

# Banking Enquiry

Presentation on the final report to the Banks and  
other Stakeholders

by the Chairman of the Banking Enquiry

25 June 2008



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# Introduction

- 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:
  - **2004 Task Group report** into *Competition in South African banking* (Falkena III) report
  - **2006 FEASibility report** into *Competition in banking and the national payment system*



# Terms of reference: Subject matter

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.



# Terms of reference: Objects

- 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.



# Setting

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.



# Setting

- Mr. Charles Frank was appointed Enquiry Manager and was assisted by Miss Kamogelo Seleka.
- Duration: August 2006 – June 2008
- The Banking Enquiry held 21 days of public hearings
- The Technical team held 101 engagements with stakeholders
- Enquiry received 267 Submissions from Individuals
- Enquiry received 151 Submissions from stakeholders



# Concerned Stakeholders

- Diverse group of stakeholders participated in the Enquiry.
  - Consumers
  - Small and prospective banks
  - Non-banks
  - Banks
  - Regulatory authorities
- The concerns of stakeholders 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.



# Response to Enquiry

- During the Enquiry 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
  - others reduced the number (or nature) of fees
  - the promulgation 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.



# Final report

- Consists of 8 Chapters
  - Chapter 1 - Enquiry Overview
  - Chapter 2 - Market Power in the Provision of Personal Transaction Accounts
  - Chapter 3 - Costing and Pricing
  - Chapter 4 - Penalty Fees
  - Chapter 5 - ATM and Direct Charging
  - Chapter 6 - Payment Cards and Interchange Fees
  - Chapter 7 - Access to the Payment System
  - Chapter 8 - Conclusion and Recommendations
- Full report contains 588 pages
- Executive summary/overview 44 pages



# Recommendations

## Penalty fees

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.**
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).**



# Recommendations

## ATMs

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.**



# Recommendations

## ATMs

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.



# Recommendations

## Payment cards and interchange fees

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 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.
9. 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.
10. There should be no interference with the card schemes' current rules against merchants "surcharging" customers who use payment cards. However, **the "honour all products" rule should be eliminated.**



# Recommendations

## Payment cards and interchange fees

11. **Rules and practices** restricting the participation of duly qualified institutions as acquirers in the payment card schemes **should be abolished**:
- a) Requirement of Visa - participation requires members to be **deposit taking institutions**  
Requirement of MasterCard - participation requires members to be **regulated financial institutions**  
If a **proper regulatory and supervisory framework for non-bank acquirers** were established, schemes should be obliged to admit duly qualified non-bank institutions in this country.
  - b) The rules or practices of both Visa and MasterCard restricting **acquiring to institutions which issue scheme cards**, and indeed which issue them on a significant scale.



# Recommendations

## Interchange in other payment streams

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. 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 the EFT debit 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.**



# Recommendations

## Interchange in other payment streams

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**. 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**.



# Recommendations

## Access to the payment system

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.
  
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.**



# Recommendations

## Access to the payment system

17. **The membership and governance of PASA should be revised so as to include qualified non-bank participants.**
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.**



# Recommendations

## Product, price comparison and switching

19. **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.
20. The **Banking Association** should develop a **set of criteria for a switching code** to be included in the Banking Association Code of Banking Practice.
21. A centralised **banking fee calculator service** should be established.



# Recommendations

## Product, price comparison and switching

22. The Banking Association should initiate and support an independent process to establish a limited number of generic **customer profiles to be publicised in order to facilitate comparison 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.
23. 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**.



# Recommendations

## Mzansi and social grants

24. 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.**

The **Mzansi initiative should also be scrutinised** to ensure that the structure of its bundling and pricing **is truly pro-poor.**

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



# Recommendations

## Comparative advertising

25. The Competition Commissioner should propose to the Minister of Trade and Industry that further **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.



# Recommendations

## FICA

26. 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.



# Recommendations

## Ombudsman

27. **A Payment System Ombud should be established.**
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.**



# Conclusion

