

A Variation to the Access Regime for the ATM System: Consultation Document

MAY 2012

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Reserve Bank

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Introduction

The Reserve Bank (the Bank) is seeking comments on a proposal to vary the *Access Regime for the ATM System* (Access Regime) to extend the Bank's exemption power in respect of the Access Regime's interchange fee provisions. This extended power could be used to grant an exemption for a scheme being proposed by the ATM industry for providing charge-free access to ATMs in selected very remote Indigenous communities.

The proposed changes are marked in the draft of the varied Access Regime as set out in the Attachment.

Background

A case for considering an expansion of the Bank's exemption powers under the Access Regime has become evident in light of a proposal by the ATM industry to establish a scheme to reduce the sizeable expenditure on ATM fees by residents of very remote Indigenous communities. The scheme has been formed following the work of a joint Treasury/Reserve Bank ATM Taskforce (the Taskforce), which found that 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 access cash at an ATM; at these very remote locations, cardholders typically only have access to one independently owned ATM and, therefore, do not have access to charge-free ATM services.

As part of its work, the Taskforce engaged with the ATM industry to work towards reducing the expenditure on ATM fees by residents of very remote Indigenous communities who lack access to alternative banking facilities. The scheme proposed by ATM industry participants is likely to involve financial institutions – including the major banks – making payments to independent ATM deployers to enable cardholders in selected very remote Indigenous communities to access existing ATMs free of direct charges. These payments may, however, be counter to provisions relating to interchange fees in the Bank's Access Regime.

The Access Regime, which was put in place as part of the broader ATM system reforms in 2009, eliminates the payment of interchange fees between participants in the ATM system, except in two sets of circumstances.¹ The first is where a common multilateral fee is paid between members of an ATM sub-network. The second is where a fee is paid in respect of a one-way arrangement, where an institution pays a fee to an ATM network owner so that its cardholders can access that network without paying a direct charge. The Bank considered that these exceptions would benefit competition by allowing smaller institutions to provide their customers with charge-free access to a larger network of ATMs than the institutions could provide themselves. However, the Bank sought to avoid the possibility that these exceptions would lead to the redevelopment of a network of bilateral fees. The Access Regime therefore prevents an issuer from putting in place more than a single one-way arrangement, and from being both a payer and a receiver of interchange fees under one-way arrangements.

The proposed scheme for very remote Indigenous communities may involve some participants that already receive interchange fees in one-way arrangements also being required to pay fees in one-way arrangements established for the purpose of the scheme – counter to the interchange fee provisions of the Access Regime. Paragraph 16 of the Access Regime currently provides the Bank with the power to grant an exemption to the prohibition on interchange fees for ATM transactions (paragraph 11 of the current Access Regime) under certain circumstances, but that power does not extend to the provision that prevents a participant from being

¹ See Reserve Bank of Australia (2009), *An Access Regime for the ATM System*, February. Available at <www.rba.gov.au/payments-system/reforms/atm/access-regime/atm-access-0209.pdf>.

both a payer and a receiver of interchange fees under one-way arrangements (paragraph 12). Therefore, the industry's proposed scheme may be able to proceed in its current form only if the ATM Access Regime is varied.

The Proposed Approach

The Bank's preliminary view is that the exemption powers in the Access Regime may currently be too narrow. It has reached this preliminary view given that it is now aware that there may be possible circumstances where a participant may be both a payer and a receiver of interchange fees under one-way arrangements, where those circumstances are not contrary to the original intent of the Access Regime – namely to increase transparency in ATM fees to cardholders and to strengthen competition in the ATM industry.

The Bank therefore proposes to vary the Access Regime in order to expand its exemption power. This would enable it to grant an exemption to an ATM scheme for very remote Indigenous communities and any future arrangements that the Bank considers appropriate, having regard to the requirements of the Access Regime.

The draft variation to the Access Regime (in the Attachment with the proposed variations, including changed paragraph numbers, marked) extends the Bank's exemption power in paragraph 17 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 13 in addition to those of paragraph 12. The draft Access Regime would continue to require that, in deciding to grant an exemption, the Bank consider the public interest, the interests of current and potential future participants in the system and any other matters that it considers relevant.

The Bank must consider the same factors in deciding whether to vary the Access Regime in the manner described above. That is, under section 14(1) of the *Payment Systems (Regulation) Act 1998*, it must consider whether it is appropriate to vary the Access Regime, having regard to:

- (a) whether the variation would be in the public interest; and
- (b) the interests of 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.

The Board's preliminary view is that varying the ATM Access Regime to extend the Bank's exemption power in the proposed manner is likely to be in the public interest. This preliminary view is based on the following considerations. It would provide the Bank with the flexibility to facilitate an ATM scheme for very remote Indigenous communities in a timely manner, along with any other arrangements that in the future might be considered to be in the public interest. The interests of current and potential future participants in the system would continue to be taken into account under the varied Access Regime given that the varied Access Regime explicitly requires the Bank to consider these factors when making an exemption.

Next Steps

The Board invites comments on the proposed variation to the Access Regime. Formal written submissions should be provided by no later than 13 July 2012 and should be sent to:

Head of Payments Policy Department
Reserve Bank of Australia
GPO Box 3947
Sydney NSW 2001

or

pysubmissions@rba.gov.au.

Submissions provided by email should be contained in a separate document, in PDF, Word or equivalent format.

In the normal course of events, submissions will be posted on the Reserve Bank's website and those making submissions will be provided with an opportunity to discuss their submission with the Bank.

Attachment

Draft Access Regime

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.

Amended and restated Access Regime

1. This Access Regime was gazetted on 24 February 2009 and amended on [] to read as set out above and below.

Application

- ~~1.~~ 2. This Access Regime is imposed under Section 12 of the *Payment Systems (Regulation) Act 1998*.
- ~~2.~~ 3. 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 ~~below~~ in this Access Regime as the ATM system.
- ~~3.~~ 4. 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. 5. Each participant in the ATM system must do all things necessary on its part to ensure compliance with this Access Regime.
5. 6. 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. 7. This Access Regime is to be interpreted:
- in accordance with its objective; and
 - by looking beyond form to substance.
7. 8. This Access Regime ~~comes originally came~~ into force on 3 March 2009. This Access Regime as amended and restated comes into force on [_____].

Price of access

Connection Charge for providing the Direct Connection Service

- ~~8.~~ 9. 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~~10 below, applying on the date the Connection Agreement is entered into.
- ~~9.~~ 10. 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.~~ 11. 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.~~ 12. 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.~~ 13. 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.~~ 14. Each ATM Acquirer in the ATM system that receives an interchange fee within the terms of sub-paragraph ~~14~~12(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.~~ 15. 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.~~ 16. The administrator of an ATM sub-network must publish the rules that govern access to the sub-network.

Exemptions from paragraphs 11 12 and 13 of this Regime

16.17. The Reserve Bank may grant an exemption to a participant in the ATM system from any or all of the requirements of paragraphs 11 12 and 13 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.

17.18. 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.