

Kamogelo Seleka

From: martin keenan [keenanm@telkomsa.net]
Sent: Saturday, November 04, 2006 11:26 PM
To: Banking Enquiry
Subject: FAO CHARLES FRANK, re: integrity of NPS; re: shuter submissions obo nedbank on 2 november

BANKING ENQUIRY;
NEDBANK'S ORAL SUBMISSIONS ON 2 NOVEMBER 2006;
THE NATIONAL PAYMENTS SYSTEM ("NPS");
SEEMING ABUSE OF THE NPS BY NEDBANK IN MAY 2006;
INTERNAL FAILURE BY NEDBANK TO ADDRESS, ADEQUATELY OR AT ALL,
A COMPLAINT REFERABLE TO THE ABOVE.

4 November 2006
attention, Mr Charles Frank,
Banking Enquiry Manager
Competition Commission

tel. 012 394 3250
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PART [A]: the circumstances in which I bring this matter to the attention of the Panel

(1) Alerted by a report I read on Friday 3 November 2006 in the Cape Times of that date (p.6 of the News Section, and p.19 of Business Report), today I visited the webpage of the Banking Enquiry www.compcom.co.za/banking where I find the deadline for submissions to the Enquiry passed on Friday 27 October 2006.

(2) Nevertheless, I wish to bring to the attention of the Enquiry what I believe is clear evidence of systemic and deliberate abuse of the National Payments System ("NPS") by Nedbank in and about May 2006. I trust I am not in error in believing that the NPS (of which I had not previously heard) refers to the system whereby - possibly among other transactions of which it is irrelevant to speak here - banks collecting money for themselves or their customers pass, on the strength of valid signed mandates which they hold, electronic debits to accounts held with other banks by the persons who signed such mandates. In my correspondence with Nedbank I have invariably referred to this as the "Direct Debit System" and they have not corrected me. I recognise that the direct debit platform (if that is the correct term) as normally understood, and as used for recurring debits, differs from the platform used to process what are called Point of Sale ("PoS") transactions (one-off debits). I shall try not to stray too far beyond any area in which I have no expertise, but some over-reaching on my part is inevitable in the light of circumstances which will shortly appear.

(3) The newspaper item I have referred to is a report of the oral submissions made to the Enquiry panel on, it seems, Thursday 2 November by Robert Shuter, Nedbank's Managing Director of Retail Banking. I quote from the passage of the report dealing

with Mr. Shuter's submissions regarding the entry of new participants into the NPS:

"Nedbank's view is that access to the [NPS] for banks and non-banks is important provided the integrity of the system is maintained . . . customers need to [be able to] trust that unauthorised parties cannot access their money. This is one of the fundamental principles that the rules of the system seek to uphold." (Cape Times, 3 Nov. 2006, p.6)

and again

"Rob Shut(t)er said the NPS was a critical platform and integrity was of great importance for the system to work. Shuter said consumers needed to trust the fact that their money could not be accessed by unauthorised parties. That was one of the fundamental principles of the NPS" (Cape Times, 3 Nov. 2006, p.19)

(4) I am fully persuaded of the truth of what Mr. Shuter is reported as saying, and it was by reference to exactly these basic principles (of integrity and trust) that I first raised my concerns with Nedbank (who are not my bankers) in May 2006.

PART [B]: the events of May 2006 and Nedbank's response to my complaint

(5) In May 2006, Nedbank (as I believe), abused the NPS in order to extract money for their own benefit from an account I hold with ABSA. They did precisely what Mr. Shuter was addressing: without my authority they used the NPS to access my account with ABSA, and thereby surreptitiously withdrew from my ABSA account money to which they had no shadow of right, deceitfully (so it would appear) representing to ABSA that they held - as they did not - a direct debit mandate from me in their favour in order to recover this money with the minimum of trouble and effort.

(6) Since I first discovered these debits (and Nedbank have repaid the money they wrongfully withdrew from my account), Nedbank have prevaricated and have obstinately ignored my reasonable and clear requests for information as to how they effected the withdrawal; they have omitted to acknowledge that what they did was wrong and improper, or to give any undertakings they will not repeat it or that they will take appropriate steps to prevent a recurrence. Finally, after lengthy delays and fatuous responses to my correspondence, they have positively refused to progress the matter further, and have invited me to take the issue to the Banking Ombud - a course which I am not presently disposed to take, even allowing (as may not be the case) that the Banking Ombud can take referrals which do not concern a bank and its customer.

(7) Because my complaint against Nedbank concerns an issue of great public importance, and since it appears likely to me that Nedbank engaged in systemic and possibly widespread abuse of the NPS in May 2006 (my case was, they tell me, one of as many as 4,000 in which such improper withdrawals by them might possibly have occurred), this stance of Nedbank does not strike me as either a professional or creditable way of handling the issue. The fact that Nedbank will neither candidly admit nor deny that they abused the NPS in my case (as I think is clear beyond all doubt) is highly suggestive either that they are reluctant to admit their impropriety, or that they do not consider themselves to have been at fault, or that there are a number of bank officers who have no

clear idea of what is at stake. In each case there is the strong likelihood this practice will persist unless checked.

(8) Although Nedbank, as I believe, took my case seriously at first, and although I was assured the matter had been referred to the Head of Payments and Settlements and to the relevant Compliance Officer (as per an email sent to me dated 26 May), in fact my letters were directed to the Banking Ombud Liaison Office where they were accorded no more than tardy and trifling attention considering the seriousness of the subject-matter (a one page letter dated 6 August adding nothing to what had been written to me on 18 and 31 May). I seriously doubt that my complaint has yet come under the notice of anyone at Nedbank who has any proper understanding of the issues, or (if they do) who subscribes fully to the opinion expressed by Mr Shuter to the Panel on Thursday last.

PART [C]: issues of public concern arising out of my case relevant to the Enquiry

(9) If what Mr Shuter professed to the Panel on Thursday is not to be mere posturing, the senior management of his bank have an obligation to the public (I say nothing about their customers or shareholders) themselves to deal timeously, professionally and decisively with all cases where credible evidence is presented that the bank have abused the NPS. My case is such a case, and Nedbank have utterly failed to deal with it adequately or at all. Nor is it probable that my case stands alone (see head (7) above).

(10) The quality of a bank's performance, and of its commitment to the highest standards of probity and integrity, is measured not by what the senior managers profess on a public platform, but by what the more junior operatives actually do, and how they handle complaints and inquiries from the public into what they (the operatives) have done. My case is evidence that what Mr Shuter represented to the Panel on Thursday 2 November has not been assimilated by:- (i) the operatives who perpetrated the transaction on 31 March I have complained of; (ii) all supervisors or senior staff who knew of that transaction whether before or after it was effected; and (iii) so many of Nedbank's staff at various departments who have been seized of my complaint or who know of it either through my correspondence or otherwise. In the circumstances it seems necessary for Mr. Shuter to be apprised of this matter so that he might address it and try to save the bank's and his credibility.

(11) I am therefore bringing the matter to the attention of the Panel as simply as possible. I present, therefore, a time-line showing the essence of what happened and the burden of my complaint. All dates are 2006

PART [D]: TIME-LINE

18 March: I attempted to effect a transaction at Pick 'n Pay using their Point of Sale ("PoS") facility with my ABSA cash card and using my PIN. The system registered a failed transaction and I was invited to swipe my card again and re-enter my PIN, which I did; this too registered as a failed transaction. Unknown to me, and as a result of a systems error, two debits were passed to my ABSA account the same day incorrectly reflecting the failed transaction(s) as effective. I accept that this was an

inadvertent systems error and, as Nedbank well know, I have had no serious complaint on this aspect of the case since June.

27 March: I first discovered that Nedbank had passed those two debits to my ABSA account, and I raised the matter with Pick 'n Pay; through their good offices I was reimbursed by Nedbank on 31 March who made electronic transfers into my ABSA account, effectively reversing the previous debits.

8 May: Nedbank passed a second set of debits to my ABSA account. This was done by Nedbank negligently and in error, but deliberately - some person or persons at Nedbank wrongly believing that the electronic transfers into my account on 31 March ought not to have been made on the false ground the PoS transactions were effective (as they were not).

9 May: I objected to this second set of debits and my account was subsequently reimbursed, again, by Nedbank (on 16 May)

PART [E]: the burden of my complaint against Nedbank

(12) I have repeatedly challenged Nedbank to tell me (a) by what authority they accessed my ABSA account on 8 May and (b) by what precise means they accessed my ABSA account on that day; I have told them (c) that it seems to me they abused the direct debit system on 8 May in order to short-cut the tedious process of seeking to recover from me what they (wrongly) believed was an over-payment to me on 31 March. This appears in letter and emails from me starting with one on 16 May.

(13) Nedbank have never offered any authority for the debits on 8 May except the failed transactions on 18 March: "this authority comes in the form of you initiating the transaction (*sc. on 18 March*)" [letter to me of 31 May], and "the fact that your ABSA account was debited (*sc. on 8 May*) should not be construed as a sinister event that took place without your authorisation and/or consent. It was merely done as a result of your initial unsuccessful transaction (*sc. on 18 March*)" [letter to me of 7 August]; Nedbank have consistently ignored my request (b) which they have not once alluded to, nor have they given any explanation for their extraordinary failure to respond to it despite telling me they have fully investigated the transaction; Nedbank have asserted that the transaction was "as a result of a combination of a system error and communication fault and should not be construed as fraud or an abuse of the debit facility"[letter to me of 6 September], but have not otherwise addressed the issues under (c) - in particular they have steadfastly refused to admit that they used the direct debit system to access my ABSA account on 8 May (I have no idea what they mean by "debit facility" unless they mean their facility to abuse the NPS in order to debit my account with ABSA). Their letter of 6 September (after I was effectively told the correspondence was closed) was the first time they even mentioned the "debit facility"- a topic raised by me with them as early as my letter to them of 19 May: "the direct debit facility is one of the most sensitive aspects of a bank's operations &c."

(14) It seems tolerably evident from the accompanying codes appearing on my bank statement that Nedbank passed a spurious direct debit instruction to ABSA on 8 May in

order to recoup what they (wrongly) believed was money reimbursed to me on 31 March under a mistake of fact, and that (contrary to what Nedbank have asserted in the correspondence I have just quoted from) the debits were not passed by reference to the "initial unsuccessful transaction (sc. of 18 March)". That assertion by Nedbank is either a lie, or a statement made through carelessness or ignorance. As I understand it, once a PoS transaction has been passed (as happened in my case on 18 March), it is spent and cannot be reactivated or repeated or re-posted as such.

(15) I consider it to be clear beyond any doubt that such a course of action as Nedbank perpetrated on 8 May with regard to my ABSA account is illegal, improper, deceitful and in breach of its duties (i) to the other banks in the direct debit system (including ABSA) with which it is in a contractual relationship, (ii) to the Governor of the Reserve Bank, who exercises oversight of the banking system in the interest of the most efficient and most beneficial operation of the national economy, and (iii) to the public at large, whose economic interests are a particular and statutory concern of the Competition Commission.

(16) I further consider that the subsequent course of behaviour by Nedbank with regard to my case absolutely requires it to be brought forcibly to their attention at the highest level that the abuse of the direct debit system is unacceptable, for which purpose all such appropriate penalties, individual reprimands on the person(s) involved, and all necessary corporate censures require to be imposed and passed by the relevant authorities. In this regard I refer to all the above and particularly to the matters identified under heads (6) and (7) which aggravate the initial fault.

PART [F]: the next step

(17) If the Panel wish to hear more, and to have laid before them such supporting evidence as I possess (including the correspondence I have had with ABSA and Nedbank between May and September), I am more than ready to oblige. If, on the other hand, the Panel are not disposed to take cognisance of this matter - either on the grounds it is technically out of time, or for some other reason - I would at least ask them to forward this email to Mr. Shuter (whom I cannot otherwise access quickly or easily; the corporate website gives only the street address of head office and a switchboard telephone number). The Panel whom he addressed on Thursday 2 November to the contrary effect are entitled to hear he is deeply perturbed to learn of an allegation that Nedbank abused the NPS, and that when clear evidence of such abuse was brought to the attention of his bank, they declined to respond in an appropriate fashion. I would, however, be obliged for a response from you one way or another - a courtesy I have not received from Nedbank after the first flush of blanket apologies from them in May and June. I was left waiting for two months before the letter of 7 August was sent to me.

(18) As a first step, it seems to me, an investigation needs to be instituted to check in which other cases (arising out of the systems error in 18 March) the NPS was improperly resorted to by Nedbank to reimburse themselves;- and for these purposes it matters not if the bank was justified in claiming a reimbursement from some or any of the persons affected, for it is the manner in which, and the method by which, they reimbursed themselves which is at fault. Senior management at Nedbank then need to review their

internal procedures both as regards implementation and supervision of transactions through the NPS (in order to prevent a recurrence of what happened on 8 May: in Mr. Shuter's terms, the system must be failsafe) and as regards their complaint procedures (in order that, when evidence of such abuse is brought to the bank's attention, its procedures are sufficiently nimble to identify an issue of more than ordinary importance and ensure it is attended to with all due despatch and at a level suited to the seriousness of the subject-matter).

(19) Without in any way seeking or pretending to entrench on the prerogatives of the Competition Commission, I reserve the right to bring this matter before such further or other bodies, persons, or tribunals as shall seem appropriate, but not, in any event before I have had a response to this email.

With my sincere regards, and with all due apologies for raising this matter out of time and in so informal a way,

I am,

Martin Keenan

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