store (and not in a venue that provides alcohol or gambling goods and services).
 - The residents of these very remote communities lack access to an alternative retail banking service, such as a bank branch, bank ATM, or post office.
11. The number of ATMs in the ATM Fee Arrangement is limited to a maximum of 85 ATMs and there are regular reviews to ensure that each of the ATMs continues to meet the eligibility criteria. Ad hoc reviews can also be triggered by certain events such as transaction volumes, population change, the introduction of competing banking services, or a material change in consumer behaviour.
12. A list of the ATMs currently covered by the ATM Fee Arrangement is at Attachment A.

Consultation

13. The ACCC tests the claims made by an applicant in support of its application for authorisation through an open and transparent public consultation process.
14. The ACCC invited submissions from a range of potentially interested parties.
15. The ACCC received submissions from Next Payments, the Reserve Bank of Australia (RBA) and the Australian Securities and Investments Commission, and a joint submission from the Financial Counselling Australia (FCA), the Consumer Action Law Centre (CALC), and the Indigenous Consumer Assistance Network (ICAN).⁴ The submissions were generally supportive of the application.
16. The submissions by the applicant and interested parties are considered as part of the ACCC's assessment of the application for authorisation.

⁴ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

ACCC assessment

17. The ACCC's assessment of the proposed conduct is carried out in accordance with the relevant net public benefit tests⁵ contained in the *Competition and Consumer Act 2010* (Cth) (the **CCA**). In broad terms, the ACCC may grant authorisation if it is satisfied that the likely benefit to the public from the proposed conduct would outweigh the likely detriment to the public, including from any lessening of competition.

18. 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 matters
- the relevant areas of competition likely to be affected by the conduct, which, consistent with the conclusions reached in A91312, are likely to be local markets for the supply of ATM transaction services to ATM cardholders in local areas served by an identified ATM (Local Areas); the wholesale deployment and operation of ATMs nationally; and the supply of retail banking services
- the likely future without the conduct that is the subject of the authorisation.⁶ In particular, the ACCC considers that, absent the authorisation, the participating banks and ATM deployers would be unable to reach agreement not to charge transaction fees and as a consequence, there is the potential for re-introduction of these fees
- the five year re-authorisation period requested, and
- the fact that these arrangements have been operating under an ACCC authorisation since 2012, and no concerns have been raised with the ACCC in that time.

Public benefit

19. The CCA does not define what constitutes a public benefit and the ACCC adopts a broad approach. This is consistent with the Tribunal which has stated that the term should be given its widest possible meaning, and 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

20. The Applicant submits that the current authorisation has delivered "significant and substantial public benefits."⁸ Specifically, the Applicant submits that re-authorisation of the ATM Fee Arrangement will continue to:

⁵ Subsections 91C(4), 91C(7), 90(5A), 90(5B), 90(6) and 90(7).

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.

⁸ Application for Authorisation at 5.2.

- improve and promote fairer access to banking and financial services for Indigenous people living in very remote communities
 - reduce the financial burden from the cumulative impact of ATM fees for Indigenous people living in very remote communities and allow for money to be spent on essential living expenses
 - reduce the potential for Indigenous people living in very remote communities to be overcharged when accessing cash through non-ATM means
 - reduce the financial burden associated with excessive ATM usage (in the form of more frequent balance enquiries and cash withdrawals),
 - enable Indigenous people living in very remote communities to have greater information regarding their finances, which will enhance their ability to implement budgets and reduce reliance on cash.
21. In granting authorisation A91312 to the ATM Fee Arrangement in 2012, the ACCC accepted that the arrangement would lead to the following public benefits:
- A solution to address high ATM fee expenditure incurred in very remote Indigenous communities
 - A reduction in the potential for some traders to provide financial services that may exploit the lower levels of financial literacy and lack of banking alternatives of relatively high proportions of the people in very remote communities
22. In assessing the application for re-authorisation, the ACCC has considered whether or not the ATM Fee Arrangement has resulted in these (or other) public benefits.

A solution to address high ATM fee expenditure incurred in very remote Indigenous communities

23. The Applicant submits that in the time since the current authorisation was granted, there has not been a material change in the type, frequency and value of ATM transactions in the remote communities covered by the ATM Fee Arrangement. The Applicant states that while ATM use in most parts of Australia has declined on average 5% each year since 2012, ATM use in the communities covered by the ATM Fee Arrangement has only declined by 2.4% between 2015 and 2017.
24. The Applicant submits that during the life of the current authorisation, the participating banks have contributed a total of between \$12 million and \$13 million to the cost of operating the ATM Fee Arrangement. The Applicant submits that without the Arrangement, most or all of these costs would have been recovered from Indigenous people living in very remote communities in the form of ATM fees.
25. The Reserve Bank of Australia submits that continuation of the ATM Fee Arrangement is in the public interest. The RBA further submits that the removal of the ATM Fee Arrangement would likely mean the re-introduction of ATM fees in the affected communities and this would result in a substantial increase in expenditure on ATMs which could be a significant financial burden for the residents of these communities.
26. Like the Applicant, ASIC considers that there has not been a substantive change in behaviour regarding the use of ATMs.

27. ASIC continues to support the objectives of the ATM Fee Arrangement and considers that it has (and will continue to) provide significant public benefits including that Indigenous people living in very remote communities are not financially burdened by substantial ATM fees from cumulative ATM enquiries and withdrawals.
28. As part of its supporting submission, the Applicant provided a letter from Financial Counselling Australia (FCA) which states that the ATM Fee Arrangement removed a substantial cost imposition on consumers living in remote communities and provided them with the same opportunities to access funds as consumers in less remote areas, who can generally access an ATM owned by their bank that does not charge a fee.
29. The FCA letter also states that the conditions impacting on consumers living in very remote communities have not substantially changed since the ACCC granted the current authorisation. The FCA notes:
- access to the internet to check balances and manage finances remains limited, with a corresponding lack of understanding of internet banking
 - access to cash remains an important vehicle for exchange
 - understanding and awareness of ATM fees remains low, and
 - remote Indigenous communities already struggle with higher costs for basic necessities.
30. In their joint submission in support of the application, FCA, CALC and ICAN noted that the above factors, along with higher patterns of ATM use by Aboriginal and Torres Strait Islander people, contributed to many residents of remote communities lacking money to meet basic living expenses, a problem that spirals further as ATM fees are compounded.
31. The joint submission states that the ATM Fee Arrangement addresses this problem and means that consumers living in these remote communities have the same opportunities to access their funds as consumers living in cities, who can generally find a bank-owned ATM which does not charge a fee. FCA, CALC and ICAN consider that the ATM Fee Arrangement has resulted in significant public benefits.
32. The ACCC considers that consumers in very remote communities use ATMs more frequently than consumers in less remote areas, with ATMs being the primary means by which consumers in remote areas access and manage their finances.⁹ This was the case in 2012 when the ACCC first considered this matter and remains the case now, with ATM usage remaining high.
33. This high ATM usage is exacerbated by limited alternative means for consumers in these very remote communities to manage their finances, with a lack of physical bank branches, limited infrastructure and uptake of internet and mobile banking, and a lack of alternative services that offer low or no fee access, such as EFTPOS or a competing ATM provider.

⁹ The ATM Taskforce focussed on consumers living in very remote communities as these communities generally did not have a physical bank branch or access to alternative banking services. Very remote communities were characterised by low population, limited access to telecommunications services, limited access to education, and low median weekly income, ATM Taskforce – Report on Indigenous ATM Issues, 28 February 2011 at Attachment E.

34. As a consequence, if fees are charged for ATM use, consumers in these very remote communities face significant financial harm. Consumers in less remote areas are often able to choose from a range of banking options, including bank ATMs that are fee free.
35. The ACCC considers that re-authorising the ATM Fee Arrangement will enable consumers living in these very remote communities to continue to be insulated from the financial harm imposed by ATM fees which they are unable to avoid due to a lack of competitive alternatives.

A reduction in the potential for exploitation by some traders

36. The Applicant submits that the ATM Fee Arrangement, by providing better access to information about account balances, can enable Indigenous people to better manage their budgets and make them less vulnerable to exploitative practices.
37. In A91392, the ACCC accepted that the ATM Fee Arrangement is likely to result in greater competition to the financial services provided by traders and community stores in the form of EFTPOS and some fringe lending services. The ACCC considered that this greater competition may reduce the ability for some traders to exploit the lack of alternative financial services.
38. The ACCC remains of the view that the ATM Fee Arrangement provides a competitive alternative for access to cash to EFTPOS and fringe lending services.

Public detriment

39. The CCA does not define what constitutes a public detriment and the ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by society including as one of its principal elements the achievement of the goal of economic efficiency.¹⁰

40. Generally, in a well-functioning competitive market, an arrangement whereby competitors agree to effectively subsidise free provision of a service (such as ATM services) may cause detriment by dampening price signals to suppliers and customers. This could reduce efficiency in the market and lead to worse outcomes for consumers than allowing the market to work.
41. The ACCC notes that even though the price for ATM withdrawals and balance enquiries has reduced to zero, there has not been a corresponding increase of ATMs in these very remote communities. This suggests that the usage of ATMs is driven by factors other than price and any potential loss of efficiency from dampened price signals is likely to be small.
42. In this case the ACCC considers that a number of features of ATM services in remote communities mean that relying on competition alone is unlikely to lead to efficient outcomes. Therefore an appropriately designed scheme to provide fee free ATM transactions is likely to lead to little detriment (and significant benefit) to the public. Reasons for this view are set out in more detail below.

¹⁰ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

43. The Applicant submits that the ATM Fee Arrangement, if re-authorised, will not lessen competition in any relevant market. Specifically, the Applicant submits that the ATM Fee Arrangement:
- will not reduce the level of competition in the supply of ATM services, as each ATM is situated in a very remote location with regular reviews to ensure that the identified ATMs continue to be situated in areas where there are no alternative retail banking services
 - will be of limited scope, with a limit of 85 ATMs
 - allows the addition of other issuers and ATM deployers to participate in the arrangement, and
 - ensures that any adverse impact would be short lived given the relatively short period of further extension.
44. In granting authorisation A91312 in 2012, the ACCC considered that the ATM Fee Arrangement was likely to cause very limited public detriment and that any anti-competitive detriment was likely to be limited by the short duration of the ATM Fee Arrangement and its limited scope. The ACCC specifically considered:
- whether customer switching would lead to the non-viability of the Traditional Credit Union (TCU), particularly within Local Areas
 - the reduced incentive to introduce a new ATM or banking service to a Local Area
 - the reduced incentive for retail banking providers which are parties to the Implementation Agreement to compete for customers who reside in a Local Area
 - potential customer confusion, and
 - the potential for aggregation of market power, including through co-ordinated conduct and information sharing, in the wholesale deployment and operation of ATMs and competition to supply retail banking services.
45. In considering the application for re-authorisation, the ACCC has considered whether or not the ATM Fee Arrangement has resulted in these (or other) public detriments.

Impact of the ATM Fee Arrangement on the viability of the TCU

46. In A91312, the ACCC acknowledged concerns regarding the potential for customer switching to adversely affect the TCU, which provides banking and financial services in the Northern Territory and relied on customer fees, including ATM fees, to support its activities. The TCU submitted at that time that its business model meant that it could not afford to subsidise fee free ATM balances and withdrawals. The ACCC concluded that this adverse outcome for the TCU was unlikely to eventuate given that the ABA did not propose to implement the ATM Fee Arrangement in communities where the TCU or other financial services were then available.
47. As part of its supporting submission in this matter, the Applicant provided a letter from the TCU. The TCU states that the ATM Fee Arrangement overlaps with some of its services, but that there would be a negative impact on the TCU and remote

Indigenous Australians if fee-free access to these ATMs were removed. In particular, it would go against the TCU's values, including caring for members. Consequently, the TCU supports the continuation of the fee-free arrangement.

Reduced incentive to introduce a new ATM or banking service

48. In A91312, the ACCC considered whether financial institutions would seek to introduce new ATMs or financial services into these very remote communities if the Arrangement did not proceed. It concluded that due to pre-existing commercial and logistical barriers, such as low population density and the high costs of cash handling in very remote areas, this was unlikely.

49. The ACCC considers that this remains the case.

50. In A91312, the ACCC also noted that the TCU was the only financial institution that had publicly expressed some interest in expanding into Local Areas and examined the effect that the conduct may have on the TCU's incentive to expand. On the information available, the ACCC concluded that, at worst, the ATM proposal may delay any proposed TCU expansion into a Local Area but was unlikely to prevent it.

51. The Applicant submits that since the granting of Authorisation A91312, the TCU has grown from 11 to 16 branches, and from 1 to 21 ATMs and that it no longer charges its customers transaction fees for using those ATMs.

52. In light of these developments, the ACCC is of the view that the ATM Fee Arrangement does not appear to have prevented the expansion of the TCU. The ACCC also notes the Applicant's submission that the ATM Fee Arrangement should not prevent entry or expansion of any other providers of financial services into areas that could support a branch or ATM.

Reduced incentive for participating banks to compete for customers

53. The ACCC has considered the potential for the continuation of the ATM Fee Arrangement to reduce the incentive of the participating banks to compete for new customers in Local Areas. The ACCC considers that the competitive detriment which may arise is likely to be limited due to:

- the minimal level of existing competition amongst the participating banks to attract customers from remote communities
- the relatively unchanging nature of demand in Local Areas for retail banking services.

54. Interested party consultations have not indicated any concerns in relation to this issue.

Customer confusion

55. In A91312, the ACCC considered that there could be some public detriment resulting from the inadvertent payment of ATM fees during the initial implementation of the ATM Fee Arrangement due to customers potentially using an ATM which is not part of the ATM Fee Arrangement and incurring fees as a result.

56. FCA, CALC and ICAN submit that when customers in these very remote communities travel to larger centres they are continuing to use ATMs in the same manner as they do in their home community and are incurring fees as a result.¹¹

57. While this is of concern to the ACCC, the public detriment arising from such customer confusion is likely to be relatively small compared to the benefits of the ATM Fee Arrangement, including because:

- the ATM Fee Arrangement will continue to include the provision of an electronic screen message which will distinguish the identified ATMs from other ATMs across the network and explain the fee free transaction
- with the recent announcement by the four large banks that they will be removing ATM fees for non-bank customers¹² customers travelling outside of the ATM Fee Arrangement areas are now more likely to be able to find an ATM which does not charge them fees.

Potential for aggregation of market power

58. The ACCC considers that the continuation of the ATM Fee Arrangement is unlikely to lead to a significant effect upon competition outside of Local Areas due to the small proportion of each financial institution's business affected by the ATM Fee Arrangement, the limited scope of the ATM Fee Arrangement, and the restrictions contained within the implementation agreement around information sharing.

59. The ACCC has also not received any concerns regarding this issue during consultation.

Competition within the ATM Fee Arrangement

60. While the original ATM Fee Arrangement authorised by the ACCC involved two ATM deployers, the current arrangement involves only a single ATM deployer, DC Payments.

61. The Applicant submits that under the proposed changes to the Implementation Agreement, changes will be made to the eligibility criteria (outlined in paragraph 10 above) to help promote competition among ATM deployers. The Applicant also submits that the present ATM deployer will agree to the introduction of new ATM deployers.

62. The process for adding new ATM deployers to the arrangement is outlined below.

- The eligibility criteria will be refined to facilitate the entry of ATM deployers and increase the effectiveness of the arrangement by providing that:
 - ATMs that are located near a Traditional Credit Union (TCU) branch will be eligible to participate in the arrangement (to allow TCU to participate as an ATM deployer if it so wishes) and
 - only one ATM in a location will be eligible to participate in the arrangement (to avoid the situation where two co-located ATMs may be

¹¹ Submission from Financial Counselling Australia, Consumer Action Law Centre, and Indigenous Consumer Assistance Network, 28 September 2017.

¹² <http://www.theaustralian.com.au/business/companies/commonwealth-bank-ditches-atm-withdrawal-fees/news-story/2a0d8aecd15b07318d3e53e25810c225?nk=becc32a1c1fddc137ac28c135c42b21b-1508383265>

part of the arrangement while other locations have no access to fee-free ATMs).

- Whenever ATMs are removed from the arrangement, the ABA as delegate of the issuers will invite ATM deployers to submit proposals for ATMs to replace them, so that a maximum of 85 ATMs are always available under the Arrangement. The ABA will assess these proposals against the eligibility criteria and the additional criterion of promoting competition among ATM deployers, and determine which proposals best meet these criteria.
 - The ABA intends that the criterion of promoting competition will encourage the participation of new ATM deployers in the arrangement over time.
63. The ACCC has considered the implications of having a single ATM deployer within the ATM Fee Arrangement. In particular, the ACCC notes the current lack of an alternative deployer within the arrangement means the incumbent faces no competitive tension in relation to matters such as the quality of service that it provides.
64. The ACCC considers that the proposed process outlined by the Applicant for adding additional ATM deployers is likely to mitigate this potential competition concern to a certain degree.
65. However, the ACCC also notes that with a maximum of 85 ATMs permitted as part of the ATM Fee Arrangement, 82 of which are currently operated by DC Payments, there is limited scope for an alternative deployer to gain access to the arrangement.
66. The ACCC would be concerned if a lack of competition between ATM deployers led to lower service quality within the ATM arrangement. The ACCC seeks comment from interested parties on the extent to which the proposed amendments to the eligibility criteria promote competition between ATM deployers within the ATM Fee Arrangement.

Balance of public benefit and detriment

67. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.
68. The ACCC considers that the re-authorisation of the ATM Fee Arrangement, as contemplated by the Implementation Agreement, is likely to result in significant public benefits including:
- continuing to provide a means of addressing the financial impact of high ATM usage in remote Indigenous communities
 - a reduction in the potential for consumers living in remote Indigenous communities to be exploited due to a lack of alternative financial services.
69. The ACCC considers that the ATM Fee Arrangement, as contemplated by the Implementation Agreement, is unlikely to result in any significant detriment. This is because, based on the information before the ACCC including information about the operation of the scheme to date, the ATM Fee Arrangement:

- does not appear to have had an impact, or be likely to have an impact, on the incentive and ability of non-participating financial institutions such as the TCU to expand
- does not appear to have reduced, or be likely to reduce, the incentive for other providers of financial services to introduce new ATMs or other banking services into areas that would support such entry or expansion
- is not likely to reduce the incentive for participating banks to compete for customers in Local Areas
- is likely to result in minimal customer confusion, and if such confusion occurs, the impact of this is likely to be minimised by the wide availability of fee free ATMs outside of the local areas
- is not likely to lead to a significant aggregation of market power and
- does not prevent alternative ATM deployers from joining the arrangement.

70. The ACCC considers that any detriment incurred as a result of re-authorising the ATM Fee Arrangement is likely to be outweighed by the benefit afforded to remote indigenous communities with an identified ATM.

71. Accordingly, the ACCC proposes to grant authorisation.

Length of authorisation

72. The CCA allows the ACCC to grant authorisation for a limited period of time.¹³ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period. In this instance, the Applicant seeks authorisation for a further five years.

73. The ACCC considers that it is appropriate to authorise the ATM Fee Arrangement for a longer period of time than five years. This is because:

- the ATM Fee Arrangement has resulted (and is likely to continue to result) in significant public benefits and limited detriments
- there has been little material change in the usage of ATMs in very remote Indigenous communities and while ATM usage may decline, it is likely to do so at a relatively slow rate
- there has been limited increase in the availability of alternative banking services and the ACCC does not consider that alternative banking services (with the possible exception of the TCU) will seek to enter these very remote communities in the medium term.

74. The ACCC therefore proposes to grant authorisation for a further 10 years.

¹³ Subsection 91(1).

Draft determination

The application

75. Application A91593 was made using a Form FC, under subsection 91C of the CCA. Authorisation is sought to make and give effect to the Implementation Agreement, including the:

- provision of fee free balances and withdrawals to the parties' customers at identified ATMs
- sharing of aggregate customer transaction data and costing information to the extent necessary to facilitate the provision of fee free balances and withdrawals to the parties' customers at identified ATMs

76. Authorisation is sought as the proposed conduct/ arrangement may contain a cartel provision or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the CCA.

77. Subsection 90A(1) of the CCA requires that before determining an application for authorisation the ACCC shall prepare a draft determination.¹⁴

The net public benefit test

78. For the reasons outlined in this draft determination, the ACCC is satisfied 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 proposed conduct/ arrangement.¹⁵

Conduct which the ACCC proposes to authorise

79. The ACCC proposes to revoke authorisation A91312 and grant authorisation A91593 to the Applicant to enter into and give effect to the Implementation Agreement.

80. The ACCC proposes to grant authorisation A91593 for 10 years.

81. Under section 88(10) of the CCA, the ACCC proposes to extend the authorisation to future parties to the proposed conduct/arrangement.

82. The authorisation is in respect of the Implementation Agreement as it stands at the time authorisation is granted, except that the authorisation:

- does not impose any limit on the number of ATMs that may be covered by the Implementation Agreement as long as the criteria set out in paragraph 9 are satisfied in relation to the addition of each individual ATM;

¹⁴ Section s91C(5) requires the ACCC to comply with the requirements of s90A prior to making a determination.

¹⁵ The relevant tests are set out in Sections 90(5A), (5B), (6) and (7) of the Act

- does not prevent future additional ATM Deployers and retail banking providers becoming parties to the Implementation Agreement in accordance with the terms of the Implementation Agreement;¹⁶
- does not prevent a party to the Implementation Agreement taking a unilateral step under the Implementation Agreement (such as changing the identity of its nominated representatives or delegates) that it is entitled to take in accordance with the terms of the Implementation Agreement.

83. Any other changes to the Implementation Agreement during the term of the proposed authorisation would not be covered by the proposed authorisation. The ACCC notes that this does not affect the parties to the Implementation Agreement's ability to make or give effect to amendments to the Implementation Agreement to the extent that doing so does not breach the Act.

84. A decision to grant authorisation also provides statutory protection pursuant to section 44ZZY of the Act in relation to the disclosure of information otherwise prohibited under sections 44ZZW and 44ZZX of the Act, to the extent that the disclosure of information is part of the authorised conduct.

85. This draft determination is made on 26 October 2017.

Next steps

86. The ACCC now seeks submissions in response to this draft determination. In addition, consistent with section 90A of the CCA, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.

¹⁶ The ACCC notes that such an extension of the ATM Proposal would be likely to require agreement by the existing parties to the Implementation Agreement, to any further necessary parties being added to the Implementation Agreement and any necessary consents from the Reserve Bank of Australia and other government agencies.

Interim authorisation

87. At the time of lodging the application the Applicant requested interim authorisation to extend the previously authorised Implementation Agreement.
88. The Applicant requested interim authorisation to allow the Parties to continue to provide fee free ATM services pursuant to the ATM Fee Arrangement in the event that the ACCC was unable to issue its final determination on the matter before 1 December 2017, being the date at which Authorisation A91312 expires.
89. The ACCC grants interim authorisation for the Applicants to continue to give effect to the current Implementation Agreement, as attached as Confidential Annexure A to the Applicant's Submission in support of application for revocation and substitution of authorisation A91312, dated 1 August 2017.
90. In granting interim authorisation, the ACCC considers that:
- the ATM Fee Arrangement has been operating since 1 December 2012 and appears to have led to benefits and no significant detriment in that time; and
 - granting interim authorisation will allow the ATM Fee Arrangement to continue to operate without interruption, pending final determination by the ACCC.
91. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

Attachment A – List of Identified ATMs

	Site Name	Community Locality	State
1	Aherrenge Community Store	Aherrenge via Alice Springs	NT
2	Ali Curung Store	Ali Curung	NT
3	Mount Liebig	Mount Liebig	NT
4	Aputula Store	Aputula via Alice Springs	NT
5	Areyonga Supermarket	Areyonga	NT
6	Arlparra Community Store	Utopia	NT
7	Atitjere Homelands Store Aboriginal Corporation	Atitjere	NT
8	Barunga Store	Barunga via Katherine	NT
9	Bawinanga Aboriginal Corporation #1	Maningrida	NT
10	Bawinanga Aboriginal Corporation #2	Maningrida	NT
11	Belyuen Store	Cox Peninsula	NT
12	Canteen Creek Store	Davenport	NT
13	Croker Island Store	Minjilang (Crocker Island)	NT
14	Docker River Store	Kaltukatjara (Docker River)	NT
15	Engawala Store	Engawala	NT
16	Finke River Mission Store	Hermannsburg via Alice Springs	NT
17	Gunbalanya Council Community Store	Oenpelli	NT
18	Imanpa General Store	Imanpa WA via Alice Springs NT	NT
19	Ininti Store	Mutitjulu via Yulara	NT
20	Jilkminggan Store	Mataranka	NT
21	MacDonnel Shire Titjikala Store	Titjikala via Alice Springs	NT
22	Maningrida Progress Association	Maningrida	NT
23	Milikapiti Store #1	Milikapiti Melville Island	NT
24	Milikapiti Store #2	Milikapiti Melville Island	NT
25	Naiyu Store	Daly River	NT
26	Nguiu Ullintjinni Ass #1	Bathurst Island	NT
27	Nguiu Ullintjinni Ass #2	Bathurst Island	NT
28	Nguiu Ullintjinni Ass #3	Bathurst Island	NT
29	Nguru Walalja	Yuendumu	NT
30	Nyirripi Community Store	Nyirripi	NT
31	Papunya Store	Papunya via Alice Springs	NT
32	Pirlangimpi Store	Melville Island	NT
33	Pulikutjarra Aboriginal Corporation	Pulikutjarra	NT
34	Santa Teresa Community Store	Santa Teresa	NT
35	Ti Tree Community Store	Ti Tree	NT
36	Umbakumba Store	Umbakumba	NT

37	Walangeri Ngumpinku Community Council	Yarralin via Katherine	NT
38	Warakurna Community Store	Petermann via Alice Springs	NT
39	Warte Alparayetye Aboriginal Store	Alpurrurulam Lake Nash NT via Mt Isa Qld	NT
40	Watinuma Roadhouse	Fregon SA via Alice Springs NT	NT
41	Wetengerr Store	Barkley Homestead	NT
42	Wirliyajarrayi Store	Willowra via Alice Springs	NT
43	Ayton Iga	Ayton	QLD
44	Doomadgee Retail Store #1	Doomadgee	QLD
45	Doomadgee Retail Store #2	Doomadgee	QLD
46	Hopevale Supermarket – Island and Cape	Hope Vale	QLD
47	Badu Island Supermarket	Badu Island	QLD
48	Mapoon Aboriginal Council Store	Mapoon	QLD
49	Palm Island Retail Store #1	Palm Island	QLD
50	Palm Island Retail Store #2	Palm Island	QLD
51	Umagico Supermarket	Cape York	QLD
52	Woorabinda Retail Store	Woorabinda	QLD
53	Wujal Wujal Store	Wujal Wujal	QLD
54	Amata Community Store #1	Amata SA via Alice Springs NT	SA
55	Amata Community Store #2	Amata SA via Alice Springs NT	SA
56	Amata Community Store #3	Amata SA via Alice Springs NT	SA
57	Intalka Store	Iwantja SA via Alice Springs NT	SA
58	Kaltjiti Community Store	Fregon SA via Alice Springs NT	SA
59	Kanypi Store	Kanypi SA via Alice Springs NT	SA
60	Mimili Community Store	Mimili	SA
61	Oak Valley Store	Oak Valley (Maralinga Tjarutja)	SA
62	Pipalyatjara Store	Pipalyatjara SA via Alice Springs NT	SA
63	Pukatja Supermarket	Pukatja SA via Alice Springs NT	SA
64	Yalata Community Store	Yalata	SA
65	Beagle Bay Community Store	Beagle Bay	WA
66	Bidyadanga Store #1	Bidyadanga via Broome	WA
67	Bidyadanga Store #2	Bidyadanga via Broome	WA
68	Blackstone Store	Papulankutja (Blackstone) WA via Alice Springs NT	WA
69	Illawarra Store	Jigalong Community via Newman	WA
70	Irrunytju Store	Wingellina WA via Alice Springs NT	WA
71	Kiwirrkurra Roadhouse and Community Store	Kiwirrkurra	WA
72	Kundat Djaru Community Store	Kundat Djaru via Halls Creek	WA
73	Kururrungku Store	Billiluna Station via Halls Creek	WA
74	Mulan Community Store	Mulan via Halls Creek	WA

75	Tjukurla Store	Tjukurla Community	WA
76	Uraro Community Store	Kalumburu via Wyndham	WA
77	Wanarn Store	Wannan Community via Alice Springs	WA
78	Warburton Store	Warburton WA via Alice Springs	WA
79	Warrunyinna Store	Jameson Community WA via Alice Springs NT	WA
80	Wirrimanu Community Store #1	Wirrimanu via Halls Creek	WA
81	Wirrimanu Community Store #2	Wirrimanu via Halls Creek	WA
82	Wungkul Store	Wungkul via Kununurra	WA

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.