

22 September 2008

**Confidential**

Ms Michele Bullock  
Head of Payments Policy  
Reserve Bank of Australia  
GPO Box 3947  
SYDNEY NSW 2001

Dear Michele

**ATM Reform: Compliance with the Trade Practices Act**

As you know there are two aspects of the reforms to the ATM system that need to be considered in light of Part IV of the *Trade Practices Act* (TPA):

- 1 zero interchange fees; and
- 2 capping the charges payable by an Access Seeker to establish a direct connection or direct clearing/settlement arrangement with an Access Provider.

Clauses 7 (Payment for Connectivity) and 10 (Interchange Fees) of draft #3 of the ATM Access Code currently deal with these aspects of the reforms.

For some time APCA, Gilbert + Tobin and the institutions that will become the initial subscribers to the ATM Access Code have been considering how to implement these aspects of the reforms and obtain assurance as to compliance with the TPA.

There was (and is) a strong desire to, if at all possible, implement all of the reforms (including the aspects described above) in a purely self-regulatory ATM Access Code. Unfortunately, we have not been able to achieve this outcome. As we have discussed, the main difficulty in developing a purely self-regulatory implementation has always been providing a high level of assurance of compliance with the TPA within the fixed, and short timeline agreed with RBA.

We are now convinced that the reforms cannot be implemented in accordance with RBA's explicit wishes without the RBA exercising its powers under the *Payments Systems (Regulation) Act* – for example, by designating the ATM system and dealing with the aspects of the reforms described above in one or more regulatory instruments.

I would appreciate your letting us know whether the RBA proposes to address this matter and if so, in what manner. Needless to say, APCA stands ready to assist in any way possible. It would seem sensible that we discuss the detail of any applicable instruments and the implementation timetable as soon as possible (perhaps with Gilbert + Tobin).

Finally, during our discussions with the Treasury with respect to an authorising regulation, they seemed to accept that the current regulatory arrangements were not ideal. I understand that they will be giving this some consideration in the near future. APCA would, of course, welcome the opportunity to be involved in any consideration of the regulatory arrangements for the payments system.

I will call you shortly to discuss this issue.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CH', with a long horizontal stroke extending to the right.

Chris Hamilton

**CHIEF EXECUTIVE OFFICER**

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CC The Treasury, Attention: Kerstin Wijeyewardene/Gillie Kirk