

Banking Enquiry

Report to the Competition Commissioner
by the Enquiry Panel

Executive Overview

June 2008



*competition*commission
south africa

Table of Contents

1	The setting	3
2	The banking industry and the scope of the report	7
3	Concerned stakeholders	9
	• Consumers	10
	• Small banks and prospective banks	12
	• Non-bank stakeholders	13
	• Concerns as a framework for the Enquiry	15
4	The concerns of consumers	17
	• Bank fees and charges	18
	• Product and pricing complexity, disclosure and switching	21
5	The concern of small banks and prospective banks	23
	• Access to the payment system and the setting of interbank fees	24
	• Restrictions on the issuing and acquiring of branded payment cards	24
	• Payment system governance	25
6	Concerns of non-bank stakeholders	27
	• Innovation and the delivery of improved services	28
	• Exclusion from clearing and settlement activity and regulation	29
	• The setting of interchange as it affects card payments	30
7	Recommendations of the Enquiry	35

The setting

The Banking Enquiry was established by the Competition Commission in August 2006 in terms of Section 21 of the Competition Act No.89 of 1998 to examine certain aspects of competition in retail banking in South Africa. The Enquiry follows two earlier reports (the 2004 Task Group report into Competition in South African banking – also known as the Falkena III report – and the 2006 FEASibility report into Competition in banking and the national payment system) which also examined competition in the retail banking industry. Unlike the Enquiry, neither of the earlier reports had the benefit of requesting detailed submissions from banks and other stakeholders. Such submissions, together with the hearing process involved, allowed the Enquiry to examine matters in more depth. The process also allowed the Enquiry to develop and refine recommendations as more information came to light.

The Competition Commissioner officially announced the establishment of the Enquiry on the 4th August 2006, and released the document titled Composition of the Enquiry and Terms of Reference. The Panel, thus appointed by the Commissioner, subsequently released the Enquiry Programme. The subject matter and objects of the Terms of Reference of the Enquiry are repeated here for ease of reference:

5. The subject matter of the enquiry will be:

- (a) the level and structure of charges made by banks, as well as by other providers of payment services, including:
 - (i) the relation between the costs of providing retail banking and/or payment services and the charges for such services;*
 - (ii) the process by which charges are set; and*
 - (iii) the level and scope of existing and potential competition in this regard;**
- (b) the feasibility of improving access by non-banks and would-be banks to the national payment system infrastructure, so that they can compete more effectively in providing payment services to consumers;*
- (c) any other aspect relating to the payment system or the above-mentioned charges which could be regarded as anti-competitive.*

6. The objects of this enquiry are, in connection with the subject matter stated above:

- (a) to increase transparency and competition in the relevant markets;*

- (b) *to ascertain whether there are grounds upon which the Competition Commissioner should initiate, and the Commission consequently use its powers to investigate, any specific complaints of contraventions of the Competition Act;*
- (c) *to engage with the banks, other providers of payment services, the appropriate regulatory authorities and other stakeholders in order to ascertain the extent to which, consistent with the soundness of the banking and payments system, there could realistically be improvements in the conditions affecting competition in the relevant markets, including increased access to the national payments infrastructure;*
- (d) *to enable the Commission to report to the Minister and make recommendations on any matter needing legislative or regulatory attention.*

The Enquiry Panel consisted of Mr Thabani Jali (Chairperson), Mrs Hixonia Nyasulu, Mr Oupa Bodibe, and Adv Rob Petersen SC. The Technical staff and consultants who rendered support to the Panel were Mr Keith Weeks, Dr Penelope Hawkins, Miss Jana Louw, Mr Stephen Chisadza, Miss Vania Cardoso, Mr Vincent Motshwane, Mr Henry Shaw, Mr Keith Smith and Dr Chris Torr. Mr Charles Frank was appointed Enquiry Manager and was assisted by Miss Kamogelo Seleka.

The Enquiry programme consisted of five consecutive stages. Stage one (August to end October 2006) allowed for initial general submissions by the banks, the public as well as all other stakeholders, and marked the beginning of analysis and research. Stage two, which commenced in November 2006, accommodated the first round of public hearings in several cities. Stage three allowed for further research and culminated in specific questionnaires prepared by the Technical Team, calling for detailed submissions of data from various parties, in particular the major banks. This stage lasted until March 2007. The fourth stage involved further hearings between April and July 2007. The final stage, analysis and report writing, began thereafter. The submission of this report to the Competition Commissioner represents the end of the Enquiry.

During the course of the Enquiry, there were 21 days of public hearings and the Technical team held 101 stakeholder engagements.



***The banking industry
and the scope of
the report***

The banking industry is important both in terms of its contribution to the economy and in the way it touches the lives of South Africans. At the end of 2006, the banking industry's revenue accounted for around 6 per cent of GDP or R106.9 billion (BSD, 2006). This is calculated by taking banks' interest income (earned from taking deposits and thereafter making loans) together with their non-interest income (earned from all other activities, including payment services).

The range of activities undertaken by banks typically includes:

- Taking deposits and extending loans
- Facilitating transactions and providing payment, clearing and settlement services
- Providing a variety of financial products and related services.

Whilst all these roles are important, the remit of the Enquiry primarily focused on exploring competition in the provision of transaction accounts and related payment services to individual retail customers of the banks. For this reason, it did not examine the generation of interest income by the banks, and hence is silent on the level and occurrence of interest charges. Business and corporate banking were also excluded from the analysis. Instead the report focuses on transaction-based activities that are derived from the ability of banks to open accounts, take deposits, extend loans and facilitate transactions.

The focus on transaction-based, or payment, services has meant that fees and charges on such services have come under close scrutiny. Transactional fee income amounted to R34.5 billion, or roughly a third of banks' income in 2006. With the focus of the Enquiry on retail banking, data from the four big banks (Absa, Standard, FNB and Nedbank) suggests that the fees and charges facing individuals on personal transaction accounts (PTAs) alone generated around R11 billion. This excludes the fees charged to small businesses and large corporations, which were not the subject of this Enquiry.

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***Concerned
stakeholders***

The reports of 2004 and 2006 alerted the Commission to concerns regarding competition in the national payments system, and in particular the concerns of small banks, prospective banks and non-bank players. Moreover, the Commission had also been made aware of widespread public concern regarding the level of charges made by banks and other providers of payment services to consumers. The concerns of three groups – consumers, small (and prospective) banks and non-bank players – became the focus of attention of the Enquiry.

Consumers

Some 267 submissions to the Enquiry were received from individual consumers of banking services. A number were received from consumer groups, including: the Financial Sector Campaign Coalition (including COSATU and the SACP), the Benchmark Foundation, the Bank Pensioners Society, the Black Sash, Savings and Credit Co-operatives League, the South African National Consumer Union, the Ethekewini Civic Forum and the 1860 Pioneers Foundation.

Key themes in these submissions were the level and incidence of bank charges, with some consumers submitting their individual bank statements as evidence of the reasons for their complaints. In several cases, claims were made that fees were unjustly applied (a matter within the remit of the Ombudsman for Banking Services). In other cases, the application of fees was challenged as these fees were not adequately disclosed to consumers in advance. Several submissions indicated how those least able to afford penalty fees for returned debit orders (dishonour fees), for example, seemed most likely to be charged such fees. Of the fees that were listed as being unacceptably high at the hearings were fees for cash deposits, off-us ATM transactions and penalty fees. The Panel heard from the National Credit Regulator and the Financial Sector Charter Coalition that the application of penalty fees (especially dishonour fees) could result in a significant decline of the funds available in an average customer's account, thereby creating a vicious cycle the consumer is unable to control.

It was also observed that those products supposedly offering the cheapest options for consumers, did not always prove to be so. For example, as Mr Rowlinson of Wizzit pointed out, under the Mzansi pricing structure, several banks offer the first few transactions per month at a fairly low rate, but penalise subsequent transactions by charging more for them than would be typically charged on other accounts. The limited availability of cash-back at the point of sale (available at two of the largest retailers), which is considerably cheaper than the Mzansi money transfer product available from the big four banks and Postbank, was offered as another example.

Arising from the concerns regarding the level of fees and charges, was the theme of a lack of appropriate disclosure of information and consumer education. Hence linked to requests to examine the level of fees was the request for improved transparency and communication with customers. Mr Mahlangu of the Financial Sector Charter Coalition spoke of the need for banks to spend individual time with customers explaining their options and the application of fees, and also called for mandatory education of consumers.

It was apparent to the Panel that the legacy of the discriminatory laws and practices of the past remains a challenge for the South African banking sector. The South African banking landscape continues to reflect the fact that the majority of South Africans only enjoy limited access to adequate banking facilities with poor communities being neglected. Such communities endure further financial hardship of incurring transportation costs to access banking services outside their communities – often for relatively simple and inexpensive payment transactions. This disparity was starkly highlighted in case studies presented by Mr Paulus and Mr Kholisile of the Financial Sector Charter Coalition on the neighbouring communities of Alexandra and Sandton. It was submitted that there are some 59 bank branches servicing 130,000 people in Sandton as opposed to one formal bank branch serving 175,000 people in Alexandra. Other similar instances (involving for example the township of Mohlakeng outside Mogale City) brought home the message of under provision of financial services in the townships.

A number of submissions pointed out that the affordability of bank accounts was affected not only by the level of fees, but also by the associated costs of reaching a branch or ATM. It was suggested that certain categories of accounts should carry no bank charges. The Financial Sector Charter Coalition and the Black Sash felt, respectively, that at least low-income workers and social grant recipients should be able to enjoy free banking.

Some of the consumer concerns about access to services fall outside the terms of reference of the Enquiry. The banking sector is urged to examine the presentations made by members of the public and the various consumer and civil society organisations that appeared before the Panel. Such presentations highlighted the problems of high bank charges, transparency and disclosure of information, and the lack of access to basic facilities that poorer South Africans experience in the course of their daily lives.

Small banks and prospective banks

In retail banking generally, the four major banks together have well over 90 per cent of the market. The submissions and hearings revealed that small banks and those institutions that saw themselves as prospective participants in the national payments system had a number of concerns.

Such concerns included the costs of entry to the payment system and its different streams, and once in, inadequate representation in various institutional structures and the disadvantages of being a small player in bilateral negotiations of interbank fees.

Registered banks include some small banks, which have already met the criteria for obtaining a bank license. However, once registered, they still need to meet the requirements and the associated start-up costs of becoming a clearing bank (with access to the clearing and settlement infrastructure of the payment system), should they want to become part of the payments system. The costs of entry to the system range from capital costs associated with IT systems, acquiring infrastructure such as point of sale devices and ATMs, and initiation fees for the following: SAMOS (the South African Reserve Bank's settlement system); the Payments Association of South Africa (PASA); Bankserv (the dominant switch of the retail payment streams); and should they want to issue debit or credit cards, VISA and/or MasterCard. There would also be usage or transaction fees which would typically be higher per transaction for a smaller entity than for a larger incumbent, given the latter's considerably greater volumes. Moreover, smaller banks would also need to employ skilled personnel to manage and operate their payments capability.

Currently, the prospective entrant to the payment stream needs to obtain permission from each of the incumbents to participate in such streams (referred to here as the technical stage). The entrant also needs (as things currently stand) to negotiate an interbank fee for accepting and processing payment instructions with each existing member – referred to as the commercial stage. Concerns with both the technical and commercial stages were brought to the attention of the Enquiry.

In the technical stage, the delays resulting from the existing participants testing and approving the interoperability of the systems of new entrants were raised as a concern. In the case of the commercial arrangements, the rules require bilateral negotiations with each incumbent. As Mr Stassen of Capitec Bank put it at the hearings, "for a small player, you have got very little, if any, negotiating ability". Such bilateral negotiations may also take many months to conclude. Where interbank

fees have been uniformly set for all the participants in the payment stream, there is no need for bilateral negotiations, but there are possible competitive concerns, and the new entrant simply has to accept the given rates.

Smaller institutions, such as Mercantile Bank and Capitec Bank, expressed a preference for multilateral setting of interbank fees, which are independently and transparently overseen. Such interbank fees should cover the processing costs – and should be as price neutral as possible – and not be the main factor behind the acceptance of a new product or payment mechanism. The big banks also generally favoured multilateral setting of interbank fees.

The costs associated with issuing and acquiring branded payment cards (VISA or MasterCard) were also regarded as onerous by the smaller players. Some of the costs associated with branded payment cards are fairly obvious. There are international membership fees, payable in US Dollars, as well as various entry conditions and on-going transaction fees. But the real issue seems to be participation of banks in both card associations in order to achieve access to merchant acquiring (i.e. the service of accepting, processing, clearing and settling card payment transactions on the merchant's or retailer's side).

One of the other concerns raised by smaller participants of the payment system – such as Ithala Limited and Mercantile Bank – was their apparent lack of representation at decision-making levels of various key entities. For example, the big four banks dominate decision-making at PASA and Bankserv, and subsequently the clearing houses and their commercial associations (such as the Association of Bank Card Issuers). Smaller participants are represented (together) by a single vote while the bigger players each have their own.

Non-bank stakeholders

The non-bank stakeholders in the payments system are a diverse group of institutions, and include retailers, micro-lenders, bureaux and system operators who provide services in relation to the processing of payments. They brought various concerns to the attention of the Enquiry.

The arguments of the retailers centred around the costs of the payment industry and how these were passed on to the consumer. They objected to the setting of interbank rates – such as interchange fees for credit cards – and the requirement for card payments to be processed via a single acquiring bank, as well as through the central payments switch – Bankserv.

In fact, making use of more than one acquirer – “multiple acquiring” – is currently permitted to a limited extent. The current rules are that merchants are permitted to appoint an acquirer for each of the card brands and types, namely Visa, MasterCard, Visa Electron, Maestro, Diners Club and American Express. Information supplied to the Enquiry suggests that the largest retailers, such as Pick n Pay and Shoprite Checkers, have two acquirers for payment cards. To the extent that multiple acquiring takes place, this answers the concern raised by retailers that processing all card payments through a single acquiring bank creates unacceptable risk in the event that one bank’s systems fail. Should that happen, the retailer would be able to process its card payments through another acquirer.

However, the big retailers also called for sorting at source where the retailer would have a relationship with each of the existing issuing banks (or at least all of the big banks). This process would largely obviate the need for switching through Bankserv. The key benefit of the widespread adoption of sorting at source set out by its proponents appears to be potential cost reduction. For example, the sorting at source model would allow non-banks greater negotiating power with regard to bank processing fees – as there will be an ability to play one acquiring bank off against another. Moreover, the big retailers maintained that they could sort card payments for each bank through their own systems – which could further reduce their costs. Pick n Pay acknowledged in the hearings that there would probably not be any benefit for smaller merchants, however, as they would not have the negotiating power of the larger retailers. The Enquiry was not persuaded that there is merit in promoting sorting at source (as distinct from the more limited multiple acquiring) from the point of view of competition policy.

So far as interchange is concerned, retailers pointed out that the interbank fees for credit cards set by the banks included charges which should not be passed on to the merchant, and ultimately the consumer. These charges include amounts for the “interest-free” period – enjoyed by those who effectively pay the entire amount outstanding on their credit cards every month – as well as the payment guarantee to the merchant. It was observed by Net1’s Dr Belamont that the advantage of the interest free period is enjoyed by only the minority of credit card users and yet its cost is spread to all the retailer’s customers – even those who pay in cash – as these costs are reflected in the store’s prices. Retailers – as expressed by Mr Cope of Pick n Pay – felt that payment card interchange should cover only the processing costs of the issuing bank. It was stated that, should the interchange fee be reduced, customers could benefit from lower store prices. SARPIF – the South African Retailers Payments Issues Forum – also pointed out that the process by which the interchange fees were set remained opaque and that SARPIF had been denied input into the process.

Non-banks – such as non-bank credit providers, bureaux and system operators – highlighted the uneven playing fields that they experienced in the payments system. Their disadvantage was expressed by Micro Finance South Africa’s Mr Seymour as being on the “wrong-side of the payment fence”.

A concern was raised that the payment system, while being highly sophisticated, did not actually cater for the needs of “the masses” or “second economy” in terms of appropriate access and costs. In the view of non-bank providers, this hampered the provision of basic banking services. Non-banks – (such as Micro Finance South Africa and the Commercial Independent Bureau Association) expressed frustration in having an inferior status in the payments system – essentially neither being recognised as potentially innovative participants nor having adequate representation at decision-making structures.

The frustration arises in part because, while non-banks compete directly with banks in certain respects, such as extending credit and providing certain payment collection services to businesses, they have to rely on the banks (their competitors) to process their payment instructions and enable them to fulfil their mandate to their clients. This was expressed by some as a vulnerability, given the gate-keeping role to the payments system that the banks play. Non-banks are effectively at the mercy of the pricing decisions made by their competitors – the banks. Hence there was an appeal to improve the access of appropriately qualified non-banks to entities such as Bankserv – by eliminating or making more transparent the gate-keeping conditions and by a fairer and more transparent approach to pricing for such access.

Concerns as a framework for the Enquiry

Not all the concerns raised by the different groups could be addressed. Some were clearly beyond the remit of the Enquiry. Others could not be examined in sufficient depth because evidence was not forthcoming. The Enquiry has also avoided proposing changes which, while superficially attractive or “popular”, could ultimately do more harm than good.

Nonetheless, the concerns provided a framework for the Enquiry’s activities. They provided useful insights with which to test the submissions and views presented by the banks and other stakeholders. These concerns were influential in guiding the line of questioning of the Panel, and the identification of key issues to be considered during the course of the Enquiry.

The Enquiry was carried out over some 22 months, during which time a number of changes in the banking industry and payments arena occurred – for example: both Bankserv and PASA reviewed their decision-making structures; amendments to the NPS Act were published; some banks reduced their fees on certain accounts, and others reduced the number of fees. The implementation of the National Credit Act made some fee categories illegal or obsolete. Nonetheless, this hardly left the Enquiry bereft of matters to consider, as will be apparent from the report.

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The concerns of consumers

Bank fees and charges

The Enquiry undertook to see if there was a relationship between bank fees and costs, and if so, if it could be reasonably concluded that fees were – in general – too high. Relating fees to costs proved impossible to do with the data voluntarily submitted by the banks – in writing and at the hearings – and it became clear that costs were but one input into the pricing strategy of banks. Prices also reflect the structure of the industry and the market power of the major banks, as well as barriers to entry and difficulties of achieving economies of scale which prevent even innovative new banks from competing with the incumbents in any but small niches.

The complexity of products and prices (combined with inadequate transparency and disclosure), the cost and difficulty for consumers in switching banks, and the reluctance of the major banks to engage in vigorous price competition with each other that could “spoil” the market for them in the long term – all contribute to producing a situation where the prices charged to consumers for transactional accounts and payment services are probably (although with some exceptions) well above the level that effective competition would allow.

Without being able to pin down the relationship between costs and prices, and because there is complex cross-subsidisation between multiple products and services in the banking industry, it has been impossible to identify all the particular instances where the level of prices charged by banks would constitute an abuse that warrants (or could be effectively addressed by) intervention on the part of the competition or regulatory authorities.

However, there are exceptions which are the subject of recommendations of the Enquiry. These relate to penalty fees and off-us ATM transactions. Consumers have pointed out that such fees appear clearly to be too high and set arbitrarily, and that these fees contribute significantly to their total bank charges. Moreover, such fees are not always adequately disclosed and fall most heavily on those least able to afford them.

In the case of penalty fees, both the level and the volume of the fees charged for rejected debit orders by the major banks provided grounds for grave disquiet. Payment by debit order is routinely required nowadays for all manner of regular services which have become an essential part of everyday life. Reliance on debit orders is widespread throughout the retail market served by banks, and it is especially notable in the lower income markets. Debit order facilities have also recently been added to the basic Mzansi account offerings.

The data submitted to the Enquiry indicated that the average rate at which debit orders are rejected, and dishonour fees are applied, is roughly twice as high for basic savings or transmission accounts as for all PTAs taken together. In other words, in accounts typically held by lower income customers, a relatively high proportion of debit orders presented for payment are dishonoured for insufficient funds. Where detailed data has been provided, indications are that as much or even more revenue is earned by banks from rejected debit orders on these accounts than from the processing of successful debit orders.

Many ordinary bank customers are not in a position to pad their bank accounts with funds that are surplus to their immediate needs. When salary payments are delayed, this causes the debit orders – which they have signed in good faith – to be rejected for insufficient funds. It is not a matter of neglect, or irresponsibility, but of circumstances beyond their control. Yet the penalty fee is applied per debit order item, so that a customer may face multiple penalties to add to the primary misfortune of getting paid late. Customers on low incomes, with tight credit margins, can readily find themselves lacking sufficient funds without having had any intention of defaulting on their payments or of breaching their undertakings to the bank.

The Panel found that it is no answer for banks to say that, on application, they might reverse the penalty fee in a deserving case. Very many consumers – even if they were assured of the possible indulgence – would suffer in silence rather than muster the confidence, or find the time, to challenge the penalty when it appears on their account.

The Panel found it unacceptable that a bank should recover more than the cost incurred in processing the rejection of a debit order. On the evidence available to the Enquiry, there was no reason to believe that, currently, banks would be unable fully to recover their costs ordinarily incurred in respect of rejected debit orders (including a fair return on outlays) by means of a fee capped at R5 per dishonoured item. The Panel has therefore recommended that a cap of approximately that amount should be imposed, subject to periodic review.

This is the only instance in which the Panel has found it appropriate at this stage to recommend direct price regulation. A number of other measures are proposed, however, which are designed to bring down prices that are currently being sustained at uncompetitive levels. (In the case of interbank interchange fees – not strictly a “price” – a method of establishing applicable levels under regulatory supervision is recommended.)

As regards ATM transactions, cash withdrawals made at ATMs are a common activity for most bank customers. In 2006, around 1 billion ATM transactions were made through the network, generating gross revenues in excess of R4 billion for the banks. The Enquiry came to the conclusion that pricing arrangements between banks for use of the shared network have served to shelter the provision of ATM services from effective price competition, and that this situation needs to be changed.

In particular, the Enquiry concerned itself with the pricing arrangements that are currently in place when a customer of one bank uses the ATM of another bank, also known as “off-us” transactions. While only 15 per cent of ATM transactions are of this kind, the analysis of the Enquiry shows that they have been unduly restricted and that the pricing arrangements in respect of them have had – and continue to have – repercussions for all cash withdrawal transactions made at an ATM.

The consumer is typically charged a substantially higher fee for off-us transactions, and (for an average-sized cash withdrawal) a substantial part of this fee is retained by the issuing bank although it has not provided the cash dispensing service. The fee that is paid by the issuing bank to the ATM service provider for an ATM transaction is generally referred to as a carriage fee. Currently the carriage is a fee multilaterally agreed upon between banks. The Enquiry found that not only is carriage itself sheltered from competitive forces, the consumer is not free to shop around for ATM services and – because of the interbank arrangements – is treated as belonging to the issuing bank for all ATM transactions. Accordingly, the ATM services that banks offer to their customers are sheltered from competition.

If the carriage fee is abolished and the cash provider instead charges the consumer directly for the cash dispensing service – i.e. if the direct charging model is adopted – price competition can become more effective. For the direct charging model, the carriage fee would be replaced by a direct charge, set by each ATM service provider. Instead of recovering costs from the issuing bank through a carriage fee, the ATM service provider would be recovering costs directly from the customer (who uses the payment card). The card issuer (while it could charge its own processing fee as with other card transactions) would merely remit to the ATM service provider the amount of the customer’s withdrawal along with the ATM service provider’s direct charge.

Such a move would also provide an ideal opportunity for better fee disclosure at the ATM, prior to the transaction taking place, with the customer informed as to the off-us fee, prior to confirming the transaction. If the fee were deemed too expensive, the customer could cancel the transaction without being charged. Transparency in

ATM charges and disclosure of information – prior to confirmation of a transaction taking place – was raised at the hearings.

It became apparent to the Panel that the pricing innovations developed by the banks over the years – such as ad valorem fee structures and bundling of transactions – that are said to be designed to reduce bank fees and charges, typically apply only to products reserved for middle to higher income individuals. The recommendation is that the benefits of these features also be made available to the lower income individuals.

Product and pricing complexity, disclosure and switching

Both customers and prospective customers are faced with a bewildering array of different banking products and bundles. However, as came across powerfully at the hearings, many consumers do not understand the differences of the benefits of one product over another, let alone one bank over another. While the incumbent full-service banks all appear to offer the same set of account-holding and transaction facilities, these facilities are bundled, packaged and priced differently. This complicates choices for consumers and weakens price competition. To promote competition, there is a need for simplified offerings that can readily be compared, in both price and content.

Such simplification would begin to address the information asymmetries (inequality of information) in the market for personal transaction accounts. Such asymmetries arise not only from the complexity already described, but also from inadequate transparency and disclosure in respect of the features and pricing of transactional banking products. Each bank uses its own terminology and nomenclature to describe its products and related product features and fees. This makes it very difficult for consumers to understand, assess and compare the different offerings of the banks.

As a consequence, the great majority of consumers do not actively investigate what they are paying in bank fees, nor do they respond readily to changes in prices by seeking out an alternative provider. The Enquiry believes that a number of steps can be taken – under the auspices of the Banking Association and the Ombudsman for Banking Services – which will help address these matters of complexity and weak disclosure.

The Enquiry found that the cost to customers of switching banks (including the search costs in finding an alternative) are generally enough to create a significant degree of customer captivity and so confer on banks an appreciable degree of market power. The Enquiry concluded that, on the basis of these switching costs alone, banks are or will have been in a position to impose a small but significant lasting increase in price above a competitive level without losing too many customers, and that their current prices probably reflect the exercise of this power in the past. Customers would have to find an alternative bank which is substantially cheaper than their own and likely to remain so, in order to justify the expenditure of time, effort and money in switching.

To switching costs must be added the search costs of finding a suitable substitute. In addition to problems of transparency and disclosure, the greatest obstacle faced by consumers in the search process lies in the difficulty of making meaningful comparisons across the product offerings of the banks. The evidence presented suggests that the overriding reason consumers do not make choices primarily on the basis of price is that the cost and effort required to make such a determination with any accuracy is simply prohibitive for the great majority of consumers. This reinforces customer inertia when it comes to changing banks and accentuates the degree of market power that banks have. Inertia is not difficult to account for, even though expressions of discontent abound. Consumers – in particular those who depend on a range of banking and payment services provided by the full-service banks – have little reason to conclude that they would be substantially better off by switching. This is certainly not because prices are at a keenly competitive level.

In order to reduce the obstacles presently retarding price competition, the Panel has made a number of recommendations designed to facilitate price and product comparisons, and reduce the time and effort required for consumers to switch banks.



***The concerns
of small banks and
prospective banks***

Access to the payment system and the setting of interbank fees

Understandably, a prospective entrant to the payment system has to meet technical requirements and has to make commercial arrangements for its participation. As it stands, participation in any payment clearing house (PCH), such as through the use of ATMs or cards, requires written permission from each incumbent, confirming that the would-be entrant has met the necessary technical requirements. While in principle objections to providing such letters can only be on the basis of possible risks introduced, there may be frustrating months of delay before an incumbent produces such a letter, after having tested the interoperability of the new entrant's systems.

The Panel has suggested that a model like the LINK ATM network in the UK represents an improved model for entry. In the case of LINK, objective criteria for entry are set, and the Chief Executive grants access on the basis of these criteria.

As for the commercial arrangements, the Panel did not consider that a multiplicity of interchange levels bilaterally negotiated between the various participants in each relevant payment stream would offer a satisfactory way forward. Stakeholders, large and small, made it clear that bilateral negotiation of interchange is complicated, ineffective and logistically fraught with problems. Indeed, bilateral interbank arrangements in this sphere are more likely to result in the enhancement and abuse of market power by the big banks than would a uniform level of interchange applicable to all issuing and acquiring participants in the particular payment stream.

The Panel proposed that the problem of interchange-setting and the danger of its abuse be addressed by way of a new statutory arrangement, which would ensure the setting of interchange by a transparent and objective process involving the participation of all stakeholders and an independent third party.

Restrictions on the issuing and acquiring of branded payment cards

Discrimination between large and small banks is also a feature of access to payment services such as acquiring credit and debit card transactions. Both Visa and MasterCard have strict rules and regulations regarding the eligibility and participation of institutions as issuers and acquirers in their card schemes. These are carefully evaluated in the report. There are also practices of the schemes which have created

unnecessary barriers to acquiring by smaller players. This aspect, too, is dealt with in detail.

The Panel has come to the conclusion that the card schemes need – both formally and in practice – to abandon restrictions which limit acquiring to issuers.

Payment system governance

During the course of the Enquiry, both Bankserv and PASA made changes to their Board structure. In the case of Bankserv, independent directors can now be appointed. In the case of PASA, the proposed structures give more prominence to the smaller banks.

The Panel believes that an Ombud to payment system participants, or prospective participants, should be established. The Ombud could assess whether or not applications have been fairly dealt with and whether or not they have been fairly treated in terms of access, the pricing of such access, and the time required to obtain it. Included in the remit of such an Ombud would be the entire ambit of the payment arena, which would include access to the infrastructure of Bankserv (or the relevant PCH operator), access to settlement accounts, the processing of membership of PASA, and the processing of PCH applications.

Those with complaints about Bankserv's fee structure – as raised in the hearings – appear to be reasonably happy with the recent changes that have been made. Nonetheless, the Enquiry has recommended that the Competition Commission, together with the Payment System Ombud, keeps Bankserv's pricing practices under observation – given its current dominant position in the industry.





***The concerns
of non-bank
stakeholders***

It appears to the Enquiry that the regulation of the South African payment system by the South African Reserve Bank (SARB) under current legislation has fallen behind best international practice. This conclusion stems from evidence that regulation is failing to adequately address the changes in payment services provision which are resulting from technological advances, new payment streams and the increasing provision of payment-related services by non-banks.

While the South African payment system is technically advanced, the same cannot be said of our access and regulatory regime. Clearing and settlement remains restricted to the narrow category of “clearing banks” irrespective of the payment stream involved. This regulatory conservatism, which prevails even though the exclusion of suitably qualified non-banks from low-value (or retail) payment streams has been shown to be unnecessary for the maintenance of stability and effective management of risk, has serious implications for competition and needs to be reconsidered in the light of more advanced regulatory practices taking hold elsewhere. For example, the regulatory authorities in both the Europe and Australia have recently developed access regimes which permit suitably qualified non-banks to participate fully in the payment system.

Innovation and the delivery of improved services

The existing regulatory regime for the National Payment System does not appear to have met the needs of South African consumers as far as competitive and technically innovative payment services are concerned. The old approach of largely ignoring non-bank activities has begun to shift. But persistence in the view that only clearing banks may participate in clearing and settlement is not an approach that will best serve South Africa’s interest. The Enquiry is convinced of the need for a revision of the regulatory approach and for the development of an appropriate regulatory regime for payment system activity which is functionally-based, rather than institutionally-based, so as to ensure quality of access. Those participating in payment activity should be adequately regulated, regardless of whether or not they are clearing banks.

The restriction of participation to clearing banks means that introduction of payment instructions into the system by a non-clearing bank or a non-bank must be under the auspices of a clearing bank. This also implies that to gain acceptance, an innovative idea must first be adopted by a clearing bank that will in turn take the innovation to the PCH. This may involve a number of hurdles, including that to gain acceptance, both the clearing bank first approached, and the other clearing banks, will need to

be convinced that such an innovation will not undermine revenues from their existing business lines. Then the successful innovator is tied to the terms and conditions of the clearing bank which has adopted the idea and typically gets locked into an arrangement from which there are high risks of switching.

The current arrangement is thus likely to stifle or delay innovation as incumbent clearing banks may adopt a conservative and obstructive approach to innovation. They may indeed reject viable innovations out of hand or take an unduly long time to approve any change from their own prevailing business models.

The current regulatory arrangement also entails risk insofar as the regulated entities or clearing banks do not themselves have the mechanisms or motivation to monitor the transactions introduced by those acting under their auspices. The principle that the entity that introduces the transaction should be responsible for any associated risk is sound. But this fails when the bank introducing the transaction does so in name only and is not equipped to regulate the “sponsored” entity.

There needs to be clear and objective criteria for the submission, evaluation and acceptance of innovations, along with changes to the access regime.

Exclusion from clearing and settlement activity and regulation

There is currently no access regime for payment system participants other than one in which, once a bank is registered as a deposit-taker, it can potentially become a clearing bank and member of PASA.

While the oversight domain embraces the entire payment value chain and includes non-banks, the supervision of non-banks has been piecemeal and does not provide for satisfactory access to clearing and settlement.

Because non-banks are not catered for as members of PASA, they are excluded from having an effective voice.

Along with changes to allow suitably qualified non-banks to participate directly, under effective regulatory supervision, in clearing and settlement activities in appropriate low-value payment streams, the Panel believes that PASA membership should be extended to non-banks. This does not necessarily require all members to participate on the same footing. A more nuanced membership of PASA (as for example exists in

the Australian equivalent) will point the way to improved governance, as the current (and currently proposed) governance structures are dominated by the biggest banks which have the greatest volume and values.

In an environment where both bank and non-bank members of payment clearing houses can be members of PASA's highest authority – its Council – governance concerns associated with clearing banks regulating non-bank competitors will tend to fall away.

The setting of interchange as it affects card payments

Interchange, and the way interchange levels are set, became an important focus of the Enquiry.

Whenever a payment card is used to buy goods or services, or otherwise to effect a payment, two independent demands have to be matched. This applies to both three-party and four-party schemes. Just as a wedding requires two people to say “I do”, a payment by payment card requires one person (the payer) to choose to use the card as the means of payment, and another person (the payee, usually a merchant) voluntarily to accept it. If the cost to the one or to the other – the charge levied for the use or acceptance of the card respectively – is such as to deter either of them, then the card will not come to be used to effect payment. Whether or not a particular transaction will fall away will also depend on whether or not there is a substitute means of payment (cash, for example) acceptable to both parties. The theory of two-sided markets is discussed extensively in the report.

In the case of a closed or three-party card payment scheme, the scheme owner itself must be able to match the two independent demands, by way of its own pricing of its issuing service to cardholders on the one hand, and by way of its acquiring service to merchants on the other. The scheme owner's issuing and acquiring costs are aggregated in its own hands, and so are its issuing and acquiring revenues. Within the constraints set by its aggregate actual and potential costs, and by its aggregate actual and potential revenues, it can maximise output (and profit) in terms of card usage by cross-subsidising the one side of the business with the help of the other. It can, for example, price below cost on the issuing side (i.e. in its price to cardholders) to the extent that it can recover the shortfall by pricing above cost on the acquiring side (i.e. in its price to merchants). The different price elasticities of demand relative to cost on the different sides of the market for its card payment services can thus be

reconciled by way of a balancing exercise, performed by the single supplier matching two supplies in a way that brings into effective correspondence the two independent demands. Cardholders, for example, may be very responsive to changes in price – meaning that demand on the issuing side would be more price elastic. On the other hand, merchants may be far less responsive to changes in price – indicating that demand on the acquiring side is price inelastic.

In the card schemes which dominate (MasterCard and VISA – also known as four-party schemes), a special balancing mechanism has been shown to be necessary in principle. The balancing exercise – to the extent needed to match the two independent demands with each other and the two independent supplies with them – can only be performed effectively by a transfer of revenue between the two suppliers. In the view of the Panel, interchange in the payment card stream is, at least in principle, a reasonably necessary, and thus legitimate, means of bringing this balance about. The Enquiry sees the true nature of interchange as a means of revenue allocation between financial institutions participating in a card scheme, rather than as a price for a service by one such participant to another.

In the view of the Panel, the necessity of interchange in principle as a balancing mechanism (and thus its legitimacy in principle also) does not serve to justify the methodologies currently employed by the card schemes, and by their participating banks, in arriving at the actual levels of interchange applicable to the various types of payment card transactions.

Interchange enters invisibly into the merchant service charges levied by acquirers. As a common component in acquirers' costs, it sets a floor for their merchant service charges which cannot be competed away. In turn, it enters invisibly into consumer prices. If interchange is necessary, it has nonetheless the nature of a necessary evil – and should be kept as low as reasonably possible. In fact, as the Enquiry shows, the art in interchange setting has been for the schemes and their participants to assess the maximum level of interchange which merchants are likely at any time to be willing to bear by way of merchant service charges.

As a subsidy from the acquiring to the issuing side, interchange obviously facilitates card issuing. Competition between schemes for issuers has the paradoxical tendency to drive interchange upwards rather than downwards. Where, as in South Africa, the major issuers are also the major acquirers, the interests in maximising interchange are generally far more powerful than any influence that might tend to bring it down. Where interchange has come down, the likelihood is that issuing costs have come down even faster, or some immediate purpose of overcoming merchant resistance to

card acceptance has been the aim. The bargaining power of large merchants allows them to negotiate more favourable merchant service charges. This can, however, not be seen as an effective constraint on the level of interchange fees set between participating banks. The true constraint on interchange, and on merchant service charges, is ultimately the “competition” of increasingly archaic substitute means of payment (such as cash and cheques). Little comfort can be taken from this.

Moreover, by including in credit card interchange a contribution by the merchant to the issuer’s costs of extending credit, the current interchange approaches of the schemes and their participating banks serve to privilege this line of business over competing forms of credit extension.

Higher rates of interchange for credit cards compared with debit cards can be seen to “subsidise” the issuing of credit cards and has helped make the former cheaper for the cardholder to use, while the potential for debit cards to replace cash and cheques has probably been retarded. At the same time, to the extent that the level of credit card interchange causes merchant service charges for such transactions to exceed debit card merchant service charges and the merchants’ costs of cash, any resulting addition to consumer prices would imply that poorer consumers are to this extent being obliged to subsidise the rich.

In short, it does not follow from the necessity of interchange that the actual setting of interchange is free from the danger of abuse. Transparency and objectivity, and the resulting confidence on the part of both suppliers and consumers, are crucial to the setting of appropriate levels of interchange in the different payment streams in which it is shown to be necessary.

Submissions made by banks, taken together with subsequent exploratory consultations with them, indicated that all would favour or accept a change from the present methods of setting domestic levels of interchange, to an independent, objective and transparent regulated process. The understanding was that such regulation would be based on a transparent approach:

- with objective criteria being established for each relevant payment stream through a participatory process and justified in public
- with the resulting appropriate levels of interchange, where applicable, being independently assessed on the basis of audited data
- with the integrity of the process being verified under regulatory oversight
- with the levels of interchange so determined being thereafter enforced.

The Enquiry has recommended that the necessary regulatory scheme be drawn up and implemented so as to enable this change to be effected and enforced as soon as practicable. Among retailers consulted, there was unanimous support for safeguards against excessive interchange, although not necessarily agreement on the means of achieving this.

Interchange also exists by interbank arrangement in other payment streams. The Panel's recommendations include bringing the setting of interchange in such other streams – where interchange can be shown to be necessary – under essentially the same independent, objective and transparent process.



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***Recommendations of
the Enquiry***

The recommendations of the Enquiry are explained in detail in the various chapters of the report. They are outlined here for convenience; however further detail should be sought from the report itself.

The Panel of the Banking Enquiry makes the following recommendations:

- 1** A cap should be imposed on the price of processing rejected debit orders at approximately R5 per dishonoured item. Such a cap should be imposed by regulation. It should apply both to savings and current accounts, and to ordinary as well as early debit orders. Banks which incur additional expenses or losses in particular cases through their customers' default in respect of debit orders can terminate those customers' accounts and/or sue for damages. Whether such price regulation should be imposed using existing regulatory powers of the SARB, or by way of section 9(1) of the Sale and Service Matters Act 25 of 1964 (as amended), or by other existing or special legislation, is a matter on which the Panel does not consider itself best placed to express an opinion. In the view of the Panel, if the necessary regulatory intervention is not forthcoming within a reasonable time, the Competition Commissioner, in consultation with the National Treasury and SARB, should recommend to the Minister of Trade and Industry that he consider directing the Consumer Affairs Committee established under the Consumer Affairs (Unfair Business Practices) Act 71 of 1988 (as amended) to conduct a full-scale investigation into dishonour fees in respect of debit orders charged by the four major banks (Absa, Standard, FNB and Nedbank). Should the latter Act be replaced by the enactment of the Consumer Protection Bill, 2007, now before Parliament, then the necessary investigation could be initiated or continued as may be appropriate under the new Act.
- 2** Systems should be put in place by the banks, which will enable customers to cancel any direct debit instruction at any time by phone, internet, or over the counter at a branch (subject to written confirmation by the customer where necessary). This would not alter the customer's contractual obligation to the creditor in respect of payment arrangements.
- 3** The current interbank pricing system of carriage should be replaced with a model of direct charging in the ATM stream as soon as possible, whereby each ATM service provider sets its own charge for the cash-dispensing service to the customer.
- 4** In the context of the direct charging model, the necessary compensation

to the card issuer in respect of its own processing and related service to its customer for an off-us ATM transaction should be obtained through the issuer levying its own charge directly on its customer.

- 5 The change to a direct charging model should be accompanied by a regulatory prohibition – whether by way of PCH clearing rules or otherwise – against any ATM service provider discriminating in price between customers using cards issued by other firms. This addresses the concern voiced by smaller banks that a switch to a direct charging approach in the ATM stream could allow larger players to price-discriminate against their customers to the detriment of competition in the longer term. It appears to be commonplace that where direct charging (as opposed to surcharging) is adopted elsewhere in the world, such a rule of non-discrimination on the basis of issuer holds.
- 6 If a change to a direct charging model for ATM transactions is not adopted by the banks within a reasonable time, then it would be appropriate for the Competition Commissioner to begin a formal investigation into whether or not the continuing practices of the banks regarding interbank carriage fees contravene section 4 of the Competition Act.
- 7 The Competition Commission should revisit the question of direct charging for mini-ATMs and cash-back at point of sale (POS) once adequate experience has been obtained of direct charging in ATM services.
- 8 An independent, objective and transparent regulatory process for determining interchange in the payment card and other relevant payment streams should be put into effect and enforced as soon as practicable. The process envisaged would involve the establishment of an “Interchange Forum”, within which there would be a specific sub-forum for each payment stream where interchange is to be subject to regulation. The regulator of the payment system – the SARB – would appear to have the authority under section 10(1)(c) of its own enabling Act to devise and implement the necessary rules and procedures. Such a process, under compulsory regulation, would begin by establishing the validity of interchange in each case, and the appropriateness of each cost component for such an interchange. This would allow, for example, the interrogation of whether the cost of the interest free period on credit cards should be part of the credit card interchange fee.
- 9 It is accepted that payment card schemes may legitimately restrict acquiring licences to regulated and supervised financial institutions (as provided, for

example, in MasterCard rules). However, certain rules and practices further restricting the participation of duly qualified institutions as acquirers in the payment card schemes should be abolished. If the schemes do not voluntarily – both formally and in practice – abandon these restrictions forthwith, then the matter should be addressed either by the initiation of formal complaints and investigations by the Competition Commission, or by regulatory intervention, or by both. The rules in question include:

a Visa’s general international requirement that acquirers be authorised to take deposits is, in our view, too restrictive in the South African context (and indeed is likely increasingly to be challenged around the world).

However, if a proper regulatory and supervisory framework for non-bank acquirers were established here, schemes could – in terms of their own rules requiring compliance with local laws – be brought into line where necessary. To ensure this, the regulatory and supervisory framework would have to oblige the relevant card schemes to accept as eligible, without discrimination, those banks and non-banks meeting the domestic requirements. The Panel has in mind a provision comparable to section 6A(3) of the National Payment System Act, 78 of 1998 as amended, but tailored for the purpose.

b The rules or practice of restricting acquiring to institutions which issue scheme cards, and indeed which issue them on a significant scale, in our view are clearly restrictive of competition on the acquiring side. Such restrictions on acquiring have no legitimate basis. Acquiring should not be limited to issuers.

10 The card schemes should be requested by the Competition Commission formally and forthwith to withdraw their prohibitions on pure cash-back at POS, at least to the extent that such transactions are permitted under domestic law. Failing satisfactory responses in that regard, the Panel recommends regulatory measures to correct the situation decisively. If such measures are not forthcoming, then the Commissioner should consider initiating a complaint and investigating the relevant scheme rules for possible contravention of the Competition Act as prohibited restrictive practices.

11 There should be no interference with the card schemes’ current rules against merchants “surcharging” customers who use payment cards. The Panel also

accepts the legitimacy of the “honour all cards” rule (in the narrow sense of all the particular scheme’s cards of the same type). However, the “honour all products” rule should be eliminated. The Visa and MasterCard scheme rules differ somewhat in this regard, as is analysed in the report. Generally, there should be no requirement that a merchant choosing to accept a scheme’s card of one type (say a PIN-based debit card) also be obliged to accept the scheme’s cards of other types (say credit cards and cheque or hybrid cards). Eliminating the “honour all products rule” should facilitate the acceptance of debit cards, by freeing merchants’ acceptance of these cards from being tied to the acceptance of more expensive cards. If the withdrawal of the “honour all products” rule cannot be negotiated on a voluntary basis with the schemes concerned, then the Panel recommends a regulation or other appropriate statutory intervention to prohibit it. If this is not forthcoming within a reasonable time, they would recommend that the Commissioner give consideration to initiating and investigating a complaint or complaints of possible contraventions of the Competition Act through the application of the “honour all products” rule.

12 In the view of the Panel, even though EFT debit transactions meet the basic criterion of a two-sided market, the actual necessity of interchange in this payment stream has not been demonstrated. The Panel is not in a position to say conclusively, on the basis of the information voluntarily submitted to them, that it has been proved not to be necessary. Consideration should therefore be given by the Competition Commissioner to initiating a complaint with reference to section 4(1)(b), and alternatively section 4(1)(a) of the Competition Act, in order formally to investigate a possible contravention or contraventions arising from the past and current interbank arrangements in respect of interchange in this stream.

13 If interchange is to be levied in future in relation to EFT transactions, then it ought to be included within the regulated process which the Enquiry has recommended for interchange generally, and so be subject to the participatory procedures involved in arriving at and implementing an appropriate level of interchange. The first step would be to establish whether the interchange in the stream concerned is necessary at all.

14 The interchange fees applicable to early debit order (EDO) transactions should also be brought within the transparent and objective regulatory scheme proposed for payment cards and other payment streams. Once

again establishing the necessity of interchange for the EDO streams would be fundamental to the process. That exercise will also help clarify the extent to which banks' pricing to users in these streams is in excess of costs, and whether a specific investigation into excessive pricing, either under the Competition Act or consumer protection legislation, is warranted.

- 15** An access regime that includes non-bank providers of payment services should be developed so as to allow for their participation, under effective regulation and supervision, in both clearing and settlement activities in appropriate low-value or retail payment streams. There are international precedents – such as those from Australia and the European Union – that suggest that an access regime of this sort can be designed that does not threaten the systemic stability.
- 16** The National Payment System Act should be revised. This would allow for non-banks to be clearing and (even) settlement participants, and hence members of PASA. It would allow for different types of participants and membership of payment clearing houses. Once the NPS Act has been redrafted, the associated SARB and PASA position papers and directives would also have to be revised. Obvious examples are the Bank Models position paper, to accommodate the realities of Postbank and Ithala Limited and the e-money position paper, as well as the directives on system operators and third party providers.
- 17** The membership and governance of PASA should be revised so as to include qualified non-bank participants. PASA is the delegated self-regulatory authority of the payments system. This position, together with the professed view of the NPSD that their remit and that of PASA as the payment system management body extends throughout payment system activity, means that PASA membership should be extended to participating non-banks.
- 18** A system should be introduced whereby the Chief Executive of PASA, rather than the incumbent members of a PCH, takes the final decision regarding the entry of new participants.
- 19** A Payment System Ombud should be established. This entity would play the role of an Ombud to payment system participants, or prospective participants. The Ombud could assess whether or not applications have been fairly dealt with and whether or not they have been fairly treated in terms of access

and the pricing of such access. Included in the remit of such an Ombud would be the entire ambit of the payment arena, which would include access to the infrastructure of Bankserv, or the relevant PCH operator, access to settlement accounts, processing of membership of PASA and processing of PCH applications.

20 The Banking Association should develop a set of minimum standards for the disclosure of product and price information by banks to be included in the Banking Association Code of Banking Practice. Such a code should be set up after consultation with the Ombudsman for Banking Services, consumer protection agencies and organisations, the regulatory authorities, the Competition Commission and other relevant bodies. The code should include matters related to: standardisation of terminology (and a “plain language” requirement); communication and provision of information to clients; a requirement for at least certain minimum information to be included in bank statements; a summary and breakdown of charges and interest (both debit and credit) on every account; advance notice of new charges and altered charges; and a regular rights reminder to customers.

21 Together with improving transparency, standardising terminology and educating customers, the Banking Association should encourage the appropriate application of pricing initiatives aimed at reducing the fee burden on customers. Such initiatives include ad valorem pricing, banded fee options and appropriately bundled packages. They were highlighted by the banks during the course of the Enquiry as being beneficial to customers, but do not appear to be generally offered to lower-income customers or on entry level accounts.

The Mzansi initiative, which is making considerable progress in extending banking services to the previously unbanked, also needs constant scrutiny to ensure that the structure of its bundling and pricing is truly pro-poor.

Consideration should also be given to ensuring that recipients of social grants are not disadvantaged by the cost of receiving and accessing their grants through bank accounts.

22 Customer profiles should be drawn up and publicised to facilitate comparative shopping. Banks could then reveal in their own advertising and information whether, how and to what extent they accommodate these profiles, and their respective prices in that regard. A “profile” is a typical combination of

customer needs. For this purpose, the Banking Association should initiate and support an independent process to establish a limited number of profiles that would apply to various typical customers of all banks in the middle market segments, where price competition currently appears most restrained. This will not be a simple task, as banks apply different criteria when deciding on the segmentation of their product market. The profiles must be constructed from the point of view of various typical customers, not from the point of view of particular banks. By way of example, the profiling procedure needs to take account of the fact that some customers may prefer electronic payment channels while others may prefer branch and paper-based transactions.

- 23** A centralised banking fee calculator service should be established. This should provide an accessible facility for consumers to input their own product requirements – with assistance if necessary – and obtain (without cost) an automatic, objective indication of where they could obtain those services and at what prices. It would be up to the banks to make available reliable product and pricing data if they wished their services to be included in the answers supplied by the calculator service. The data should be open to public inspection and to audit in the event of dispute.
- 24** The Competition Commissioner should propose to the Minister of Trade and Industry that consideration be given to permitting comparative advertising that would allow banks to compare their own prices and product offerings directly and explicitly with those of their rivals. The Panel has held back from making a definite recommendation to this effect, because the Enquiry has not been in the position to assess the implications of such a change for other industries.
- 25** If after two or three years, the recommendations put forward to improve comparison and switching have not been implemented or (once implemented) have not had the desired effect of increasing price competition and bringing prices down significantly, then the Competition Commissioner should revisit the idea of obliging the banks to provide one or more “basic banking products” with similar content, capable of being simply and directly compared. This would enable customers, whose needs would be satisfied by such a particular product, to compare price and choose their bank accordingly. That in turn would intensify price competition, and cut across the existing segmentation of the market at least to the extent that segmentation has been contrived by banks in order to maintain market power.

- 26** The Banking Association should develop a set of criteria for a switching code to be included in the Banking Association Code of Banking Practice. This code should include criteria regarding the provision of sufficient information and documentation by banks to new and existing customers. The schedule involved should explain the process of switching. The old bank should provide the new bank with information on standing orders and direct debits within a specified period of time of receiving the request to do so. The schedule should specify how the balance on the account, standing orders and direct debits, net of any charges and interest but including any interest due, will be transferred from the old bank directly to the new bank, and how and when the account with the old bank will be closed. Provision should be made for customers to be exempt from paying, or be refunded, any fees and/or interest charges which are incurred within a specified period after the new account is opened as a result of a failure in the switching process.
- 27** It is proposed that the National Treasury encourage and pursue the notion of a central FICA information hub in consultation with the banking industry, to see whether or not it could be established as a central repository of customer information, and whether or not it could be operated in a manner consistent with the anti-money laundering objectives of FICA. The purpose in this recommendation is to reduce the time and effort facing consumers who wish to change banks, by facilitating compliance with FICA.
- 28** The role of the Ombudsman for Banking Services should be expanded to include enforcement and monitoring of compliance with the proposed codes of conduct for information disclosure and switching.

