



Submission No: ...1

Date Received: ..rjLP.4.Q^

Secretary: _____

Australian Competition & Consumer Commission

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
Australia

Ph (02)6243 1123
Fax (02)6243 1122

Contact Officer: Lisa Anne Ayres
Contact Phone: 03 9290 1980

20 May 2004

Mr Ryan Crowley
Inquiry Secretary
House of Representatives
Standing Committee on Economics, Finance and Public Administration
Parliament House
CANBERRA ACT 2600

Dear Mr Crowley

I write in response to your letter dated 10 March 2004 and subsequent correspondence about the evidence provided by officers of the Australian Competition and Consumer Commission ('the Commission') to the House of Representative Standing Committee on Economics, Finance and Public Administration regarding the Commission's 2003 Annual Report.

Responses to the questions that the Commission took on notice during the hearing are enclosed.

If you have any queries, please contact Lisa Anne Ayres on (03) 9290 1980.

Yours sincerely

Brian Cassidy
Chief Executive Officer



Responses to Questions on Notice

1. Statistics on the number of referrals to ASIC and the nature of the interface between the ACCC and ASIC

The Commission complaints database indicates that in the 2003 calendar year the Commission received 4598 complaints and enquiries where the person lodging the complaint or enquiry was referred to ASIC. A further small number of complaints would have been referred to ASIC after some initial investigation by the Commission. The interface between the Commission and ASIC has been formalised in a Memorandum of Understanding, a copy of which is can be found at Attachment A.

2. ACCC's informal monitoring of bank fees and charges - request for informal Commission report

To date the Commission has produced internal reports on a quarterly basis which monitor developments in the banking industry to determine whether further investigation is required. As such, the reports contain a significant amount of confidential information to allow the Commission to make informed decisions. This includes:

- information from external sources provided to the Commission on a commercial-in-confidence basis;
- information of a confidential nature gathered by other branches of the Commission as part of its investigatory and enforcement roles; and
- data sourced on a confidential basis which, for contractual reasons, cannot be provided to external parties without prior consent.

As such, the enclosed report, Report on bank fees and charges, March quarter 2004 (Attachment B) has been edited to remove any confidential information.

3. Update on the Vulnerable and Disadvantaged campaign

On 2 June 2003 the Commission launched a campaign that focuses on commercial and business practices that target or seek to exploit disadvantaged or vulnerable consumers. Characteristics that may suggest disadvantage include: low income; culturally and linguistically diverse background; disability (whether intellectual, psychiatric, physical or sensory); illiteracy; indigenouness; homelessness; remoteness and serious or chronic ill-health.

REFERRAL GUIDE

While protecting disadvantaged and vulnerable consumers has always been a priority for the Commission, it is our experience that they rarely complain to an agency like the Commission. Members of the ACCC's Consumer Consultative Committee (CCC) confirm that disadvantaged and vulnerable consumers are much more likely to complain to a 'shop front' or community based organisation, if they complain at all.

Accordingly, the Commission produced a Referral guide to assist and encourage referrals from CCC member organisations and other consumer and community organisations.

Over 600 electronic and 'hard' copies of the referral guide have been distributed to CCC members for use within their own organisations and distribution to their networks.

In addition, the Commission mailed information about the campaign and/or copies of the referral guide to more than 200 consumer and community organisations across Australia.

CAMPAIGN TASKFORCE

The Commission has created a special internal taskforce to assess and fast-track complaints received through the Infocentre or referred by CCC members and other organisations that involve disadvantaged or vulnerable consumers and to monitor and coordinate other Commission campaign activity.

CAMPAIGN PROMOTION

In addition to the public launch, attendant press announcements and the mail out referred to above, the Commission has promoted the campaign through a number of different means including::

- Articles promoting the campaign or the Commission's focus upon conduct targeting or seeking to exploit disadvantaged and vulnerable consumers have appeared in a number of publications. Examples include an article written by Chairman Graeme Samuel titled, "Greedy Traders Stalk their Prey", published in the Finance Section of The Daily Telegraph on 13 January 2004; and articles provided for the member magazines of the NSW and South Australian Councils of Social Service.
- The Campaign has also been promoted by Commissioner and staff speeches to a range of stakeholder gatherings including the Country CFO Forum and the Financial and Consumer Rights Council Annual Conference
- Campaign information and copies of the referral guide have been provided to a range of consumer and community organisations in addition to those included in the initial mail out. Campaign information and referral guides have been also included in ACCC materials at conferences.
- The Commission has established contact points at most other fair trading agencies, whereby campaign issues can be discussed and, where appropriate, referrals made of complaints involving disadvantaged and vulnerable consumers.

CAMPAIGN OUTCOMES

The taskforce considered 152 complaints during the period 4 June 2003 - 31 January 2004. This includes 80 complaints referred from a range of external agencies. The remainder of the matters have been identified as involving disadvantaged and vulnerable consumers and referred to the taskforce by Infocentre staff.

Of these complaints:

- 35 no further action was taken as the complaint did not involve trade practices issues
- 8 were referred to another agency;
- 32 are being monitored; and
- 2 were resolved administratively.
- the remaining 75 complaints feed into 4 separate investigations. One investigation has since concluded with no breach being established and the other three investigations continue.

Trends

A significant number of the matters reviewed by the taskforce involve:

- complaints from consumers about debt collection. The Commission has two current investigations resulting from complaints received; and
- complaints involving telecommunications issues, particularly selling conduct, billing, contracts and collection activity

4. Statistics on the number of complaints the ACCC receives that are referred from other (both state and federal) government agencies

The Commission does not record the number of complaints it receives where the complainants have been referred to the Commission by other government agencies.

CO-OPERATION AGREEMENT

BETWEEN THE

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION



AND THE



AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

1. PURPOSE

- 1.1 The Agencies recognise that:
 - (a) mutual co-operation between them will contribute significantly to the ability of the Agencies to effectively and efficiently discharge their respective functions.
 - (b) such co-operation will be particularly important during the initial period of ASIC's existence so that transition costs and uncertainty for business and consumers are minimised.
- 1.2 The Agencies agree to provide each other with mutual assistance in relation to the exchange of information, appropriate referral of matters, and cooperation in compliance education and enforcement activities within the framework of this Agreement and which is consistent with all relevant laws.

The Australian Securities and Investments Commission (ASIC):

1.3 ASIC was established by amendments to the *Australian Securities Commission Act 1989* which is now referred to as the *Australian Securities and Investments Commission Act 1989*, by the *Financial Sector Reform (Amendment and Transitional Provisions) Act 1998*. ASIC is responsible for the administration and enforcement of the national scheme laws, being laws of the Commonwealth and the States in relation to Australian companies and securities and futures markets, and in respect of the financial services sector for the administration and enforcement of the consumer protection laws of the Commonwealth. ASIC has such functions and powers as are conferred on it by or under the national scheme laws and the following non-national laws:

- the *Australian Securities and Investments Commission Act 1989*
- the *Corporations Law 1989*
- the *Financial Sector Reform (Consequential Amendments) Act 1998*;
- the *Insurance Act 1973*
- the *Insurance (Agents and Brokers) Act 1984*
- the *Insurance Contracts Act 1984*
- the *Superannuation (Resolution of Complaints) Act 1993*
- the *Life Insurance Act 1995*
- the *Retirement Savings Accounts Act 1997*

- the *Superannuation Industry (Supervision) Act 1993*

ASIC has the functions of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system, the provision of financial services; and the payment system.

1.4 ASIC Law confers a wide power on the Agency to:

(i) investigate matters as it thinks expedient for the due administration of a national scheme where it has reason to suspect there may have been committed a contravention of a law of the Commonwealth or State or Territory, if the contravention concerns the management of a body corporate, or involves fraud or dishonesty and relates to a body corporate, securities or futures contracts; and

(ii) ensure compliance with the consumer protection provisions of the *Australian Securities and Investments Act 1989* and other laws administered by ASIC;

(iii) promote the adoption of, and approve and monitor compliance with, industry standards and codes of practice, including standards and codes in relation to the resolution of disputes between the providers of financial services and consumers.

1.5 ASIC must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence or in connection with the performance of its functions or the exercise of its powers.

1.6 The Chairman of ASIC, or his or her delegate, is authorised to disclose confidential information pursuant to subsection 127(4) of ASIC Law to the Commonwealth government and its Agencies where such information will

enable or assist the government or Agencies to perform or exercise any of their functions or powers. The ACCC is such an Agency.

The Australian Competition and Consumer Commission (ACCC)

- 1.7 The ACCC was established by amendments to the *Trade Practices Act 1974* made by the *Competition Policy Reform Act 1995*.
- 1.8 The mission of the ACCC, derived from the objective of the *Trade Practices Act*, as set out in the legislation, is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.
- 1.9 The ACCC has responsibilities under the following legislation:
 - the *Trade Practices Act 1974*
 - the *Prices Surveillance Act 1983*
 - the *Gas Pipelines Access (Commonwealth) Act 1998*
 - the *Australian Postal Corporation Act 1989*
 - the *Telecommunications Act 1991*
 - the *Broadcasting Services Act 1991*
 - the *Trade Marks Act 1995*
- 1.10 The role of the ACCC is to facilitate and encourage compliance with the laws for which it has administrative responsibility, to take appropriate action in

response to contraventions of those laws, to adjudicate on competition and access issues and to educate the community in relation to such matters.

2. LIAISON BETWEEN AGENCIES

- 2.1 The Agencies agree that there will be regular liaison between the General Manager of the ACCC and the National Directors of Regulation and Enforcement of ASIC in relation to regulatory, enforcement and policy issues.
- 2.2 The Agencies agree that, where appropriate, it is desirable for them to consult with each other in relation to policy statements and media releases which are being formulated which may be of interest to or have an effect on the other Agency.
- 2.3 Each Agency will appoint a liaison officer for the purposes of clause 2.2 with responsibility for general liaison on matters arising under this Agreement or subsequent co-operation arrangements entered into between the two Agencies.
- 2.4 Subject to the principles and procedures set out in this agreement and any relevant administrative arrangements of either Agency, it is envisaged that liaison in respect of routine operational matters will occur on an 'as needed' basis between appropriate staff of the two Agencies.

3. INFORMATION IN RESPECT OF WHICH THIS AGREEMENT DOES NOT APPLY

- 3.1 This Agreement does not cover access by the ACCC to ASIC databases "ASCOT" and "DOCIMAGE". ASCOT information is already available to the ACCC. Database material (which must be certified for evidentiary purposes) is available to the ACCC for the scheduled fee through ASIC Business Centres.

4. EXCHANGE OF INFORMATION

- 4.1 Both Agencies will use their best endeavours to provide relevant information in a timely manner in response to requests for information, subject to any relevant legal and operational considerations and any caveats which the provider of the information might place upon the use or disclosure of the information, such as claims of legal professional privilege. The General Manager of the ACCC, or other authorised officer of ACCC, and the National Director Enforcement, or other authorised officer of ASIC, must be satisfied that compliance with the request will not adversely affect the operation of the complying Agency.
- 4.2 The Agencies agree that, where either Agency seeks information from the other Agency, both Agencies will confer without delay to determine the most appropriate basis for the release of the information.
- 4.3 The information exchange procedures required by each Agency in compliance with the law or their own administrative requirements shall be specified to the other Agency in writing.
- 4.4 Without limiting Clause 4.1 of this Agreement, each Agency agrees not to disclose any confidential information obtained pursuant to this Agreement to a third party unless it has obtained the prior consent of the Agency which has provided the confidential information.

5. UNSOLICITED ASSISTANCE

- 5.1 Each of the Agencies recognise that in the course of carrying out its functions and exercising its powers, it will come into possession of information which would, if provided to the other Agency, be likely to assist that other Agency in administering or enforcing the particular laws for which it is responsible.

5.2 Each Agency agrees, subject to legal restrictions, to use reasonable endeavours to notify the other Agency on a timely basis of the existence of any information of a kind referred to in Clause 5.1 above, notwithstanding that it may not have received a request from the other Agency for such information.

5.3 When either Agency receives notification of the existence of confidential information pursuant to clause 5.2 above, and determines that it requires access to the information, it will make a request for the information in accordance with the principles and procedures set out in this Agreement. The request for information will be considered by the other Agency and determined in accordance with those principles and procedures.

6. COST OF PROVISION OF INFORMATION

6.1 In general, the Agency which receives the request for information shall bear the whole cost incurred by it in locating and providing the information to the Agency who requests the information.

6.2 If it appears to the Agency that receives the request that it will incur substantial costs in responding to the request, it may make representations to that effect to the requesting Agency and the parties may negotiate a cost sharing arrangement in relation to the provision of that information.

7. REFERRAL OF MATTERS

7.1 The Agencies recognise that once a complaint is received or an initial investigation has been conducted by an Agency, it will often become apparent that the matter more appropriately falls within the jurisdiction of the other Agency. For example, ASIC may refer matters to the ACCC where the matter being investigated primarily involves the application of the *Trade Practices Act*. Similarly, the ACCC may refer matters to ASIC which primarily involve potential breaches of the *Australian Securities and Investments Commission Act*, the *Corporations Law* or other laws administered by ASIC.

- 7.2 Both Agencies therefore agree that the enforcement objectives of each Agency will be enhanced if, after consultation, the matter is formally referred to and continued by that other Agency. The referrals should be made as soon as practicable after the principal contravention is identified.
- 7.3 Both Agencies will agree and enter into arrangements for the referral of matters to the other Agency. These arrangements will include, among other matters, the process of consultation about a potential referral, the form and process for the making of a referral, the method and timing of the acceptance or refusal of a referral, the provision of ongoing assistance in relation to a referral and any other matter that assists efficient enforcement outcomes in relation to these referral arrangements. These referral arrangements will be jointly reviewed by both Agencies at least annually.
- 7.4 Both Agencies acknowledge that there may be circumstances where matters will also be referred to other specialist Australian Agencies, such as the Australian Taxation Office, the Australian Federal Police, the Australian Customs Service or State and Territory Consumer Affairs offices or Offices of Fair Trading, or appropriate Agencies of other countries. In those circumstances, ASIC and the ACCC will endeavour to consult each other prior to a referral to another Agency.

Specific co-operation issues

- 7.5 Conduct relating to both financial services, as defined in the *Australian Securities and Investments Commission Act*, and other goods or services, including credit services, are referred to in this agreement as 'conduct in relation to mixed goods or services'. Conduct involving potential contraventions of the competition provisions of the *Trade Practices Act* and provisions of the *Australian Securities and Investments Commission Act* are referred to as 'mixed conduct'.

- 7.6 Each Agency will inform the other in accordance with procedures agreed from time to time of any relevant inquiries into mixed conduct or conduct involving mixed goods or services.
- 7.7 Contact points on these issues will be the ACCC's General Manager and the National Directors Regulation and Enforcement of ASIC, or relevant liaison officers appointed by each Agency.
- 7.8 In relation to consumer protection issues involving mixed goods and services or mixed conduct the ACCC will co-ordinate the collection of such complaints through its own offices and those of the State and Territory Consumer Affairs Agencies and refer appropriate matters to ASIC for action.
- 7.9 The ACCC will, from time to time and upon request, provide ASIC with details of complaints relating to mixed goods and services or mixed conduct where such complaints have not been referred to ASIC for action.

Takeovers and mergers

- 7.10 Both Agencies are involved in the regulation of takeovers and mergers. As part of on-going co-ordination, the ACCC will inform ASIC of any investigations into takeovers or mergers that is appropriate within the law. ASIC will provide any assistance in such investigations that is appropriate within the law.

Codes of conduct

- 7.11 Both Agencies may be involved in facilitating the development and adoption of effective codes of conduct in respect of the provision of financial services or that may affect the provision of financial services. Each Agency will provide the other any assistance in relation to such activities that is appropriate within the law.

Authorisations and Notifications under Part VII of the Trade Practices Act

- 7.12 ASIC has an interest in the outcome of any Notification or application for Authorisation under Part VII of the Trade Practices Act in respect of financial services. As part of on-going co-ordination, the ACCC will inform ASIC of any Notification or application for Authorisation it receives in respect of financial services. ASIC will provide any assistance in relation to such matters that is appropriate within the law.

Other Regulatory matters

- 7.13 ASIC has an interest in any regulatory actions by the ACCC that may result in a requirement for a market participant to make or update a disclosure to the market either generally or as part of a capital raising or other activity within ASIC's regulatory jurisdiction. The ACCC will use its best endeavours, to the extent permitted by law, to inform ASIC of any regulatory decision or action by the ACCC which may potentially result in a market participant being under a disclosure obligation under the laws administered by ASIC.

8. REFERRAL OF POWERS

- 8.1 The ACCC shall discuss with ASIC any intention to request that Agency to delegate any of its powers pursuant to s. 102(2)(e) of the *Australian Securities Commission Act*.
- 8.2 ASIC shall discuss with the ACCC any intention to request that Agency to delegate any of its powers pursuant to s. 26 of the *Trade Practices Act*.
- 8.3 The Agencies may agree to establish criteria for the referral of powers from time to time where this will assist co-operation in the discharge of each Agency's functions.

9. JOINT TASK FORCE

- 9.1 The Agencies acknowledge that, subject to secrecy and confidentiality issues, an investigation or litigation may be conducted more effectively by the establishment of a joint task force consisting of members from both Agencies.
- 9.2 The Agency requesting the joint task force will advise the other Agency of the background to the request for a joint task force, the likely objectives of the joint task forces, and the expected resources required and approximate duration of the proposed joint task force. The Agency receiving the request will advise as soon as possible as to whether it will accept or refuse the other Agency's request.
- 9.3 If both Agencies agree to take part in the joint task force, an agreed operational plan will be prepared between the Agencies setting out the objectives, expected duration, funding arrangements, publicly arrangements, accountability command, and management of the joint task force.
- 9.4 Requests to ASIC for a joint task force should be made to the National Director, Enforcement, Office of the Chairman, Sydney. Requests to the ACCC should be made to the General Manager of the ACCC.

10. CONFIDENTIALITY

- 10.1 When an Agency receives information from the other Agency in accordance with this Agreement, it will take all reasonable steps to ensure that such information is only used or disclosed for the purpose for which it was obtained, or as otherwise authorised by the other Agency, unless ordered to do so by a Court or Tribunal. In such a case the parties must keep each other fully informed.

- 10.2 Without limiting the generality of Clause 9.1 of this Agreement, the Agencies will comply with the Information Privacy Principles set out in s. 14 of the *Privacy Act*.

11. MUTUAL ASSISTANCE ON OTHER MATTERS

- 11.1 The two Agencies will also pursue issues of co-operation in staff training, staff exchange, joint publications and other compliance education initiatives.
- 11.2 The two Agencies acknowledge that electronic commerce will affect consumers in both the financial and non-financial sectors. The Agencies will co-operate in consumer education initiatives in respect of electronic commerce, as well as complaint co-ordination and management.
- 11.3 Both Agencies acknowledge that to facilitate market understanding of the new legal and administrative arrangements resulting from the Financial Sector Reform legislation co-operation in these matters will be particularly important during the first 12 months of this Agreement.
- 11.4 The two Agencies will meet at Commissioner level at least twice a year and at officer level as the need arises, but at least quarterly at Divisional and National Director level.
- 11.5 It is noted that each Agency is a member of HOCOLEA and will co-operate through that forum as well as through this Agreement.

12. DISPUTES

- 12.1 Where there is conflict over any matter relating to issues in this Agreement, the parties will seek to resolve the issue by negotiation between the General Manager of the ACCC and National Directors Enforcement or Regulation, ASIC.

13. REVIEW OF THIS AGREEMENT

- 13.1 Each Agency will keep the operation of this Agreement under continuous review and will consult with the other with a view to improving its operation and resolving any matters which may arise. The Agencies agree that the Agreement may be amended at any time.
- 13.2 On or shortly after the first anniversary of the date of this Agreement, representatives of the Agencies shall review the flow of information between the Agencies, the costs incurred by each Agency in providing information, and consider, if appropriate, amendment of this Agreement.

14. TERMINATION

- 14.1 An Agency must give written notice to the other of its intention to terminate this Agreement. The Agreement will terminate 7 days after the date upon which the notice was received.

DATED this *seventeenth* day of July 1998



A J CAMERON AM
Chairman
Australian Securities and
Investments Commission



AFELS
Chairman
Australian Competition and
Consumer Commission

Attachment B

**Report on bank fees and charges
March Quarter 2004**

22 April 2004
Melbourne Office

Background

This quarterly report details developments within the banking sector. The report is generally based on a combination of publicly available information and confidential information (including information obtained from external sources on a commercial-in-confidence basis and confidential information gathered from other branches of the ACCC as a part of its investigatory and enforcement roles). As such, this report is intended for internal use only.

The report aims to improve the breadth of information available to the Commission to address political and consumer concerns about bank fees and competition, and to determine whether further investigation is required. The Commission does not report formally to the Government on bank fees and charges.

Key findings of the March quarter report

This report examines:

1	Issues arising over the March quarter 2004:	
1.1	Changes to fees and charges.....	4
1.2	Credit card competition.....	5
1.3	Consumer issues.....	5
2	Payment system reforms and developments:	
2.1	Visa debit card reform.....	6
2.2	Credit card reform.....	7
2.3	EFTPOS reform.....	8
2.4	ATM reform.....	8
2.5	Other.....	9
3	International developments:	
3.1	US.....	9
3.2	UK.....	10
3.3	Ireland.....	10
3.4	Norway.....	10
4	Conclusion.....	11
	Appendix A Data on transaction fees of the major banks - Appendix A.....	12

In relation to the above the key findings are:

- ANZ Bank made changes to the terms and conditions of its Deeming account.
- NAB abolished its ATM fee exemption for National Tailored Home Loan customers who use foreign ATM's resulting in these customers incurring a fee of \$1.50 when they use a foreign ATM.
- Since the last quarterly report, effects from payment system reforms continue to remain evident within the industry and further developments have occurred including:
 - o Westpac stating the effects of credit card reforms will cost the bank significantly less than initially expected;
 - Westpac also announced that it will be restructuring its credit card rewards program as a result of reforms
 - o RBA designating the debit card scheme operated in Australia by Visa International as a payment system under the *Payment Systems (Regulation) Act 1998*;
 - o The initiation of an appeal by major Australian retailers against the ACCC's decision to allow reforms to the EFTPOS network, with hearings commencing on 14 April; and
 - o Potential delays to ATM reform.
- The report concludes that:
 - o There is no indication of issues arising from changes to bank fees and charges or credit card fees and charges that may be of significant concern for the ACCC at this stage;
 - o Staff will maintain the existing watching brief and report again in July 2004.

The remaining sections of the report provides commentary on the above issues.

Commentary on key findings and conclusions for March quarter 2004

1 Issues arising over the March quarter 2004

This section of the report examines various changes that have been made to fees and charges during the March quarter. It also looks at changes in the credit card market as well as consumer issues during this period.

1.1 Changes to fees and charges

During the March quarter 2004, changes have been made to bank fees and charges and terms and conditions of the following banking related products:

- ANZ's Deeming Account
- NAB's ATM fees

1.1.1 ANZ Deeming Account

On 25 March 2004, ANZ representatives met with Commission staff to advise of proposed changes to the ANZ Deeming Account¹ terms and conditions effective 3 May 2004.

Currently the interest rates that apply to different account balances are \$0 - \$35,599 - 3.00% and \$35,600+ - 5.00%. From the 3 May these will change to \$0 - \$1,999 - 1.25%, \$2,000 - \$35,599 - 3.00% and \$35,600+ - 5.10%. ANZ also intends to introduce the following changes to this account:

- No monthly account service fee [REDACTED]
- Free unlimited ANZ transactions (i.e. all except foreign ATM transactions).

ANZ believes these changes will create a simplified product that is easier for customers to understand and for ANZ frontline staff to explain. ANZ also believes that these changes will bring them into line with their competitors.

[REDACTED] ANZ will be sending all deeming account customers a letter advising of the changes and will ensure that all customers receive a minimum of 30 days notice. They will also provide briefing to their call centre staff to deal with any queries or complaints from customers.

1.1.2 NAB ATM fees

From 1 May 2004, NAB's Tailored Home Loan customers will incur a foreign ATM fee of \$1.50. These customers were previously exempt from all ATM fees, including for the use of

¹ transaction account available to recipients of Government benefits with interest paid at the Government deeming rate

foreign ATM's, however, with the changes mean these customers will now incur a fee for every use of another banks ATM (they will however, still be exempt from ATM fees when using NAB's own ATM's). An NAB spokesman said abolishing the exemption would affect only 20,000 customers - 10 per cent of the mortgage holders - who used foreign ATMs in the past six months and that other banks had a similar exemption therefore bringing the NAB "back in line with the rest of the industry"². NAB stated that the fee rise was planned last October and had nothing to do with recouping losses as a result of the currency options trading scandal.

1.2 Credit card competition

The March 2004 quarter saw Commonwealth bank (CBA) introduce a new credit card to its line up, while other banks are introducing charge cards to their credit card offering to avoid the impact of the RBAs credit card reforms.

On 20 February 2004, CBA announced that it would introduce the 'Platinum' credit card which will be launched with an interest rate of 18.15%, a credit limit of \$12,000 or more and be linked to the Commonwealth awards program.³

Most of the major banks have also teamed up with a charge card company such as American Express or Diners Club. Co-branding will allow the banks to avoid the full impact of the reforms as American Express and Diners are not affected by reductions in interbank fees as they charge merchants directly. Industry participants are reported as saying the co-branded cards will allow the banks to reap a higher level of fee revenue.⁴

One such example of this co-branding is the partnership between American Express and Westpac's altitude program. The Altitude American Express will have a points earning rate of two Altitude points per one dollar spent and will have an annual fee of \$45 which will be waived in the first year for customers who take up the offer before 30 April 2004.⁵

1.3 Consumer issues

This section outlines the volume of banking related complaints that the ACCC received this quarter.

Table 1 provides a summary of complaints received by the Commission relating to bank fees and charges.

² The Australian 'Battling NAB scraps ATM fee exemption' Friday 2 April 2004

³ CBA Media Release The Commonwealth Bank restructures credit card offering ahead of Platinum launch', 20 February 2004

⁴ The Australian Financial Review 'Reforms rock credit industry', 28 February 2004

⁵ Westpac Bank Media Release 'Changes to Altitude', 20 February 2004

Table 1: Complaints received by the ACCC relating to banks, fee(s) and/or charge(s) ANZIC code 7321

Bank	June 2003	September 2003	December 2003	March 2004
Total	63	45	47	59



2 Payment system reforms and developments

2.1 Designation of Visa debit card scheme in Australia

Following a decision by the Payments System Board, the Reserve Bank of Australia (RBA) on 19 February 2004 designated the debit card scheme operated in Australia by Visa International as a payment system under the *Payment Systems (Regulation) Act 1998*. Designation is the first step in establishing standards and/or access regimes for a payment system in the public interest.

The Visa debit card scheme has a number of characteristics that raise public interest questions about efficiency and competition in the payments system:

- The interchange fees charged between financial institutions for the processing of Visa debit transactions are the same as for Visa credit card transactions despite differences in product characteristics;
- Visa debit cards cannot be distinguished at the point of sale from Visa credit cards;
- The so-called 'honour all cards' rule enforced by Visa requires that merchants accepting Visa credit cards must also accept Visa debit cards; and
- Visa debit cards are still subject to a 'no surcharge' rule of the kind that was prohibited with respect to credit cards.

In the RBA's opinion, designation to address these issues is in the public interest and will provide the opportunity for interested parties to make concrete proposals for reform before it releases in draft form any standards it judges necessary to address the public interest issues. Interested parties will then have a further period for comment before any standards are finalised.

The RBA and the ACCC will work to ensure that Visa and its members will not be at risk under the TPA as a result of complying with the RBA's requirements.⁶

⁶ RBA media release 'Designation of Visa card scheme in Australia', 19 February 2004

2.2 Credit card reform

On the 27 August 2002, the RBA announced a number of reforms to credit card schemes. These reform measures involved:

- the adoption of an objective, transparent and cost-based benchmark to be used as a basis for determining interchange fees in credit card schemes
- the end of the restriction imposed by credit card schemes which prevents merchants from recovering from cardholders the costs of accepting credit cards; and
- an access regime that removes restrictions on the eligibility of non-financial institutions to participate in designated credit card schemes.

The RBA standards on merchant pricing came into force on 1 January 2003 and its standard on interchange fees were introduced on 31 October 2003.

2.2.7 *Effects of interchange fee reform*

Since the introduction of RBA's credit card reforms, changes in the market are becoming evident. Some major banks increased their annual fees, introduced separate fees for rewards programs and capped rewards points in a move to offset lost future revenue as a result of the reduction of the interchange fees.⁷

Westpac's chief financial officer, Phil Chronican, was reported to have stated that the bank's exposure to credit card reforms would be up to \$25 million less than initially expected in 2004. Westpac now expected the reforms would cost \$15 million in 2004 and have a negligible impact in 2005.⁸

However, on the following day, Westpac announced changes to its Altitude credit card program as a result of the reforms. The changes include a reduction in the conversion rate of Altitude points to frequent flyer points from 1 to 0.5.⁹

Similarly, CBA also announced changes in its conversion rate of rewards points to frequent flyer points as a result of the reforms. CBA however, introduced further changes including points capping. Both of these changes will be linked to the type of card held by the customer, with the following redemption rates and points caps:

Card (rewards program)	Points cap	Frequent flyer points redemption rate
Standard card (Commonwealth Awards program)	50,000	2 Awards points for each frequent flyer point
Gold card (Commonwealth Awards Gold program)	100,000	1.5 Awards points for each frequent flyer point

⁷ The Australian Financial Review 'Reforms rock credit card industry', 28 February 2004

⁸ The Australian Financial Review 'Card reforms less "costly"', 26 March 2004

⁹ The Australian Financial Review 'Banks opt for charge cards', 23 February 2004

Platinum card (Commonwealth Awards Platinum program)	No cap	1 Awards point for each frequent flyer point
--	--------	---

CBA also announced that the interest rate for all cards linked to the Commonwealth Awards program would increase by 1% from 1 July 2004. This includes the standard card and the gold card. The Platinum cards, will not be affected as it will be launched with a rate of 18.15%.¹⁰

2.2.2 RBA Access Regime

On 23 February 2004, the RBA imposed an Access Regime on each of the three designated credit card schemes in Australia. The Access Regime completes implementation of the RBA's reforms. The Access Regime requires that specialist credit card institutions supervised by the Australian Prudential Regulation Authority (APRA) be eligible to apply for membership in the designated credit card schemes on the same basis as other authorised deposit-taking institutions. It also requires the removal of certain restrictions and penalties on the credit card acquiring activity of members.

2.3 EFTPOS reform

In December 2003 the Australian Retailers Association and a group of major companies including McDonald's, Australia Post, Caltex and Woolworths, lodged an application for review with the Australian Competition Tribunal of the ACCC's decision in relation to EFTPOS interchange fees (the introduction of a multilateral zero interchange fee). A second application was also lodged by Coles Myer. The appeal process has suspended the Commission's decision (the reforms were due to come into effect in January 2004). Retailers have opposed the reforms, broadly claiming that they will lead to a degradation of the EFTPOS network and are not of benefit to consumers. It is noted that the applicants for review stand to lose approximately \$100 million in annual fee income if the reforms come into effect.

The review is set down to be heard by the Tribunal from 14 to 16 April and again on 26 to 30 April.

2.4 ATM reform

It is reported in the media that the ATM market is poised for significant change in 2004 as the major banks and other industry players position for more consolidation and a shift towards direct charging.

The RBA wants ATM owners to directly charge the cardholder after displaying the fee on the terminal screen. This will increase fee transparency when a consumer uses an ATM that is not provided by their financial institution. The Australian Bankers Association has been reported as saying that these reforms will lead to lower fees when consumers choose to use ATMs not provided by their own bank.

¹⁰ Commonwealth Bank Media Release, The Commonwealth Bank restructures credit card offering ahead of Platinum launch 20 February 2004.

However, a large group of credit unions and regional banks have said that they may refuse to sign off on a reform proposal if it disadvantages smaller players, many of whom currently rebate or subsidise ATM fees for their customers and the Credit Union Services Corporation of Australia says it is unlikely to approve the reforms unless its members are able to maintain a unified national ATM network, so that credit union customers are not as exposed to higher fees. Regional banks also argue that their customers may be disadvantaged by direct charging if it limits their ability to subsidise ATM fees.

Industry participants say the group is still working towards a unified proposal to put to the ACCC by the end of April to avert the risk of the RBA deciding to regulate ATM fees at the next meeting of the Payment System Board in mid-May.¹¹

2.5 Other



3 International developments

The following information has been made available by the Commission's International Unit.

3.1 US

3.2.1 *Visa and MasterCard*

The full Second U.S. Circuit of Appeals has rejected Visa USA's, Visa International's and MasterCard International's request for a review of a lower-court decision that said the card associations violated the Sherman Antitrust Act by banning member banks from issuing American Express and Discover Cards. The lower-court ruled that banks should be able to issue American Express and Discover cards should they choose, but stayed the ruling pending appeals. The Second Circuit turned down the request without comment on January 9 2004.

3.2.2 *Bank of America / FleetBoston merger*

In March 2004, Bank of America and FleetBoston Financial Corp. won approval from the Federal Reserve for a merger creating the third largest US bank holding nearly \$ 1 trillion in assets. The Federal Reserve's board voted to clear the merger determining that the acquisition would not threaten competition or unduly concentrate banking resources. In addition to the approval of the Federal Reserve, the merger has also received approval from the Justice Department and the Federal Trade Commission. The merger must also be approved by the shareholders of both banks allowing it to be completed in early April 2004.¹²

¹¹ The Australian Financial Review 'Banks, Credit Unions hit the wall on ATM reforms', Monday 5 April 2004.

¹² AP Online, 09-03-2004

3.2.3 Acquisition of Cashcard

US based First Data Corporation, the world's largest credit card processor, announced in December 2003, that it has entered into an agreement to purchase 100 per cent of Australia's largest independent ATM company, Cashcard. On 13 February 2004, the ACCC announced that it would not oppose the acquisition as it was unlikely to result in a substantial lessening of competition. On 2 April 2004 the Federal Court gave its final approval to the Scheme of Arrangement for the purchase of Cashcard by a subsidiary of First Data Corporation. No further regulatory approvals are required and the transaction will complete on 15 April 2004.

3.2 UK

The Office of Fair Trading (OFT) said it has referred the supply of store card services to the Competition Commission following a study into the 4.8b sterling sector. The study on store cards was launched in response to questions raised by Parliament's Treasury Select Committee. It concluded that there are features of the sector, both in the supply of store card credit to consumers and in the supply of store card services to retailers, 'that appear to prevent, restrict or distort competition'. The Competition Commission will now investigate further and then decide on any necessary remedies.

3.3 Ireland

A report commissioned by the Bank of Scotland has found considerable evidence of a lack of competition in the provision of banking services to personal customers and small business in Ireland. Business and finance consumers and small business could save up to E500 million a year as a result of increased competition in the Irish banking sector according to the study. It claims that the high barriers to entry in these markets were the main reason for this. The report claimed that competition problems were most pronounced in money transmission services, in unsecured lending and in personal and small business banking. It also calls for a series of reforms including the establishment of an independent process outside of the Irish Payment Services Organisation (IPSO) to reform the money transmission system. It urged the adoption of a revised voluntary bank code to allow greater account switching, the removal of the regulation of bank charges, new measures to increase price transparency and to allow banks to access the An Post (Ireland's national postal service) network. The timing of the report coincides with Bank of Scotland's application for membership of the Irish Paper and Electronic Clearing Companies and IPSO. That organisation expressed surprise at the report's conclusions and in particular at the calls for the establishment of an independent process outside of its control. It also challenged the report's claims that its arrangement made it difficult for other financial institutions to gain entry to the money transmission system.

3.4 Norway

In December 2003 Norway experienced the creation of its largest bank as a result of a merger between DnB Holding ASA and Gjensidige NOR ASA, two of Norway's top banks, despite a number of conditions demanded by the competition authority. The authority's concerns about reduced competition in banking and finance, specifically in the markets for private loans, SME loans and group pension plans, have been met by the merged DnB and NOR.

¹³ Irish Times, City Edition, 16 March 2004

The review process appears to have focussed on the efficiency gains in the banking system post-merger. A competition authority press release states that "the 13 commitments will make the merger efficient". The authority considered the banks' cost efficiencies estimate of NOK1.69 billion per year to be exaggerated, and weighed this against the likelihood of higher prices and reduced competition. However, a consultant that led competition work for DnB Holding states "the conditions are the result of a successful efficiency defence. Most commentators consider the conditions as favourable for the parties".

4 Conclusion

Commission staff will continue to monitor developments with bank fees and charges and report again in July 2004.

Appendix A

Table A.I: Major bank transaction fees

(Table deleted for confidentiality reasons)