

A Variation to the Access Regime for the ATM System: Conclusions

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Reserve Bank

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1. Introduction

The Reserve Bank (the Bank) recently sought views on a proposal to vary the *Access Regime for the ATM System* (the Access Regime). The variation would extend the Bank's exemption power in relation to the Access Regime's prohibition on certain interchange fee arrangements in the ATM system. The Bank's Payments System Board (the Board) decided at its August 2012 meeting that it is appropriate for the Access Regime to be varied in this way. This will allow the Bank the flexibility to grant an exemption – where it is satisfied that it is appropriate – to arrangements in which an ATM market participant is both a payer and receiver of interchange fees under 'one-way arrangements'.

This document is set out as follows. Section 2 discusses the intent and purpose behind some of the provisions in the current Access Regime and why a variation has been considered. Section 3 discusses the specific variation to the Access Regime, while Section 4 summarises the views expressed by various parties during consultation. In light of these views, Section 5 discusses the case for a variation, and Section 6 sets out the Bank's conclusions. The varied Access Regime can be found in the Attachment.

2. Background and Current Issue

In 2009, the Bank put in place the Access Regime as part of a broader set of industry-led reforms to improve efficiency and competition in the ATM system.¹ Among other elements, the Access Regime prohibits the payment of interchange fees between participants in the ATM system except in two sets of circumstances: where a common multilateral interchange fee is paid between members of an ATM sub-network, and where a fee is paid in respect of a one-way arrangement (in which an institution pays an interchange fee to an ATM network owner so that the institution's customers can access the network without paying a direct charge).

The Bank considered these exceptions to benefit competition by allowing smaller financial institutions to provide their cardholders with direct charge-free access to a larger network of ATMs than they would be able to provide themselves. At the same time, the Bank sought to avoid the possibility that these exceptions would lead to the redevelopment of a network of bilateral interchange fees. The current Access Regime therefore prevents an issuer from putting in place more than a single one-way arrangement, and from being both a payer and receiver of interchange fees under one-way arrangements.

Given the variety and complexity of business arrangements in the ATM system, it was recognised at the time that it would be desirable to have some additional flexibility over the prohibition on interchange fees. The current Access Regime therefore includes a provision (paragraph 16) that allows the Bank to grant an exemption to the prohibition under certain circumstances, and sets out the matters that the Bank will have regard to when granting such an exemption. That exemption power, however, does not extend to the provision that prevents a participant from being both a payer and receiver of interchange fees under one-way arrangements.

The Bank's view is that the exemption power in the current Access Regime is too narrow. It is now aware of possible circumstances where an ATM market participant may be both a payer and receiver of interchange fees under one-way arrangements and where such an arrangement is consistent with the intent and purpose of the Access Regime. One such arrangement is a scheme that has been proposed by the ATM industry, in line with recommendations made by the joint Treasury/Reserve Bank ATM Taskforce, to help reduce the sizeable expenditure on ATM fees by residents of very remote Indigenous communities.² The proposal, which involves providing direct charge-free access to ATMs for the residents of these communities who are customers of the participating financial institutions, may involve some ATM market participants that already receive interchange fees in existing one-way arrangements also being required to pay fees in one-way arrangements established for the purpose of the scheme.

¹ See Reserve Bank of Australia (2009), *An Access Regime for the ATM System*, February. Available at <<http://www.rba.gov.au/payments-system/reforms/atm/access-regime/index.html>>.

² A typical cardholder living in a very remote Indigenous community spends much more on ATM transactions than other Australians. This reflects a lack of alternatives to paying a direct charge each time these cardholders need to make a balance enquiry or withdraw cash, given that they typically only have access to an independently owned ATM for their banking needs and, therefore, do not have access to charge-free ATM services. For more detail, see Treasury and Reserve Bank of Australia (2011), *ATM Taskforce – Report on Indigenous ATM Issues*, released on 25 May 2012. Available at <http://archive.treasury.gov.au/banking/content/reports/atm_indigenous/contents.asp>.

3. The Variation to the Access Regime

The Bank published a draft variation to the Access Regime for consultation on 29 May 2012 and has decided to proceed with a variation that is substantially the same.³ The variation in the Attachment extends the Bank's exemption power in paragraph 16 (renumbered from paragraph 17 in the draft variation to the Access Regime) in order for it to permit a participant to be both a payer and receiver of interchange fees under one-way arrangements. That is, the Bank will have the power to grant an exemption from the requirements of paragraph 12 in addition to those of paragraph 11 (renumbered from paragraphs 13 and 12, respectively, in the draft variation to the Access Regime). The Access Regime continues to set out the factors the Bank will have regard to in deciding whether an exemption is appropriate – the public interest, the interests of current and potential future participants in the system, and any other matters that the Bank considers relevant. That is, the Bank would be required to consider the same matters under the expanded exemption power as for its exemption power under the current Access Regime.

³ Reserve Bank of Australia (2012), *A Variation to the Access Regime for the ATM System: Consultation Document*, May. Available at <<http://www.rba.gov.au/publications/consultations/201205-acc-reg-atm-sys-cons-doc/index.html>>.

4. Views Expressed During Consultation

The Bank requested submissions from interested parties by 13 July 2012. Five parties made submissions: an industry body representing banks (the Australian Bankers' Association); an independent ATM deployer (Cashcard); a body representing financial counsellors (Financial Counselling Australia); an 'aggregator' of ATM services for smaller participants (Indue); and a research centre (Centre for Rural Regional Law and Justice).

All five submissions supported the proposed variation to the Access Regime, noting that it would provide the Bank with greater flexibility to grant exemptions for otherwise prohibited ATM arrangements – where it is appropriate to do so – while retaining the criteria under which an exemption may be granted.

Nonetheless, two submissions raised several issues about the specific circumstances that have prompted the Bank's current review. At the same time as expressing support for the proposed variation, the Centre for Rural Regional Law and Justice urged the Bank to provide further guidance on how the expanded exemption power may be used. Similarly, Indue supported the draft variation to the Access Regime while raising concerns about using the extended exemption power in relation to the specific scheme proposed for very remote Indigenous communities.⁴

⁴ Indue's concerns were expressed on behalf of the Traditional Credit Union, for whom Indue provides transactional and electronic funds transfer services (including for the ATM system).

5. Assessment

In making a determination on whether to vary the Access Regime under section 14 of the *Payment Systems (Regulation) Act 1998* (the Act), the Bank must consider it appropriate to do so, having regard to:

- (a) whether the variation would be in the public interest; and
- (b) the interests of the current participants in the system; and
- (c) the interests of people who, in the future, may want access to the system; and
- (d) any other matters the Reserve Bank considers relevant.

Section 8 of the Act sets out that in determining whether a particular action is in the public interest, the Bank is to have regard to the desirability of payment systems:

- (a) being (in its opinion):
 - (i) financially safe for use by participants; and
 - (ii) efficient; and
 - (iii) competitive; and
- (b) not (in its opinion) materially causing or contributing to increased risk to the financial system.

The Reserve Bank may have regard to other matters that it considers are relevant, but is not required to do so.

After taking into consideration the views expressed during consultation, the Board has concluded that varying the Access Regime to extend the exemption power in the manner outlined above is appropriate. Such a variation would be in the public interest, given that it would provide the Bank with additional flexibility to facilitate arrangements in the public interest should it be required and should the Bank consider it appropriate. It is unlikely that the proposed variation would result in any detriment in terms of the public interest or the interests of current or prospective members of the system, given that the Bank would still be required to have regard to the same factors in granting an exemption under the extended power as in varying the Access Regime.

The variation would make the process of dealing with special cases that are consistent with the intent of the Access Regime more streamlined. The alternative means of facilitating such arrangements would be to vary the Access Regime on a case-by-case basis, which would be administratively burdensome and would delay any outcome. However, unlike varying the Access Regime, granting an exemption under the extended power would not require public consultation nor publication in the *Gazette*. In the Bank's view, exemptions that may be granted under the extended power are expected to be of a sufficiently minor nature that public consultation would add little benefit, but the Bank will stand ready to consult if it considers that consultation would be likely to contribute materially to its decision.⁵

⁵ In this context, it should be noted that the Bank has already liaised with, and considered the views of, several parties on whether the Bank should grant an exemption (under the proposed varied Access Regime) to the ATM industry-proposed scheme to reduce the high expenditure on ATM fees in selected very remote Indigenous communities.

6. Conclusion

The Board has decided that it is appropriate to vary the Access Regime such that the Bank may grant an exemption to the prohibition on a participant being both a payer and receiver of interchange fees under one-way arrangements, should the Bank decide that such an exemption is appropriate. The varied Access Regime, set out in the Attachment, is substantially the same as the draft Access Regime issued for consultation on 29 May 2012, and will be effective from 29 August 2012.

Attachment

Access Regime for the ATM System

Objective

The objective of this Access Regime is to promote competition and efficiency in the Australian payments system, having regard to:

- (i) the interests of current participants in the ATM system;*
- (ii) the interests of people who, in the future, may want access to the ATM system;*
- (iii) the public interest; and*
- (iv) the financial stability of the ATM system.*

Application

1. This Access Regime is imposed under Section 12 of the *Payment Systems (Regulation) Act 1998*.
2. This Access Regime applies to the payment system operated within Australia known as the ATM system, which was designated as a payment system on 10 December 2008 and is referred to in this Access Regime as the ATM system.

3. In this Access Regime:

'Access Provider' has the same meaning as in the ATM Access Code;

'Access Seeker' has the same meaning as in the ATM Access Code;

'APCA' means the Australian Payments Clearing Association Limited (ABN 12 055 136 519);

'APCA's 2008 costs survey' is the survey, conducted by APCA, of the estimated incremental direct costs to Access Providers of providing to an Access Seeker a Direct Connection Service or a Direct Clearing/Settlement Service, the final results of which were supplied to the Reserve Bank of Australia in November 2008;

an 'ATM' means an automatic teller machine in Australia;

an 'ATM Acquirer' has the same meaning as in the ATM Access Code;

'ATM Access Code' means the ATM Access Code adopted by ATM Access Australia Limited (ABN 53 130 571 103) on 23 February 2009 to commence on 3 March 2009, and as varied from time to time;

an 'ATM Issuer' has the same meaning as in the ATM Access Code;

an 'ATM sub-network' is a component of the ATM system for which access is provided on a multilateral basis, rather than by bilateral negotiation, and for which there is a common, multilateral interchange fee;

'ATM transaction' means a cash withdrawal, balance enquiry, or any other service obtained from an ATM in the ATM system in Australia;

'Connection Agreement' has the same meaning as in the ATM Access Code;

'Connection Charge' means the charge payable by an Access Seeker to an Access Provider under a Connection Agreement as described in Clause 3 of Schedule 3 of the ATM Access Code;

'Direct Clearing/Settlement Service' has the same meaning as in the ATM Access Code;

'Direct Connection Service' has the same meaning as in the ATM Access Code;

'Direct Connector' means a participant that exchanges ATM transaction messages, and clears and settles ATM transactions using two or more direct connections;

an 'interchange fee' is a wholesale fee which is payable by an ATM Issuer to an ATM Acquirer when a cardholder of the ATM Issuer undertakes an ATM transaction that is acquired by the ATM Acquirer;

a 'one-way arrangement' is an access arrangement whereby an ATM Issuer pays an interchange fee to an ATM Acquirer for use of an ATM by a cardholder, but that same ATM Acquirer does not pay an interchange fee to access any ATMs of the ATM Issuer in the arrangement;

terms defined in the *Payment Systems (Regulation) Act 1998* have the same meaning in this Access Regime.

4. Each participant in the ATM System must do all things necessary on its part to ensure compliance with this Access Regime.
5. If any part of this Access Regime is invalid, it is ineffective only to the extent of such part without invalidating the remaining parts of this Access Regime.
6. This Access Regime is to be interpreted:
 - in accordance with its objective; and
 - by looking beyond form to substance.
7. This Access Regime originally came into force on 3 March 2009. This Access Regime as amended comes into force on 29 August 2012.

Price of access

Connection Charge for providing the Direct Connection Service

8. The Connection Charge levied by an Access Provider for providing the Direct Connection Service to an Access Seeker must not exceed the Direct Connection Cap, calculated in accordance with paragraph 9 below, applying on the date the Connection Agreement is entered into.
9. From 3 March 2009, the Direct Connection Cap for the Connection Charge in the ATM system is the lowest estimated cost for providing a Direct Connection Service as measured in APCA's 2008 costs survey. This cost is \$76 700 (excluding GST).

Connection Charge for providing the Direct Clearing/Settlement Service

10. From 3 March 2009, no charge may be levied between participants in the ATM system for providing the Direct Clearing/Settlement Service.

Interchange fees

11. From 3 March 2009, no interchange fee shall be paid between participants in the ATM system in relation to any ATM transaction, unless the interchange fee is being paid by:
 - (i) a participant with a one-way arrangement to access one, and only one, other participant's ATMs and the fee is paid in respect of this arrangement; or
 - (ii) a participant that is a member of an ATM sub-network and the fee is the common interchange fee payable between the members of the sub-network, and the fee is paid to another member of that sub-network.
12. A participant that pays an interchange fee in a one-way arrangement cannot receive an interchange fee from any other participant in the ATM system unless both those participants are members of an ATM sub-network and the interchange fee is the common interchange fee payable between members of the sub-network.

Transparency

13. Each ATM Acquirer in the ATM system that receives an interchange fee within the terms of sub-paragraph 11(i) must report that arrangement to the Reserve Bank of Australia no later than 3 April 2009 for existing arrangements or within thirty days of the date the arrangement is entered into for new arrangements.
14. The administrator of an ATM sub-network or a representative of the participants in an ATM sub-network must publish the multilateral interchange fee of the sub-network on the administrator's website or on a representative of the participants' website, or make the multilateral interchange fee generally available through other means.
15. The administrator of an ATM sub-network must publish the rules that govern access to the sub-network.

Exemptions from paragraphs 11 and 12 of this Regime

16. The Reserve Bank may grant an exemption to a participant in the ATM system from any or all of the requirements of paragraphs 11 and 12 where it is satisfied that the exemption is appropriate, having regard to:
 - (a) whether granting the exemption would be in the public interest;
 - (b) the interests of current participants in the system;
 - (c) the interests of people who, in the future, may want access to the system; and
 - (d) any other matters the Reserve Bank considers relevant.
17. Where the Reserve Bank grants an exemption it will publish notice on its website that an exemption has been granted, the nature of the exemption and the identity of the participant(s) involved.