



MEMORANDUM OF UNDERSTANDING THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION AND THE RESERVE BANK OF AUSTRALIA

Objective

1. This Memorandum of Understanding sets out an agreed basis for policy coordination and information sharing between the Australian Competition and Consumer Commission (ACCC) and the Reserve Bank of Australia (RBA) in respect of the payments system.

Responsibilities

2. The ACCC and the RBA both have legislative responsibilities for access and competition policy in the payments system. Both have a role in arbitration of disputes over access. The ACCC has general responsibility for these issues under the *Trade Practices Act 1974*. The RBA has specific responsibilities under the *Payment Systems (Regulation) Act 1998*.

3. The legislation is intended to ensure that there is no regulatory overlap. It defines responsibilities as follows:

- the ACCC is responsible for ensuring that payments system arrangements comply with the competition and access provisions of the *Trade Practices Act*, in the absence of specific RBA initiatives (see below). Under its adjudication role, the ACCC may grant immunity from court action for certain anti-competitive practices, if it is satisfied such practices are in the public interest. It may also accept undertakings in respect of third party access to essential facilities; and
- the RBA may, under the *Payment Systems (Regulation) Act*, designate a payment system as being subject to the RBA's powers. Following public consultation, the RBA may then impose an access regime on the participants and/or determine standards for that system. Where the RBA has taken such initiatives, members of that system will not be at risk under the *Trade Practices Act* by complying with the RBA's requirements.

4. The effect is that the ACCC retains responsibility for competition and access in a payments system, unless the RBA imposes an access regime or sets standards for it; designation does not, by itself, remove a system from the ACCC's coverage.

Consistency of Regulatory Policy

5. The ACCC and the RBA are both obliged to conduct their regulatory responsibilities in the public interest. In doing so, they recognise the importance of mutual consultation across a wide range of issues relevant to the payments system.

6. The ACCC and the RBA agree on the desirability of a consistent policy on access to the payments system. However, they also recognise that segments of the system have differing characteristics in terms of providers, users, transaction characteristics and values, as well as risks to payments system

and financial system stability. These characteristics may justify substantial differences in access conditions.

7. To promote consistency in regulatory policy, the ACCC and the RBA agree that when either organisation is determining policy with respect to competition, including access, or when the RBA is considering designating a payments system, each will:

- notify the other of policy questions being considered, and advise the approach it proposes to take to seeking information and formulating policy, and the date by which it anticipates a policy decision will be reached;
- provide the other the opportunity for private discussions on the proposed policy, prior to any public consultation period. Discussions will be on the basis of material prepared by the organisation with responsibility for the policy; and
- provide opportunity to the other for comment on draft determinations, plans to authorise or impose access rules and plans to set relevant standards, prior to their release for public comment.

Information Sharing

8. Where appropriate, the ACCC and the RBA will share information relevant to access, competition and efficiency in the payments system. However, the ACCC and the RBA acknowledge the conditions under which certain commercially sensitive data are supplied to them by participants, and the confidentiality and secrecy requirements of the Acts under which they operate.

Coordination Meetings and Liaison

10. The ACCC and the RBA will hold meetings of senior officials at least every twelve months to discuss the coordination of policy on access, competition and efficiency in the payment system. The meetings will be additional to those called to discuss particular policy initiatives.

11. There will be regular contact between officers of the organisations on routine matters.

A Fels
Chairman
Australian Competition and Consumer
Commission

IJ Macfarlane
Governor and Chairman
Payments System Board

Reserve Bank of Australia

8 September 1998