Financial Redress
A SUBSIDIARY OF IMF (AUSTRALIA) LTD
'Fair Play for Customers of Financial Institutions'
ACN 083 043 010

SUBMISSION

FROM: **Financial Redress Pty Ltd**

TO: **SENATE INQUIRY INTO COMPETITION IN THE BANKING SECTOR**

DATE: **30 November 2010**

INTRODUCTION

1. Financial Redress has experience relevant only to items (b) and (c) of the terms of reference and will therefore confine its submission to matters arising from that experience.

2. Financial Redress has delved deeply into the history of exception fees charged by Australian banks.

3. Financial Redress bases its following submission solely upon this exception fee work.

4. Financial Redress' primary submission is that competition has had no impact at all upon the charging of exception fees by Australian banks.

GENERAL

5. Financial Redress submits that the four major banks, constituting between them the greater part of the Australian banking sector, form a true and entrenched oligopoly with little or no existing or potential competition amongst its members.

6. The entrenched nature of the oligopoly can be best demonstrated by recognising that the four major banks have managed to establish, promote and maintain a standard form of mortgage contract wherein the lender can set interest rates as and when it sees fit.

7. Competition in the banking sector consists primarily of different badging, different public relations and different colour schemes. The recent attempts by the NAB to differentiate itself from the other three banks is an exception to the general rule that these four banks move in unison on all material matters.

8. The habit of the banks to speak in unison through the Australian Bankers Association tends to reinforce this impression.

9. The power of the oligopoly is such that it is futile for government, regulators or the public to push for competition between the four major banks or between those major banks and minor Australian banks.

10. The only real and effective answer to the power of the oligolopy is legislation, and its effective enforcement by regulators.

EXCEPTION FEES

11. For many years all banks in Australia have charged exception fees for dishonoured cheques, honoured cheques, credit card overlimits and credit card late payments.

12. In general terms, all Australian Banks have charged roughly the same level of exception fees amounting, over the last 6 years or so, to more than $5 billion.

13. This is, in itself, a telling indicator of a lack of competition in the Australian banking system in general and between the four major banks in particular.

14. The same can be said for exit fees.

15. The simple fact of the matter is that the banks have always charged what they think the market will bear.

THE ALTERNATIVE TO COMPETITION?

16. Australian banks will not react to entreaties towards competition – they will only react to legislation.

17. Again this is nowhere better exemplified than in relation to exception fees.

18. For decades the banks have either ignored or fended off objections from the public (and from time to time politicians) in relation to exception fees.

19. In 2009 the four major banks either dramatically reduced or simply abolished exception fees. They did not do so because of competition between the banks but rather because the government had foreshadowed changes to the law which would make unfair fees unlawful.

20. It was clear that the exception fees being charged by the banks were unfair and they would therefore quickly become unlawful once the legislation passed through the Australian Parliament. The banks anticipated this event by dramatically reducing or simply abolishing most exception fees.

21. They did so without seeking to recoup any amount of those fees in any other areas of their operation i.e. they recognised that there was no material cost base to the exception fees.

22. The proposed (and now existing) legislation, coupled with guidance from ASIC, also led to the demise of exit fees.

OTHER AREAS

23. Just as with exception fees and exit fees it will eventually be necessary to pass legislation in order to force the banks to act reasonably in setting variable interest rates.

24. If the existing competition law is not strong enough to prevent other anti-competitive conduct (such as price signaling) then the legislature should employ legislation to correct that behaviour rather than relying on the banks to modify their behaviour for the public good.

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