Chapter 5

ATMs and Direct Charging

Contents

5.1 Introduction and synopsis ................................................................. 146
5.2 History and evolution of ATMs.......................................................... 149
5.3 Interoperability and the origins of carriage in South Africa .................. 152
  5.3.1 Setting of the carriage fee .......................................................... 155
  5.3.2 Carriage and indirect charging to the customer ......................... 166
5.4 Revenue and pricing in current ATM model ...................................... 169
  5.4.1 Authorisation and flow of funds ................................................ 169
  5.4.2 ATM landscape ...................................................................... 171
  5.4.3 Carriage fees on other ATM transactions ................................. 173
  5.4.4 Pricing to customers ............................................................... 174
  5.4.5 Revenue and ATMs ............................................................... 176
5.5 The argument for direct charging ...................................................... 182
  5.5.1 Inapplicability of two-sided market theory to ATMs .................. 182
  5.5.2 Competition concerns relating to carriage .............................. 184
  5.5.3 Two-sided markets and direct charging .................................. 190
  5.5.4 Competition considerations of the direct charging model .......... 192
5.6 Implications of the direct charging model ........................................ 196
  5.6.1 Flow of funds in direct charging model .................................. 196
  5.6.2 Direct charging and interoperability .................................... 197
  5.6.3 Direct charging, accessibility and affordability ...................... 200
  5.6.4 Direct charging and the smaller banks .................................. 205
  5.6.5 Conditions for success of the model ..................................... 206
  5.6.6 Direct charging and FICA implications ................................ 208
5.7 Direct charging, mini-ATMs and cash-back ....................................... 209
  5.7.1 Direct pricing and mini-ATMs ............................................... 209
  5.7.2 Direct charging and cash-back at POS .................................. 212
5.8 International precedent and learning ............................................... 214
  5.8.1 ATM pricing models in the UK ............................................. 214
  5.8.2 Direct charging in Australia .................................................. 218
5.8.3 Surcharging in the United States ................................................................. 219

5.9 Other pricing models ......................................................................................... 221
  5.9.1 Elimination of the “Saswitch” premium or “convenience” fee .......... 221
  5.9.2 Independent third party to set carriage fee ........................................ 224

Tables

Table 1 ATM Timeline for SA .................................................................................. 154
Table 2 Share of fee revenue for off-us transactions ........................................... 171
Table 3 The number of ATMs by bank ................................................................. 172
Table 4 Carriage fees for “other” ATM transactions ............................................ 174
Table 5 ATM prices per bank .............................................................................. 175
Table 6 Revenue from average transaction value (R380) .................................... 177
Table 7 Off-us transactions as a share of banks’ own total ................................ 179
Table 8 Carriage revenue ..................................................................................... 180
Table 9 Gross ATM fee revenue from banks’ own customers ................................ 181
Table 10 The number of ATMs and cards issued for each bank ......................... 222

Figures

Figure 1 ATM Monthly transaction volumes ....................................................... 168
Figure 2 The flow of information for an off-us transaction ................................. 169
Figure 3 The flow of funds for an off-us transaction ........................................... 170
Figure 4 Net off-us revenue as the value of the transaction increases ............... 178
Figure 5 Proposed direct charging model ........................................................... 196
5.1 Introduction and synopsis

ATM cash withdrawals 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 banks. We have come to the conclusion that pricing arrangements between banks have served to shelter the provision of ATM services from effective price competition, and that this situation needs to be changed.

It seems clear to us that the market power of the banks in the provision of personal transaction accounts, set out in Chapter 2, extends to the provision of ATM cash dispensing services. This is so because the big four banks dominate the provision of ATM services; such services are linked to the provision of bank accounts and are not offered separately; the current interbank pricing arrangements shelter fees from price competition; and the restriction of the acquiring of such transactions exclusively to registered banks, inhibits competition from non-bank ATM service providers. Together, these factors reinforce the market power of banks over customers.

In this chapter, we are concerned with the pricing arrangements that are currently in place when a customer of one bank uses the ATM of another bank. While only 15 per cent of ATM transactions are of this kind, analysis 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.

We have concluded that the problem can best be addressed by a shift to a direct charging model, which would enable price competition for ATM services and contribute to the development of a market for cash dispensing services that is no longer the special preserve of banks.

So far as possible in our analysis, we adhere to the terminology conventionally used by banks. Among the key terms are: “on-us”, “off-us”, “issuer” and “acquirer”.

When a customer uses an ATM other than that of his or her own bank, it is known as an off-us transaction. The converse is an on-us transaction, where the ATM of the customer’s own bank is used.

The bank which has the customer’s account is known as the issuer (or issuing bank), because it has issued to the customer the payment card necessary for the transaction. The bank providing the ATM service is known as the acquirer (or acquiring bank), because it acquires the transaction into the network when the ATM is used.

In an on-us ATM transaction, the same bank is simultaneously both the issuer and the acquirer, and it directly charges its customer for its services in both roles. In an off-us
transaction, on the other hand, the roles of issuer and acquirer are separated. This raises the question of how the customer is to be charged.

Currently, where the customer of Bank B (holding a payment card issued by that bank) uses an ATM provided by Bank A, the cash dispensing service is provided to that customer by Bank A on behalf of Bank B. In this situation Bank A does not charge the customer directly; the customer remains simply the customer of Bank B, and is charged by the latter for the service actually provided by Bank A. Bank A charges its fee to Bank B. At settlement, later in the day, the amount of the dispensed funds is transferred by Bank B to Bank A, together with the fee. In other words, in this case, Bank B compensates Bank A by sharing its own fee revenue from its customer with Bank A.

The fee that is paid by the issuing bank (Bank B) to the service provider (Bank A) for an ATM transaction is generally referred to as carriage. Carriage is a fee agreed upon between banks – i.e. an interbank fee. In South Africa carriage is uniform across the banking industry.\(^1\) While carriage is uniform, the fees charged by issuing banks to their customers for off-us ATM withdrawals vary significantly.

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. Not only is carriage itself sheltered from competitive forces; the consumer is not free to shop around for ATM services but – also by interbank arrangement – treated as belonging to the issuing bank in all ATM transactions. Accordingly banks’ own ATM services to their customers are also significantly 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. We recommend that the current interbank pricing system of carriage be replaced with a model of direct charging in the ATM stream as soon as possible.

Some argue that carriage is merely a particular form of interchange (a term widely used to refer to interbank charges) and that if interchange is necessary and permissible in other payment streams, there is no reason it should not also be so in ATM transactions. For reasons developed in this chapter, we do not accept the comparison between carriage and interchange, and we do not consider that the continuation of interbank arrangements in respect of carriage is justifiable.

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\(^1\) For ATM cash withdrawals the only exception applies to off-us withdrawals by Mzansi account holders. Here carriage is also set at a uniform level, but is calculated by a slightly different formula.
The service of cash dispensing by means of an ATM transaction is not inherently different from a purchase made at a store where a payment card is offered to pay for the merchandise or other service provided. The customer’s card is swiped through a terminal, allowing the merchant to recover its price by having the customer’s payment instruction presented electronically to the customer’s bank (the issuing bank).

In principle the payment made by the issuing bank, which finds its way to the merchant through the merchant’s own bank, constitutes a withdrawal by the customer of funds held on deposit (or otherwise made available through a credit facility) at the issuing bank. The fact that cash dispensing in an off-us transaction ultimately involves a withdrawal of funds from a bank account is not a reason to treat the service of cash dispensing as different in principle from the dispensing of value in other forms.

The question to be confronted in off-us ATM transactions is why the firm (in this case a bank) actually providing the cash dispensing service should not directly charge the customer for doing so.

Interbank agreements affecting prices have anti-competitive features in the ATM stream. The direct charging pricing model for ATM cash dispensing services will eliminate the need for interbank agreement on any aspect of the level of ATM charges as each bank will set its own fee for that service, and the client will not be deemed to be the customer of the issuing bank for the cash dispensing service when provided by another bank.

Any off-us transaction involves a process of authorisation and confirmation that the customer has funds available, which in South Africa takes place through the information technology (IT) network which links all ATMs, known as Saswitch. Transactions are switched from the ATM to the IT mainframe of Saswitch, then to the issuing bank’s IT infrastructure and back again. Hence reference is often made to switching, which involves this electronic process of authorisation. The cost of the electronic switching, which is not substantial,\(^2\) would presumably continue to be paid for on the issuing side. In principle, the issuing bank also should be compensated for processing the transaction and for making the necessary payment on the customer’s behalf to the ATM service provider.

The use of an agreed interbank fee to compensate the ATM service provider is far less desirable than through direct and transparent pricing to the consumer, as the latter method should increase competition in this regard also, and thus tend to reduce overall ATM prices to the consumer.

The practice evolved by the banks, and currently approved within the prevailing regulatory framework of the South African Reserve Bank (SARB) and Payments Association of South

\(^2\) It is currently 13,5 cents, or less, per transaction where high volumes are involved (FRB, March 2007, Second Submission, ATM transactions (Initial Questions), p 9. Confidential: FRB
Africa (PASA), does not cater for direct charging in off-us ATM transactions. There appears to be no good reason why off-us transactions in respect of domestic ATM transactions should not be conducted by a system involving direct charging by the service provider – within a continuing framework of interoperability duly regulated in order to ensure reliability and to manage risk. There is precedent for the adoption of this system – both in the UK, where providers can choose between carriage or direct charging – and more recently in Australia, where the entire ATM network will convert to direct charging in October 2008.

The prevailing regulatory framework furthermore excludes non-banks from providing ATM services except through terminals contracted to a bank; hence all ATM cash dispensing services are currently conducted in the name of a registered bank. The dispensing of cash to customers using payment cards has developed as a commercial activity that can potentially be carried on directly by firms other than banks. Given sensible changes in the regulatory requirements intended to ensure reliability and intended to manage risk within the national payments system, it is a service that could be offered separately from a bank account, i.e. separately from the business of deposit-taking which is the legal preserve of banks. In our view it is unnecessary and anti-competitive for cash dispensing services to be restricted as is the case today.

While not necessarily linked, the direct charging pricing model opens the way for non-bank ATM providers to become members of the payment system network. The UK provides international precedent for this, although it may be that a different institutional structure may be necessary for this to occur here. In South Africa, currently, only banks may be members of the Payments Association of South Africa (PASA) and only banks may be members of payment clearing houses (PCHs) – such as the ATM PCH, where rules for participation are established. In the chapter on Access to the Payment System, we deal fully with the need to extend participation to non-banks, within an appropriate regulatory framework.

5.2 History and evolution of ATMs

ATMs have been with us for about forty years. While there appear to be a number of inventors globally who developed the concept of a cash dispensing machine, it was Luther Simjian who patented an early, but not so successful, version of a cash dispensing machine in 1939 in the US. The ATM we have become familiar with was developed and patented in 1968 in the US by Docutel, an automated baggage handling company.3

The provision of ATMs stemmed originally from the need of banks for a reliable cash dispensing machine that would relieve pressure on bank tellers. The first ATMs were operated off-line from the banks’ operating systems and access to these machines was restricted to those customers in good standing with the bank. Subsequent developments in

3 Bellis, 2007. ATM Cash Machines
connectivity allowed banks to validate the account balance within the bank from which the money was being dispensed.ņ

It is claimed that until 1994 in the US, the ATM machines were costly (US $50,000 to buy), and expensive to operate as each machine had to be connected to a leased telephone line. It appears that innovation in the design of new and cheaper models of ATM was stimulated by competition for local ATM transactions between rival regional and national networks in the early 1990s and by legislative changes which challenged the network rules of fixed and standardised pricing to consumers.ņ As a consequence of innovation, ATM machines are manufactured at a fraction of the cost of early models and can now “break even” with a few hundred transactions a month.

Technological developments in communication connectivity have also lowered the operating costs of ATMs over the years and the acquisition and processing costs declined at the same pace as IT costs declined. With improved communications technology, ATMs were not restricted to being placed in banking halls, but could be placed in sites such as shopping centres, service stations, etc.

ATM machines operated with common technology that accepted a card containing a magnetic stripe with the customers’ account details embedded therein and recognized a unique PIN (Personal Identification Number) for each card user.

The developments in the USA and the UK were of interest to South African bankers, who had the same desire to relieve pressure on branch tellers – particularly when salary and wage cheques were being cashed – often on Fridays and at month ends. By the mid-1980s, the banks saw the need to be able to service more customers with a more efficient infrastructure. Furthermore, there was a perception that low income earners were dominating banking halls to the detriment of high income customers.

At about the same time, banks were encouraging industry and business to switch from conventional payroll processing to a process whereby the business would supply the bank with payroll details and the bank would credit the employees’ bank accounts and debit the businesses’ accounts. This saved the businesses the problems of cash handling and cheque processing and allowed the banks to open and operate accounts for the employees. While these benefits were obvious to the employer and the employee, there were certain drawbacks. One of the main drawbacks was that employees normally needed access to their

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5 Id.
7 ATM Cash Machines, 2007.
salaries on, or soon after, pay-day. This then compounded the problems of overcrowded banking halls.

By the time South African banks adopted ATM technology, ATM machines were connected to the banks’ mainframe processors and had enhanced functionality. These machines could dispense cash and provide bank balance detail. Later they were capable of accepting deposits by cheque or in cash. Building societies led the way and introduced ATMs as early as the 1970s, and the commercial banks followed in the 1980s (Standard Bank claims to be the first of the commercial banks to launch ATMs in 1981; First National Bank (FNB) – now part of the FirstRand Group – followed in 1983). With improved communications technology, ATMs were not restricted to being placed in banking halls, but could be placed in shopping centres, etc. Generally, banks owned the ATM machines and serviced them with their own resources.

In this manner, banks were able to accommodate increased volumes of transactions without significantly increasing their “bricks and mortar” infrastructure. Later enhancements enabled customers to make transfers to other accounts, request cheques, make third party payments and top-up their cell phones.

The establishment of shared ATM networks by banks or bank holding companies is common in many countries, where pricing and rules are set by collective agreement by directors of the joint venture. In the US, for example, the biggest regional ATM networks are jointly owned by banks. The two national networks are owned and affiliated to MasterCard and Visa respectively.

In SA, it has been the trend that each bank provides its own ATM infrastructure, in some cases with considerable outsourcing to other firms. Joint ventures between banks in the provision of ATM services are not part of the South African landscape.

It is generally agreed amongst South African bankers that ATMs did relieve pressure on the branch infrastructure. However, while ATM transactions have become the most common bank interaction for customers, they have ultimately not replaced branches.

In the survey of low-middle income consumers, commissioned by the Technical Team of the Banking Enquiry, consumer views about banks were strongly associated with their ATM experiences. Brand strength, for example, appeared to be related to widespread presence

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8 SBSA, April 2007, Second Submission, ATM transactions, p 2.
10 Grimm and Balto, 1992, op cit.
11 As to inter-bank arrangements for reciprocal access to each other’s ATMs, see further below.

Banking Enquiry Report to the Competition Commissioner Contains confidential information
of ATMs, and the cost of retaining a bank account was associated with the price of cash withdrawals.\textsuperscript{13}

5.3 Interoperability and the origins of carriage in South Africa

Initially, the use of ATMs was restricted to transactions with the customer's own bank. It should be borne in mind that, even as the costs of ATMs were declining, the volume of ATM usage and the fees generated by such usage determined their profitability. Usage, in turn was determined by the positioning of the machines. It was therefore important that as many transactions as possible should be processed by these machines. This could be achieved, not only by positioning the machines in strategic locations, but also by allowing the customers of other banks to access these machines.

The convenience that ATMs offered ensured that as the technology developed, the ability to draw cash from an ATM became a necessity for most bank customers.

It follows that no one bank could afford not to provide its account holders with convenient access to an automated cash dispenser. Banks could roll out their own ATM network to provide this functionality, but this could be greatly enhanced if they could enter into reciprocal arrangements with other banks, thereby agreeing to provide ATM services to each other's clients.

The sharing of the ATM network infrastructure was achieved through interoperability between banks, which came about in the 1980s. In South Africa, interoperability was achieved through two different networks – Multinet and Saswitch.

The Multinet network was launched in March 1985 and involved direct arrangements between banks. Ultimately there were four members, including Standard Bank, United Building Society, Volkskas and the Post Office, each with direct links to each other. The system worked well, but the number of links required would have had to increase exponentially if new members were added to the network. This made it too cumbersome for large scale expansion of the number of members.

The alternate system was developed more or less in parallel, and involved switching through a central hub, with banks linking to each other through the hub. The hub, known as Saswitch, was launched in October 1985. The Saswitch infrastructure was owned by the banks and seen as a cost centre to them, with a simple charging model per transaction. Originally created with imported software and hardware, the system was redesigned locally during the sanctions era and became highly functional. In order to serve its customers better,

\footnote{13 The survey was conducted by Kaufman Levin Associates. A synopsis of the survey was presented at the hearings on 17 July 2007. See Exhibit GGG. Slide 60.}
United Building Society, a member of the Multinet switch, also joined the Saswitch network and ultimately the other Multinet members followed. For a period of time the two networks ran in parallel, but ultimately, the Saswitch hub was better able to accommodate links between all of the 14 or 15 banks and building societies at the time and Multinet ultimately fell into disuse.\textsuperscript{14}

Entry into the Saswitch network – which is now incorporated into Bankserv\textsuperscript{15} – was restricted to banks with at least one ATM, and some only just met this requirement.

A fee charged by one bank to another when the customer of one bank utilised the ATM of another bank was set in place to avoid the free rider problem, which banks with the larger ATM networks naturally wanted to address.\textsuperscript{16} An interbank charge known as carriage was introduced by agreement, applicable to all banks participating in the network. Carriage flowed from the issuing bank (whose customer was using the service of the acquiring bank) to the acquiring bank. In one submission, carriage has been described as the fee for interoperability – “Early entry players offered interoperability to competitors at an interbank fee.”\textsuperscript{17} Table 1 sets out what is currently known about the application and level of the carriage fee in the 1980s and 1990s.

\textsuperscript{14} The Multinet/Saswitch history was recounted by Dr. Serge Belamont, at a meeting on 29 March 2007. In the 1980s he was a technologist involved in the redesign of Saswitch.

\textsuperscript{15} Bankserv is the key national retail payments switch, owned by the banks – 92.5 per cent divided equally between the big four (ABSA, FRB, Nedbank and Standard Bank) and the rest owned jointly by a consortium of 6 smaller banks.

\textsuperscript{16} See, for example, FRB, March 2007, Second Submission, ATM transactions (Initial Questions), p 16.

\textsuperscript{17} \textit{Id.}, p 14.
Table 1 ATM Timeline for SA

<table>
<thead>
<tr>
<th>ATM Saswitch and PCH history</th>
<th>Date</th>
<th>Carriage fee history</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banks roll out own ATM</td>
<td>1980s</td>
<td></td>
</tr>
<tr>
<td>infrastructure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saswitch launched</td>
<td>1985</td>
<td>R 0.50</td>
</tr>
<tr>
<td>Carriage fee increase (amount</td>
<td>1989</td>
<td>R1.00 + 15c handling fee?</td>
</tr>
<tr>
<td>uncertain)</td>
<td></td>
<td>R1.00 + 50c/R100?</td>
</tr>
<tr>
<td>Bankserv established, Saswitch</td>
<td>1993</td>
<td></td>
</tr>
<tr>
<td>incorporated into Bankserv</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carriage fee increase by SBSA.</td>
<td>March 1997</td>
<td>R2.00 + 50c/R100(^{19})</td>
</tr>
<tr>
<td>All others follow</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carriage fee increase by SBSA.</td>
<td>March 1999</td>
<td>R3.25 + 65c/R100(^{20})</td>
</tr>
<tr>
<td>All others follow</td>
<td>to date</td>
<td></td>
</tr>
<tr>
<td>ATM PCH Agreements are</td>
<td>2000</td>
<td></td>
</tr>
<tr>
<td>compiled</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banks’ first bilateral price</td>
<td>2003</td>
<td></td>
</tr>
<tr>
<td>negotiations for mini-ATMs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>commences</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The justification for carriage presented by the banks is that it serves both as revenue to cover costs and as financial reward for investing in and maintaining an interoperable system. With regard to the former, the ATM costs include:

- ATM maintenance.
- Costs of cash (including security, crime prevention and insurance).
- ATM software, monitoring and servicing.

The banks see themselves as obliged to offer the service to customers of other banks, "in the name of interoperability".\(^{21}\) The interoperability of the system relates to the ability of cardholders from any issuing bank to use any ATM in the country, regardless of which bank’s brand it carries.

Technically, interoperability has been achieved in large part by the central switching hub, Saswitch, although the technical specifications of ATMs, including the standards of

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\(^{18}\) There is some confusion as to the amount of carriage applicable at that time. SBSA has it that there was a R1,00 basic charge plus a 15c handing fee (SBSA, April 2007, Second Submission, ATM transactions, p 39).

\(^{19}\) Saswitch was notified by letter from Standard Bank to South African Bankers Services Co Ltd (Bankserv) dated 16 January 1997. See Exhibit GG1.

\(^{20}\) Saswitch was notified by letter from Standard Bank to South African Bankers Services Co Ltd (Bankserv) dated 18 December 1998. Exhibit GG2.

\(^{21}\) SBSA, October 2006, First Submission, p 56.
MasterCard and VISA and the specifications relating to formatting of electronic messages, etc, have also played a part. From a commercial perspective, the PCH agreements – in terms of which members agree to accept transactions initiated on competitors’ ATMs – as well as the commercial arrangements associated with the carriage fee have also served to underpin interoperability.

Clearly, interoperability has always depended on an effective means of compensating the ATM service provider in off-us transactions. Historically, given the way the network developed, carriage has been the means of doing so. But carriage is not the only means by which the provider can be effectively compensated, or indeed incentivised to invest.

Given the strong association of carriage with interoperability, it is not surprising that the banks initially raised the threat to interoperability as a possible consequence of direct charging. However, it is clear that carriage relates only to the pricing arrangements of the network, and any changes to this need do no violence to the technical arrangements, or the notion of accepting transactions acquired through the ATMs of competitors.

While it has been pointed out by the banks that carriage is a feature of many jurisdictions, it has become apparent through experience in the UK and elsewhere that is not a necessary condition for interoperability. Indeed, the claim that direct charging would undermine interoperability has not been sustained by the banks. For example, in a subsequent submission, one of the banks stated that one of the advantages of direct charging included “incentivisation for providers to further place ATMs”. The matter is taken up below.

5.3.1 Setting of the carriage fee

In its presentation to the hearing on ATMs on 3 April 2007, the Technical Team represented by Dr Hawkins indicated that to the best of its knowledge there was a uniform carriage fee currently in operation between the banks, namely R3.25 for the first R100 and a further 65c for each R100 thereafter. The question which naturally arose was: if this was correct, then how did such a uniform fee come to be set? Getting to the truth on this was as difficult as pulling teeth.

FNB was the first bank to have to face the Panel’s attempts at extraction. It had stated in its first submission to the Enquiry that:

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22 See for example Absa, March 2007, Second Submission, Access and Interoperability, p 10: “The access [of other banks to the ATM network] is only provided because Absa receives compensation for some of its costs through the carriage” and without carriage, ATM operators may [restrict] access to their ATMs by rival banks”, p 11.

23 SBSA, August 2007, Impact of the proposed direct charging, Slide 5.

24 Exhibit CC, slide 13; Transcript p 12 (Dr Hawkins); pp 45-46. More precisely, this means R3.25 for the first R100 or less, plus 65 cents for each additional R100 or part thereof. See further below.
Historically, interchange has been set multilaterally by participants in the card PCH streams. After the introduction of Competition legislation FRB and the rest of the industry has viewed it as prudent to revert to bilateral negotiations to determine the fee.\textsuperscript{25} However, in its view such bilateral negotiations were “not sustainable”.\textsuperscript{26} Dealing with “Interchange on ATM transactions”, FNB wrote that it would recommend the consideration of a number of alternative options to the current system, including:

Moving away from bilateral to multilateral negotiations...\textsuperscript{27}

We had interpreted these statements by FNB as at least implying that the current carriage fees had in fact been set through bilateral negotiations. But then the evident uniformity of the fee puzzled us.

At the hearing on 3 April 2007, FNB gave a presentation (Exhibit DD) which stated that the carriage fee for off-us transactions is “negotiated bilaterally” (slide 4) and that it is “subject to bilateral negotiations” (slide 5). Mr Jordaan repeated that the carriage fee “is subject to bilateral negotiations”.\textsuperscript{28} Ms Durbach stated that “since 2002/2003 as was indicated on our presentation any negotiations have to be conducted bilaterally.”

The Chairperson of the Panel, chairing the hearing, asked whether the current fee was indeed the same for all four (major) banks.\textsuperscript{29}

MS DURBACH: If I can answer that. Historically it was negotiated as you know multilaterally. So for a period of time it would have been the same and that was the fee that Dr Hawkins put up. However, since 2002/2003 as was indicated on our presentation any negotiations have to be conducted bilaterally. So we can speak for FNB. However, what we cannot speak for is any other institution [that may] have negotiated different arrangements on the carriage fee between themselves, which may well have happened.\textsuperscript{30}

CHAIRPERSON: Right so you are not sure whether it is the same for all four [major] banks or not?

MS DURBACH: We do not know. I can tell you what it is for FNB but I cannot comment on any bilateral arrangements between any of the other banks.

CHAIRPERSON: OK.

ADV PETERSEN (of the Panel) : ... Ms Durbach, are we to understand that the carriage fee which exists by agreement between FNB and other banks is the result of the historical position or is it something that has been bilaterally negotiated? Currently?

MS DURBACH: Currently? Yes, I just want to check one thing, sorry. I am happy to answer it but that answer would fall under the confidential part of our submission. We can answer it at a later point or would you like to hold it over? Would you like to ask the people to clear the room so we can answer that question? ...

\textsuperscript{25} FRB, 2006, First Submission, October, p 69.

\textsuperscript{26} Id.

\textsuperscript{27} Id., p 72.

\textsuperscript{28} Transcript, p 52.

\textsuperscript{29} Transcript, 3 April 2007, p 63. In fact the carriage fee was said to be uniform between all the banks.

\textsuperscript{30} See also FRB, 2007, Second Submission, March, Section 2, p 1.
Before the room could be cleared, Ms Durbach continued:

MS DURBACH: Our position was negotiated multilaterally up until 2002/2003. What I can say is the majority of our current interchange arrangements are still pretty much at that level.

CHAIRPERSON: What do you mean by they are still at that level?

MS DURBACH: I mean that they have, the majority of them have not been re-negotiated bilaterally so still sit at the level as was explained by Dr Hawkins of the R3.25.

CHAIRPERSON: So they are still at that figure? I thought you said that was a historical figure, that things have changed?

MS DURBACH: Sorry, no. What I was referring to just to be, sorry. I obviously was not clear, is that the process of negotiating it had changed. The figure was set multilaterally until a couple of years ago. A couple of years ago we moved to only negotiating bilaterally and not multilaterally. And from an FNB perspective the fee has largely remained the same. What I cannot comment on though is what other banks have chosen to do amongst themselves. …

CHAIRPERSON: If I may ask, will it be possible for us to get the figures with regards to all the other agreements as to exactly what FNB charges in each of the agreements?

MS DURBACH: Yes. It will be possible for you to get that.

CHAIRPERSON: So that we can know exactly what is the fee in each of the agreements?

MS DURBACH: Yes.

CHAIRPERSON: OK.

ADV PETERSEN: There is no point then in [my pursuing] a line of questioning on the assumption that it is uniform. But you did hear Dr Hawkins report that as far as the Technical Team is concerned carriage is the same in the case of all banks, as far as we are aware. And if that is so, it would mean that to the extent that there had been bilateral negotiations – and you have reserved your position on that – we would have the extraordinary co-incidence that, down to the last cent, all the bilateral negotiations have arrived at the same figure. Would you accept logically that that is the implication of those facts presented to us?

MS DURBACH: The other thing I would just add to that is that I think what we could have also put forward in the submission is that some of the bilateral negotiations may not have occurred because of the difficulties in conducting a third party independent study which would assist us in determining what would be an appropriate rate.

CHAIRPERSON: What prompted the need to … move from a multilateral negotiating position to a bilateral negotiating position?

MS DURBACH: What prompted it was that at that time about four years ago we were made aware that there might be regulatory difficulties in terms of the current Competition Commission Act in terms of conducting multilateral negotiations or an industry third-party study. Until such time as we had obtained regulatory clarity we chose not to proceed in that way.

MR JORDAAN: If I may make a point. I think we are now at a tactical space now, but it can either be extraordinary that the interchange levels are the same – one can be completely logical depending on one’s point of departure. In other words if one were to subscribe to the view that interchange should be set at the average cost of the industry, which is an approach taken in many countries in the world and for many interchange streams as determined for example by a third party, one would arrive at one set of interchange. Because it is based on the average cost for the industry. Or one could say no, it has got to be based on the cost of each individual provider separately which would be different prices and therefore different interchange. So it all depends on how one frames the question, how interchange should be set. This speaks to the difficulties around interchange and carriage fees and negotiations and multilaterals and bilaterals. Which is very difficult. Which is exactly why we put forward that if interchange has to be determined our proposal would be that we give it to an independent objective third party with some set of criteria of that structure, of the average cost of the
industry or the cost of each individual bank, however it should be. Or – and that is why the other two models or the direct charging model is so intuitively attractive – we can completely dispense with all of that by going to a direct [charging] model and you know, dispense with banks having to agree, or that third party having to get involved. And I am purely subjected to the competitive forces of the market.

CHAIRPERSON: I just wanted to say the questions were dealing with the issue of the carriage fee, which in my understanding represents compensation from the issuing bank to the acquiring bank for use of that infrastructure. That is my understanding. So if they end up being exactly the same, there is an issue about compensation as to how we arrive at the figure. That is all that we are sort of highlighting. But you have indicated that you will be letting us have the various amounts, so we will appreciate that.

MS DURBACH: Even though what I can say is that as I have indicated before that the majority of them would be at the same level, I just cannot comment on the detail. But that level that Dr Hawkins put up would be the broad level that would be applicable.

…

MR JORDAAN: The position in which we find ourselves … is one of uncertainty – whether bilateral, multilateral, what is the correct approach? If one has to live with the existing model that we have, we desperately need guidance from yourselves as to which one we should do. What we can tell you, though, is that bilateral negotiations have proven to be incredibly problematic in areas where we attempted [them].

We have examples where we are now performing transaction types without such agreement actually being in place. And it is the practical difficulties of going from multilateral to bilateral where we do not even know whether, what the position should be. Hence again a reason why we are putting up these other models that completely dispenses with either bilateral or multilateral models of the interchange setting.

FNB subsequently acknowledged in writing to the Technical Team that, in fact, it had no bilateral agreements in place regarding ATMs. In our view the probability is that this was known to FNB at the time of its earlier submission, presentation and testimony at the hearing.

As appeared also from other evidence and questioning, Dr Hawkins was right. Despite talk of “bilaterals”, the truth is simply that carriage for off-us ATM transactions has all along been uniform between the banks. Since 1 March 1999 it has been R3.25 for the first R100 and a further 65c for each R100 thereafter.

Capitec Bank was next up, appearing at the hearing on 4 April 2007. Mr Stassen stated frankly that the current basis on which ATM “interchange” (i.e. carriage) was set was far preferable to bilateral agreements, which could well lead to Capitec as a smaller player being “priced out of the market”. Smaller players have “very little if any negotiating ability”. However, he also said that “currently we negotiate the interchange with the other…

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31 E-mail dated 28 May 2007. The message indicated that there are bilaterals in place for Mini-ATMs, but provided no detail. Cf also FRB, 2007, Second Submission, March, Section 2, p 4.
32 The only difference is with Mzansi withdrawals, where a flat carriage fee of R3.25 uniformly applies. See Transcript 11 April 2007, p 65.
33 Transcript 4 April 2007, p 3.
34 Id., p 30. Nedbank (Mr Shuter) expressed a similar opinion, saying that in bilateral negotiations it would be at a disadvantage relative to the bigger banks: see Transcript 4 April 2007, p 60. Standard Bank also recognised that
Saswitch [participants,] or with the other banks”. But he did not pretend that the current level of carriage may vary as between different banks. When questioned by Mr Bodibe of the Panel, he simply stated that “the agreed interchange between ourselves and the issuing bank” was “currently R3.25 plus 65c per R100, exceeding the first R100” in all cases. In an answer to Adv Petersen, he clarified this further by stating that it had not been bilaterally negotiated but was “the multilateral agreed fee”. Asked by the Chairperson when it had been agreed, he said that it had been in existence when Capitec joined the PCH “and has not been renegotiated at any time after that”. He rightly dismissed as “very unlikely” the notion that a carriage that was uniform down to the last cent could have been arrived at by bilateral negotiations.

Nedbank, in its written submission in October 2006, had stated:

ATM SASWITCH interchange has historically been set on a multilateral basis for the principles (ie how and for which transaction interchange will apply), but on a bilateral basis for the level (ie the actual price). The current interchange rate is R3.25 + 65c per/R100.

As we now know, the statement that the actual price had been set on a bilateral basis was untrue.

When Nedbank appeared at the hearing on 4 April 2007, the question of carriage fees was addressed as follows:

MR SHUTER: … Are they the same and how were they set? If I can say from Nedbank’s perspective, through a variety of factors, the BOE acquisition, integration of People’s Bank, management changes, we have not been able to establish the manner in which the current fee was set. We understand from the Absa submission that it was last reviewed in 1999, so we need to find people who were involved in that process eight years ago and generally those people no longer work for us. We are continuing to track them down, but I cannot say at the moment whether that fee was agreed multilaterally or bilaterally. Certainly our perspective is that it is the same fee. In our capacity as an acquiring bank we obviously have a relationship with all the issuing banks, and in our capacity as issuing bank we have relationships with all the acquiring banks, and the same carriage fee is being used – R3.25 plus 65c per hundred. … And we understand that to be common across the industry, and certainly it is common for all the arrangements that Nedbank has, both in its capacity as issuer and acquirer. …

CHAIRPERSON: So as far as you are concerned that is common amongst the entire industry?

MR SHUTER: Yes.

CHAIRPERSON: There has not been any change?

bilateral arrangements would be seen to promote unfair competition and create barriers to entry: SBSA, 2006, First Submission, pp 60-61. Likewise Absa: see First Submission, October 2006, Annex 3, p 67; Transcript 11 April 2007, p 213.

36 Id., p 18.
37 Id., p 31.
38 Id., pp 31-32.
39 Id., p 33.
MR SHUTER: We would only know in respect of our own acquirer/issuer relationship, but because we have those relationships across all the players, our perspective is that it is identical across the industry.

CHAIRPERSON: This was fixed on a multilateral negotiation?

MR SHUTER: Our understanding from the Absa submission is that it was last reviewed in 1999.

CHAIRPERSON: No, no, I do understand from the Absa submission. I am talking about your understanding about whether this was bilaterally or multilaterally ....

MR SHUTER: Sir, I think, just to be absolutely clear on it, we have not been able to track down people who were working at Nedbank at that point in time, it is eight years ago. So the honest answer is I do not know. But I think if you have exactly the same fee across all players across the industry, it must strongly suggest that it was agreed multilaterally. I do not see how one gets to a different conclusion.\(^{41}\)

When referred to the statement in Nedbank’s submission of October 2006 that the actual level of interchange had been set “on a bilateral basis”, Mr Shuter said that –

at the time we submitted this particular submission our investigations had indicated to us that what is recorded here was how the fee had been set. In our subsequent investigations [we were not] able to confirm this, so you would have to take our current position as a change from this position. We have not been able to establish if these fees were bilaterally set.\(^ {42}\)

We do not consider either the original statement or this explanation satisfactory.

Standard Bank stated from the outset that “a multilateral implementation of the interbank interchange/carriage fee” is “the only workable approach”.\(^ {43}\)

“Interbank carriage” fee is the incumbent system whereby banks charge each other a per transaction interbank fee for the use of their ATM network by the other bank’s customers.\(^ {44}\)

…

For both interchange and interbank carriage (and all other relevant payment streams), attempting to negotiate and implement interbank interchange/carriage fees on a bilateral basis would fundamentally compromise the comprehensive interoperability of the South African payment network. It is highly likely that given the complexity of bilateral negotiations, many pairs of banks would not reach agreement on interbank interchange/carriage for each other’s customers. Consumer would potentially find themselves unable to use other banks’ payment infrastructure (eg ATM or POS network) leading to significant losses in utility and convenience for the consumer.\(^ {45}\)

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\(^{41}\) Transcript 4 April 2007, pp 57-59.

\(^{42}\) Id., p 73.

\(^{43}\) SBSA, 2006, First Submission, p 59.

\(^{44}\) Id., p 60.

\(^{45}\) Id., p 61.
To begin with, the ATM carriage fee was set at a relatively low level.\textsuperscript{46} However as a consequence of actions initiated by Standard Bank, the fee was increased industry-wide in 1997 and again in 1999.\textsuperscript{47}

The expression “multilateral implementation” used by Standard Bank in its first submission, quoted above, should not be thought to mean multilateral \textit{negotiations}. This emerged on the last day of the ATM hearings, when Standard Bank revealed that,

\begin{quote}
  on the 16th January 1997 ... Standard Bank unilaterally increased its carriage fee to other banks, and did this again on 18th December 1998. Standard Bank once again unilaterally increased its carriage fee to other banks.\textsuperscript{48}
\end{quote}

What in fact happened was that on 16 January 1997, a letter was sent by Standard Bank to the CEO of the South African Bankers Service Co Ltd (now commonly known as Bankserv), indicating that, with effect from 1 March 1997, Standard Bank would impose increased charges “for transactions on our machines by customers of other banks, processed through Saswitch”.\textsuperscript{49} A virtually identical letter was sent by Standard Bank on 18 December 1998, advising of a further such increase from 1 March 1999.\textsuperscript{50} The fee to be applied from that date was “R3.25 for the first R100 or less, plus 65 cents for each additional R100 or part thereof.”\textsuperscript{51}

The letter of 18 December 1998 did contain the sentence:

\begin{quote}
  We understand that the price increase could be superseded through bilateral interbank negotiations but in the event that the negotiations are delayed or protracted feel it necessary to implement an increase from March 1999.
\end{quote}

No evidence was given to suggest that such negotiations were initiated. In both 1997 and 1999 the other Saswitch participants simply adopted the same pricing (and evidently with effect from the same date), so that a uniform carriage fee was applied among them regardless of the issuing bank. According to Standard Bank, in 1997 “[t]he other banks accepted these increases and each independently increased their charges to the same level

\textsuperscript{46} Belamont recalls that it was 50c in the 1980s. The FRB submission of March 2007, p 14, states that it was R1.00 + 50c/R100 prior to 1997, and that there were interim increases after 1997. This appears to be challenged by Exhibit GG2, presented at the hearings on 11 April 2007, which stated that the increase in March 1997 was the first since inception.

\textsuperscript{47} See Table 1 above.

\textsuperscript{48} Transcript 11 April 2007, p 62 (Mr Schlebusch).

\textsuperscript{49} Exhibit GG2. See also SBSA, 2007, ATM Submission, April, p 5. This letter also contained the first mention of which we are aware that carriage would be charged for balance enquiries and rejected transactions.

\textsuperscript{50} Exhibit GG1; SBSA, 2007, ATM Submission, April, p 6.

\textsuperscript{51} Exhibit GG1.
shortly after SBSA’s announcement. In 1999 “again the other banks implemented the same increase”. \(^{53}\)

Remarkably in the light of all this evidence, Absa still sought at the hearing on 11 April 2007 to convey that the current interchange fees came about through bilateral arrangement. It had stated in its first submission that interchange fees for the ATM payment mechanism “are determined on a bilateral basis”. \(^{54}\) At the hearing the Absa representatives were asked by the Chairperson whether Absa had been involved with any of the other banks in negotiating bilaterally or multilaterally. \(^{55}\)

MR VOLKER: Chairman, yes we have. I think historically going back to the late nineties, we had been, I think the current basis of the interchange rate on ATM’s, I think is a result of a bilateral arrangement. So that goes to the nineties. I think that is where it is at the moment. Subsequent to that there have been a number of attempts to engage on this on a bilateral basis, but they have not resulted in any change to the current interchange rate, as we understand it today.

CHAIRPERSON: So there are no bilateral agreements? Are there any bilaterals on the ATM ...?

MR VOLKER: On the ATM, the historic… I think the last agreement that was, that set the current arrangement was set in 1998 and the current prevailing rate is still a consequence of that. So, I think that was the last arrangement which was on a bilateral basis. As I mentioned, subsequent to that we have had engagement with various banks on reviewing this on a bilateral basis but they have not resulted in any changes to the rate that was set in 1998.

CHAIRPERSON: You must have been here when Standard Bank was presenting.

MR VOLKER: I was not.

CHAIRPERSON: You were not. Well, some of the [Absa] people here were present. There was a point made about a letter which went off and then subsequent to that, suggesting the increase in the carriage fees, and then subsequent to that, everybody else increased the carriage fees. You are aware of that?

MR VOLKER: I am aware of that. I think I was responsible for ATMs at Absa at that stage. This was, as I said, I think the last increase was in 1998 and as far as I can remember the letter we received from Standard Bank was towards the end of 1998, we received a letter announcing their increase and obviously at that stage we had the choice of also doing the same to them, so we sent a subsequent letter to Standard Bank as well as to the other banks, to announce our increase which was of the same quantum.

CHAIRPERSON: And also there was some evidence about subsequent negotiations between Standard Bank and yourselves which did not bear any fruit.

MR VOLKER: That is correct.

CHAIRPERSON: You are aware of those negotiations.

MR VOLKER: Absolutely yes. I think it was a few years later. We engaged on a … It was not just confined to ATM’s. It was a broad based discussion on reviewing the setting of interchange rates for all payment systems based on hopefully mutually accepted principles, but I think it was probably over a period of a year that we engaged with Standard Bank on

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\(^{52}\) SBSA, April 2007, Second Submission, ATM transactions, p 5.

\(^{53}\) Id., p 6.

\(^{54}\) Absa, October 2006, First Submission, Annex 3 p 67.

\(^{55}\) Transcript 11 April 2007, p 164.
those discussions. The end result was that it did not change any of the rates.

MR ZEUNER: And we had similar sort of engagement also with FNB in 2005, and ...

ADV PETERSEN: Mr. Volker, if I can just clarify this with you and I am particularly concerned
to do so, so that when we read the record later and the transcript of this, we do not draw
unfair conclusions. As I understand it, carriage is uniform between all the participants.

MR VOLKER: Yes. That is correct.

ADV PETERSEN: R3.25 for the first R100 and 65c per hundred after that.

MR VOLKER: That is correct. That is my understanding.

ADV PETERSEN: Must I conclude from what you said before that those, that down to the last
cent that was in every case arrived at through bilateral negotiations between the different
...(indistinct)?

MR VOLKER: Yes, I mean that is a reality. I think the way that it actually took place, … what
triggered it off was a letter from Standard Bank who were really the leaders in the industry at
that stage, fair to say. The letter arrived on my desk and I ...(indistinct) that this was the
increase. I had one of two options. Obviously I could have declined the letter and said, look I
am not interested in doing this, or I could have negotiated with them, but at that stage it
seemed like, you know, an acceptable level of fees to ask, and so the result was that I sent a
letter back answering it, and [announcing] exactly the same fee to Standard Bank. And at the
same time I sent a letter to all the other banks that would be using my ATMs, making the
same announcement. So, it was something that ..., that is just the way it happened.

ADV PETERSEN: And that is what you meant when you spoke of bilateral arrangements?

MR VOLKER: Yes. That was how it transpired at the time. So, there were not discussions
around the table, or actually negotiating and a bargaining process. You could maybe say it
was unilaterally sent out, but obviously when the other party accepts it, there is effectively a
bilateral agreement. 56

We certainly do not see the matter that way. In our view it is evident that the two letters from
Standard Bank, while on the face of them unilateral, were calculated to bring about and in
each case did bring about a co-ordinated pricing response in respect of carriage from all the
banks participating in the ATM network. The same would apply to consequential letters in
response, of the kind written by Absa, as Mr Volker described them. 57

It has been clearly established that the carriage fee implemented in March 1999 had not
been revised subsequently. The implementation of the Competition Act, and legal advice
that multilateral interbank agreement on carriage would be found to be in contravention of
section 4(1)(b) of the Act, appears to have played a key part in this inertia.

According to the banks, the advice received by them has been that bilaterally agreed
carriage would be permissible; however, negotiations would be time-consuming and
repetitive. Moreover, the banks’ interest in changing the carriage fee by bilateral negotiations
does not appear to be intense. The only attempts at renegotiating the fee that have come to
the Enquiry’s attention are an effort by Standard Bank to enter into negotiations with Absa

57 In response to questions from Mr Bodibe, Mr von Zeuner said: “If the panel so wishes, I mean, we can make available
correspondence and information in that regard, which will sort of put on record our position and that is the best that we
can disclose and I am prepared to do that.” Mr Bodibe said “Thank you.” (See Transcript 11 April 2007, pp 171-172.)
The correspondence and information has not been forthcoming in this regard.
and FNB respectively in 2000 and 2001, and by ABSA with FNB in 2005. According to SBSA, its attempts failed, and “no party has succeeded in renegotiating the [1999] rates.” Absa confirmed this at the same hearing.

Thus no bilateral agreement has superseded the fees which came into effect in March 1999, and all banks participating in the ATM PCH have continued the practice of charging each other the uniform carriage fee.

In its presentation of 11 April 2007, Standard Bank indicated that its reasons for requiring increased carriage were:

- Increased costs associated with handling cash, servicing and maintaining machines and soaring vandalism.
- Banks with a small ATM footprint “free-riding” on Standard Bank’s extensive ATM infrastructure.
- The value to other banks had increased as a result of Standard Bank’s increased ATM footprint.

The behaviour of following the price set by Standard Bank, has been justified by way of suggesting that Bankserv could only accommodate one interchange rate per stream at the time. We do not accept that explanation. The current management of Bankserv is of the view that multiple carriage fees could have been accommodated then, as is the case now, but believes that no one thought to ask. It is more likely that no one (no bank, that is) was interested in asking. The incentive at that time was rather to follow uniformly the upward pricing signal given by Standard Bank.

It is difficult to predict where the carriage fee would be set today if it were to be multilaterally agreed or otherwise uniformly arrived at. While there has been inflation, the cost of technology has decreased and economies of scale through the Saswitch network have improved. However, it would not be unreasonable to conclude that the existing arrangements around the carriage fee and pricing to customers – which typically includes both a cash withdrawal fee and a so-called Saswitch fee – continue to be comfortable and beneficial for the participants.

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59 Id. Also, Transcript 11 April 2007, p 100.
60 See above.
61 Exhibit GG, slide 10.
63 Correspondence from Bankserv, dated 3 September 2007.
64 See FRB, March 2007, Second Submission, ATM transactions, p 2.
Whether the conduct of the banks in arriving at the uniform carriage fees adopted in March 1997 and again in March 1999 was lawful or not is a moot point. Section 4 of the Competition Act 89 of 1998 only came into force on 1 September 1999. However, the effects of the earlier conduct – the practices followed by the banks as a result of the contact between them over the level of ATM carriage fees – have continued to the present day.

In our view, the continuing effects of the earlier conduct are best addressed in the interests of competition and the consumer by going to the root of the problem – the very fact of interbank carriage as the method of compensating ATM service providers in off-us transactions when it has ceased to be necessary to effect such compensation in that way.

For reasons further developed below, carriage would remain objectionable even if levels of carriage were to be bilaterally agreed. Indeed, if carriage were to be regarded as a legitimate means of compensating ATM service providers in off-us transactions, then a uniform carriage, applicable to all participants, would seem preferable to levels bilaterally agreed.

This is not only because, in a complex network, multilateral or other uniform setting of terms and conditions is usually simpler, cheaper and more efficient. In interbank arrangements, bilateral agreements tend, if anything, to favour the bigger players over the smaller, potentially enabling the former to raise the barriers to entry and expansion by other participants and so enhance their own market power. Consumers are not protected in this way.

In our view the essential problem with present ATM pricing arrangements does not lie in the fact that carriage is uniform, or in the level at which carriage has been set. It lies in the very fact of carriage arrangements, which have the effect of allocating customers between banks when it comes to ATM services and of sheltering such services generally, to a significant degree, from price- and other aspects of competition between service providers which could otherwise quite feasibly operate.

If the recommendations which we make in this chapter regarding a change to a direct charging model for ATM transactions are not adopted by the banks within a reasonable time (see further below), then it would be appropriate in our view 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.

Section 67(1) of the Competition Act provides that a complaint in respect of a prohibited practice may not be initiated more than three years after the practice has ceased. In this case, the effect of the practice has not ceased and so is accordingly open to different interpretation.
5.3.2 Carriage and indirect charging to the customer

It is not clear whether, prior to the carriage fee increases of 1997 and 1999, banks saw the carriage fee as a reason to charge their customers more for off-us ATM transactions than for on-us ATM transactions.

Indeed, in the early days of the network, it appears that some consumers, at least, were not charged additionally for off-us transactions. Standard Bank, for example, states:

SBSA initially absorbed these charges (carriage fees), but in 1989 found that it was paying away what it considered to be excessive carriage fees to other institutions in the light of its own infrastructure. It therefore took a decision that with effect from 1 June 1989, it would levy a charge on customers at a flat rate of R0.75 in respect of Multinet withdrawals and R1.15 in respect of Saswitch withdrawals.  

The levying of the off-us fee did not necessarily make off-us ATM withdrawals more expensive than on-us withdrawals. For example, individual bank statements dating back to 1997 indicate that, while on-us transactions of R200 were priced to the customer at R1.69, off-us transactions of R200 and R300 were both priced to the customer at R1.50. The off-us transactions are listed on the statement as “Saswitch cash withdrawal at Absa”, Boland, etc, and no other fee for the transaction is charged. However, there may be an explanation for this that is peculiar to the account type concerned.

Absa states that “there has never been a time in South Africa when customers could access another bank’s ATM without paying a higher fee” (2007, ATM Submission p 10), but we have not been able substantiate this with the information available.

Initially, banks would have had little reason to differentiate in the pricing of on-us and off-us ATM transactions having regard to the initially low level of the carriage charge; the cost saving made by the bank paying the charge by reason of its customer having used the other bank’s ATM facility rather than its own; and the overall commercial benefit of being able to offer its customers the use of a more extensive ATM network than it had been able or had chosen itself to provide.

It is clear that, following the increases in the carriage fee in 1997 and 1999, banks have levied a substantial additional charge on their customers for choosing to use another bank’s ATM. The increase in the fee to the customer for off-us transactions appears to have been driven primarily by the desire to curtail the extent to which clients were using the ATMs of other banks. This has been expressed as a situation where volumes were being lost on banks’ own ATM networks and substantial fees were being paid to rivals so that their

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66 SBSA, April 2007, Second Submission, ATM transactions, p 5. Note that in a later part of the submission (p 39), this fee is described as an “additional” charge to the consumer – over and above the standard cash withdrawal charge.

customers could use the infrastructure of other banks.\textsuperscript{68} Standard Bank, for example, points out that before it instituted its “incentive pricing”, 42 per cent of the total shared (off-us) transactions in the country emanated from Standard Bank customers.\textsuperscript{69} For the year ending October 2007, this proportion had fallen to 26 per cent.\textsuperscript{70}

The additional levy on off-us transactions appears to have been accompanied by a substantial increase in on-us fees as well. For example, in September 1999, a withdrawal of R1000 was priced to the customer at R8.50 per transaction with (in the case of an off-us transaction) an additional “Saswitch fee” of R4.00.\textsuperscript{71} It is notable that the basic cash withdrawal fee of R8.50 had represented a substantial increase compared with previous years, and that it was identical whether transactions were made at the bank’s own ATM or that of another bank. In the latter case, the so-called “Saswitch fee” is added.

However, neither of these fee categories bears any identifiable relationship to carriage or any other specific cost. The charge to the customer for off-us transactions was and is commonly referred to as a “Saswitch fee”. This term has always been a misnomer considering that the processing charge by Saswitch to the banks has been a small fraction of the banks’ additional charges to their customers.

It seems fair to conclude that:

- The increases in the carriage fee in 1997 and 1999 resulted in off-us withdrawals being priced substantially higher than on-us withdrawals
- The restriction of off-us withdrawals by this higher pricing provided an opportunity to increase on-us ATM transaction fees as well.

\textsuperscript{68} SBSA, April 2007, Second Submission, ATM transactions, p 39.
\textsuperscript{69} Id.
\textsuperscript{70} SBSA, December 2007, The request for additional information dated 21 November refers, Annexure B.
\textsuperscript{71} SBSA Current account statement September 1999.
Chapter 5 ATMs and Direct Charging

Figure 1 ATM Monthly transaction volumes

The volumes through Saswitch, shown above, (which reflect all the off-us volumes for cash and balance enquiries) appear to indicate:

• The number of off-us ATM transactions had been increasing steadily from 1990, as consumer trust in ATMs increased and the network became more robust.

• In March 1997 the number of off-us transactions peaked at 14.6 million.

• Thereafter (apart from the annual December peak) the volumes progressively decreased, as consumers initiated fewer off-us transactions.

• Part of the gradual decline in volumes probably had something to do with the higher pricing not only for off-us cash withdrawals, but also the introduction of fees for balance enquiries and rejected transactions.

The probability is that the interbank arrangements regarding carriage in off-us transactions served to raise price and restrict output throughout the ATM network. It is probably fair to say that every off-us transaction avoided may not necessarily result in an on-us transaction. Instead, the discouragement of off-us ATM transactions may result in consumers making fewer, larger cash withdrawals at their own bank’s ATMs.

72 This represents all ATM transactions such as balance enquiries.
This is most clearly indicated in the statistics for off-us transactions themselves. Consumers responded to the successive price increases beginning in 1997 to 2000, so that by June 2000 only 11 million transactions a month were going through the switch. Discounting the December peaks, it was only in March 2006 that the volumes through Saswitch regularly exceeded their March 1997 levels.

5.4 Revenue and pricing in current ATM model

5.4.1 Authorisation and flow of funds

The current ATM model, applicable to the existing ATM arrangements in South Africa, is presented diagrammatically in Figure 2.

![Figure 2 The flow of information for an off-us transaction](image)

The flow of information depicts the authorisation process when a customer of Bank B requests cash at the ATM of another bank (Bank A). Bank A recognises automatically that this is an off-us transaction and seeks authorisation from Bank B, through Bankserv. If the amount requested is available, the transaction is authorised and the transaction is processed. This process shows the use of Saswitch as the network infrastructure through which electronic messages are switched from acquiring to issuing bank and back again.

If the transaction is authorised, the cash will be dispensed. The customer of Bank B is typically charged a composite fee, which has been described as a cash withdrawal fee,
together with a “Saswitch” premium or “interbank fee”\textsuperscript{73}. These fees are not always separately disclosed and it may be that the consumer typically thinks that the whole fee is payable to the acquiring bank – or to Saswitch. The actual distribution of the total fee remains completely obscure.

As is now revealed a carriage fee, based on the formula of R3.25 for the first R100, plus R0.65 per R100 thereafter, is payable from Bank B to Bank A. Over and above the carriage fee, the switching costs of Saswitch are conventionally paid by the issuing bank, Bank B, and will vary according to the tiered pricing structure of Bankserv based on the volumes of transactions.\textsuperscript{74} At settlement, the amount of the dispensed funds is transferred to Bank A, as well as the carriage fee.

\textbf{Figure 3 The flow of funds for an off-us transaction}

Table 2 sets out the shares of revenue from off-us ATM transactions accruing to the acquiring bank (which provides the ATM infrastructure and cash dispensing service); the issuing bank (where the customer has a bank account) and Bankserv (which provides the switching service known as Saswitch). It is clear that the issuing bank receives the majority of the total off-us fees charged to the customer.

\textsuperscript{73} Both the terms are misnomers. The charge is levied by the issuer and does not correspond to the amount to Saswitch or to the other banks. The fee is termed a “convenience fee” by Nedbank (Slide 2 Exhibit EE). It is frankly referred to as a “disincentive fee” by FRB (Transcript 3 April p 110) and SBSA (2007, Annexure 10 p 1). Capitec referred to it as a “disloyalty fee” (Capitec, March 2007, Second Submission, Supplementary Submission to the Banking Enquiry, p 1).

\textsuperscript{74} Note that this is by convention. We have not been given any reason switching fees could not be paid instead by the acquiring institution, should this be a more logical allocation under a system of direct charging.
Table 2 Share of fee revenue for off-us transactions

<table>
<thead>
<tr>
<th>Transaction value</th>
<th>R 100</th>
<th>R 242</th>
<th>R 500</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total off-us fee</td>
<td>R 9.79</td>
<td>R 10.75</td>
<td>R 13.74</td>
</tr>
<tr>
<td>Acquiring Bank A's share</td>
<td>R 3.25</td>
<td>33%</td>
<td>R 4.55</td>
</tr>
<tr>
<td>Issuing Bank B's share</td>
<td>R 6.41</td>
<td>65%</td>
<td>R 6.07</td>
</tr>
<tr>
<td>Bankserv's share</td>
<td>R 0.13</td>
<td>1%</td>
<td>R 0.13</td>
</tr>
</tbody>
</table>

*Source: Banks submissions and banks' brochures.*

5.4.2 ATM landscape

Only banks, mutual banks and branches of foreign banks may be participants of the ATM Payment Clearing House (PCH). The agreement (concluded in September 2000) which established the PCH also set out the additional requirements of:

- Membership of the PASA and the ATM Participant Group
- Maintenance of a settlement account at the SARB.

At present, the following 13 banks are members of the ATM PCH: Absa, African Bank, Albaraka Bank, Bidvest (formerly Rennies), Capitec, FirstRand, Investec, Mercantile, Nedbank, Standard Chartered, Teba, The South African Bank of Athens and Standard Bank.

Over and above these, the Postbank, which is excluded from the application of the Banks Act and Ithala Limited which has special exempted status, have access to the ATM network, by virtue of their sponsorship arrangements with members of the PCH – Standard Bank with Postbank, and Absa with Ithala. MEEG also has access to the ATM network by means of its sponsorship into the PCH by ABSA.

The bulk of the ATMs are owned or branded by the big four banks, with Capitec a relatively small fifth biggest provider. Some of the member banks have a small, or no, ATM infrastructure themselves, but their membership allows them to offer the network services to their customers – for which carriage is paid. Investec is an example of a bank with none of its own ATMs. There are also currently a number of non-bank service providers who have outsourcing arrangements with the banks (they provide ATM services on behalf of the banks). This includes, for example, ATM Solutions and Bytes Technology Group.

Table 3 sets out the number of ATMs owned or branded by each of the big four banks and Capitec. While this does not provide a complete view of the system – we believe it accounts for the vast majority of the ATMs in the country. Such numbers are regarded by the firms concerned as competitively sensitive information in respect of which confidentiality has been claimed, and there is no single source of such information.
Given the PCH rules, non-bank ATM providers need to have what is in effect an outsourcing arrangement with one of the PCH members to provide ATM services at all. It is these numbers that are captured under “Other ATMs” in the table above. In this case, the non-bank ATM provider is typically responsible for everything associated with the physical installation and maintenance of the ATM. This includes selecting the site, installing the machine, ensuring it is always on-line and stocked with cash, and so on. The bank with which the ATM provider has the contract will have its logo on the machine, and is the entity responsible for settlement through the PCH. The non-bank negotiates a fee with the participant bank. The latter receives the carriage to which it is entitled in terms of the PCH arrangements, and in effect passes on a share of this to the ATM provider, by way of the outsourcing fee.

Mini-ATMs on the other hand are effectively little more than Point-of-Sale (POS) devices, located as stand-alone devices in merchant stores. Cash withdrawals through mini-ATMs

Table 3 The number of ATMs by bank

<table>
<thead>
<tr>
<th>End 2006</th>
<th>Absa</th>
<th>Standard Bank</th>
<th>Nedbank</th>
<th>FNB</th>
<th>Capitec</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Own ATMs</td>
<td>3,706</td>
<td>1,276</td>
<td>3,148</td>
<td>280</td>
<td></td>
</tr>
<tr>
<td>Number of Other ATMs</td>
<td>157</td>
<td>0</td>
<td>170</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Share of ATMs</td>
<td>24.4%</td>
<td>8.2%</td>
<td>19.9%</td>
<td>2.8%</td>
<td></td>
</tr>
<tr>
<td>Mini – ATMs</td>
<td>0</td>
<td>1327</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total number of ATMs (incl. mini-ATMs)</td>
<td>3,863</td>
<td>4,475</td>
<td>4,507</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Share of Total</td>
<td>22.4%</td>
<td>26.0%</td>
<td>2.6%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Banks’ submissions, March and April 2007, Second Submissions, ATM transactions.

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75 Excluding AutoPlus and AutoDeposit machines which do not dispense cash, but allow only “other” ATM transactions like balance enquiries and deposits. (SBSA, April 2007, Second Submission, ATM transactions, p 21-22).

76 Provided by ATM Solutions and Bytes. In contrast with ABSA, there is no differential pricing for “other” ATMs. (Nedbank, March 2007, Second Submission, ATM transactions, p 6.)

77 Provided by ATM Solutions. (Absa, March 2007, Second Submission, ATM transactions, p 4.)

78 SBSA do intend to roll-out mini-ATMs under their AutoMoney devices, of which 20 are currently on trial. (SBSA, April 2007, Second Submission, ATM transactions, p 23-24).

79 As stated in the hearings by Capitec CEO, Mr Riaan Stassen, Transcript, 4 April 2007, p 18.

80 The PCH agreement and clearing rules allow only participants in clearing, i.e. clearing banks, to deliver payment instructions to the system operator (Saswitch) – whether themselves or through their agents or customers. All terminals and other devices used for the purpose, must be owned by, or contracted to, the collecting participant, which is the acquiring bank. (See PCH agreement, Sections 2.2.3, 2.2.9.)

81 FRB, March 2007, Second Submission, ATM transactions, p 4 makes something of the fact that their mini-ATMs have a housing to provide privacy. But other mini-ATM models such as counter-top models appear to fulfil the same function.
are initiated as self-service transactions, but have to be fulfilled through the assistance of the merchant. Once the consumer has requested a withdrawal through such a device, a printed slip from the machine is presented to the merchant who then dispenses the cash from his or her till to the customer. These slips are later reconciled through the system. The carriage payable in this case is considerably smaller.

Absa, FNB, Nedbank, Standard Bank and Capitec account for some 17,215 ATM terminals around the country. If one takes only cash dispensing machines into account (i.e. excluding mini-ATMs), Absa's brand appears on 45 per cent of all ATMs in the country, and Standard and FNB’s on 24 per cent and 20 per cent respectively. Nedbank has the smallest number of ATMs of the big four banks with around 8 per cent of the total. Capitec, the next biggest player, has around 3 per cent of the country’s ATMs.

If one takes into account mini-ATMs, however, then FNB is the second biggest ATM provider in the country, with a 26 per cent share.

5.4.3 Carriage fees on other ATM transactions

The carriage fees for “other” ATM transactions came into force over a period of time. While balance enquiry fees appeared to have come into existence some time earlier, fees for rejected transactions came into force in March 1997, and both sets were increased to their present levels in March 1999.

Carriage for cash-back at point of sale – with and without purchases – and for mini-ATM transactions are more recent phenomena. These cash withdrawal options only came about after the PCH agreement – which set out “the principle of bilateral negotiation of fees and charges in relation to all matters other than error rectification”.  

While there is missing data in Table 4, it appears that there is standardisation of carriage for balance enquiries, but some variation, and evidence of bilateral negotiations or unilateral imposition of different interbank fees in the case of cash-back and mini-ATM transactions. Note that cash-back at POS is a facility restricted to debit cards, and the carriage shown here excludes the interchange fee of 0.55 per cent of the value of the transaction flowing from acquirer to issuer. In the case of mini-ATMs, where a bilateral negotiation between banks has not been concluded, a default rate of R0.25 applies – which was the default fee for Postbank stand-alone counter-top devices. (See more in section 5.7)

5.4.4 Pricing to customers

While there are uniform carriage fees on cash withdrawal transactions in the ATM stream, pricing to customers varies by bank and type of account, and in one case, by type of provider. Table 5 indicates the different variable fees for the big four banks and Capitec.

In the data, various fees are set out for a savings account, a current account and a credit card account. (Note that in the case of the credit card, an annual, not monthly, fee typically applies.) Each of these accounts allows for a debit or credit card to be issued, which can be used to withdraw cash at the Saswitch ATM network.

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Note all of these are carriage fees – and hence flow from issuer to acquirer. A dash in the table indicates information not received.

This excludes the interchange flow of 0.55 per cent flowing from acquirer to issuers for all debit card purchases.

Note that this is still only accepted by some banks. SBSA state that the MasterCard and ViSA rules prohibit pure cash-back (SBSA, April 2007, Second Submission, ATM transactions, p 23). ABSA, however, states that “This prohibition is overwritten by PASA rules which permit pure cash-back transactions at POS” (Absa, March 2007, Second Submission, ATM transactions, p 7).
## Table 5 ATM prices per bank

<table>
<thead>
<tr>
<th>Dates Accessed and Applicable to Charges</th>
<th>Absa</th>
<th>Standard Bank</th>
<th>Nedbank</th>
<th>FRB</th>
<th>Capitec</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 April 2006 - 2007</td>
<td>R2.70 plus R1.00 per R100 or part thereof (FlexiSave) (E-Plan)</td>
<td>R5.05</td>
<td>R2.85 plus R0.90 per R100 or part thereof (Savings Deposit Account)</td>
<td>• R5.00 for R0.01 – R500 • R10.00 for R501 – R1000 • R15.00 for R1001 – R2000</td>
<td>R2.00 (One Global Account)</td>
</tr>
<tr>
<td>1 July 2006 - May 2008</td>
<td>R3.00 plus R0.90 per R100 (Silver Current Account)</td>
<td>R3.10 plus R0.90 per R100 (Current Account)</td>
<td>R2.85 plus R0.90 per R100 (Basic Current Account)</td>
<td>• R5.00 for R0.01 – R500 • R10.00 for R501 – R1000 • R15.00 for R1001 – R2000</td>
<td>R2.00 (One Global Account)</td>
</tr>
<tr>
<td>2007</td>
<td>R3.00 plus R0.90 per R100 or part thereof</td>
<td>R3.00 plus R1.00 per R100 or part thereof</td>
<td>R2.85/R0.90</td>
<td>• R5.30 for R0.01 – R500 • R10.60 for R501 – R1000 • R15.90 for R1001 – R2000</td>
<td>R2.00 (One Global Account)</td>
</tr>
<tr>
<td></td>
<td>R3.00 plus R0.90 per R100 or part thereof</td>
<td>R400 to R110 p.a. (excluding garage card options)</td>
<td>R400 to R110 p.a.</td>
<td>R225 p.a. (R132 p.a. for the Smart CC Charged at R11 per month)</td>
<td>R2.00 (One Global Account)</td>
</tr>
<tr>
<td></td>
<td>R9.00/R0.90</td>
<td>Above mentioned plus R6.70</td>
<td>Above mentioned plus R5.95</td>
<td>R5.75 + ATM fee above for the CC and • R10.75 for R0.01 – R500 • R15.75 for R501 – R1000 • R20.75 for R1001 – R2000</td>
<td>R6.50</td>
</tr>
</tbody>
</table>


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87 The indicated annual fees are not necessarily all inclusive. Some banks may well charge additional annual fees such as a so-called “Loyalty fee” of a substantial amount.

88 The ATM cash withdrawal fee applicable to ABSA-supported ATMs (ATM Solution ATMs and Bytes ATMs) is R5.80 plus R0.90 for each additional R100 or part thereof (i.e. Absa has three tiers of fees: on-us, almost on-us – for Absa branded ATMs – and off-us).

89 This is R10.50 for SA.
In general, most banks charge an *ad valorem* fee for ATM cash withdrawals. The main reasons given for the *ad valorem* fee is that the costs and risks for the bank increase with the value drawn from the ATM, because of cash handling, the risk of stocking the device and insurance.\(^\text{90}\) By contrast, non-cash ATM transactions tend to be charged as a flat fee, as the costs and risk of the transactions do not vary by value.\(^\text{92}\)

There are a few exceptions. In the case of the Mzansi account, for example, which has neither *ad valorem* carriage nor pricing for cash withdrawals,\(^\text{93}\) the flat fee pricing structure is a consequence of the banks attempting to meet their commitments under the Financial Sector Charter to service low-income clientele.\(^\text{94}\) For FNB, however, the banded fee structure – which is an *ad valorem* fee structure of sorts – for on-us and off-us ATM transactions is instituted to allow greater simplicity.\(^\text{95}\) Capitec charges the simplest fee structure of all – R2 for on-us and R6.50 for off-us transactions.

In all cases, a customer will be charged the stated cash withdrawal fee, unless a bundled option is chosen, for each on-us transaction. In addition, there is a premium fee charged for an off-us ATM transaction. (See the Other Bank’s ATM row in Table 5.) In the case of Standard and Nedbank, off-us transactions attract a cash withdrawal fee plus a premium. Absa and FNB employ a higher fee structure for off-us transactions. There are different arguments for charging consumers the premium, which are explored in the next section. At least one of the major banks associates the premium with funding the carriage fee.\(^\text{96}\) Conceptually at least, this implies that the cash withdrawal fee is charged regardless of whether the customer uses his or her own bank’s ATM or not.

### 5.4.5 Revenue and ATMs

In Table 6, the revenue earned by banks per off-us transaction, the carriage to be paid away and the net revenue for the issuing bank for an average value off-us ATM transaction, are

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\(^{90}\) Also see the chapter on Costing and Pricing.

\(^{91}\) Nedbank, March 2007, Second Submission, ATM transactions, p 3.

\(^{92}\) For example, after one free deposit and withdrawal a month, the Mzansi account holder pays R4.20 per transaction for up to five transactions (withdrawals or deposits) and thereafter R8.40 per transaction. SBSA, April 2007, Second Submission, ATM transactions, p 10.

\(^{93}\) Nedbank’s Transactor account was launched under the Peoples Bank brand and exists as an inherited pricing structure for the same reasons. Nedbank, March 2007, Second Submission, ATM transactions, p 5.

\(^{94}\) Also see the chapter on Costing and Pricing.

\(^{95}\) FRB, March 2007, Second Submission, ATM transactions (Initial Questions), p 2.
shown. The net revenue is larger than that paid away in carriage in every case, except in the case of Capitec, where only a small portion of the fee is retained.

The retention of the larger part of the fee by the issuing bank when the acquiring bank bears the costs of locating and maintaining the ATM, keeping the machine filled with cash, and so on, suggests the profitability of the ATM stream.

The banks have argued that the direct costs of providing an off-us ATM transaction consist of the carriage fees (payable to the ATM provider) and additional costs incurred at the issuing bank (including authorisation, transactions record keeping and the costs associated with card fraud risks).\(^98\)

In addition, indirect costs have to be covered, too. Issuing banks have argued that common costs and other costs related to account holding should be taken into account as well. The common costs include branch costs, ATM infrastructure, IT infrastructure, head office infrastructure and legislative compliance costs.\(^99\) Other services for which they do not directly charge include the costs of providing face-to-face client service,\(^100\) costs of providing the account\(^101\) and the costs associated with change of address.\(^102\) In some cases it was more generally stated, such as by Mr Jordaan of FNB:

The... banks’ withdrawal fees, cash withdrawal fees, are important for us in recovering the costs of providing for the overall product. Again this is a trap one can easily fall into, to think the cash withdrawal fee is only for cash withdrawal. I know it is termed like that but it also serves to recover some of the many other costs we as a bank have.\(^103\)

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\(^97\) Note that in its information furnished to FEASibility in 2006, Bankserv maintained that R242 was the average transaction value for off-us transactions. In response to a query raised, given the disparity between this value and the R500 often quoted by banks, Bankserv restated the value as R380 – see correspondence dated 23 August 2007.

\(^98\) SBSA, April 2007, Second Submission, ATM transactions, p 18.


\(^100\) Transcript 4 April 2007 p 105.

\(^101\) Transcript 3 April 2007, p 15.

\(^102\) Transcript 4 April 2007, p 105.

\(^103\) Transcript 3 April, pp 53-54.
It is questionable whether, in the case of an off-us ATM withdrawal, the issuing bank should be able to recover from the cardholder who has elected not to use that bank’s ATM but rather to use that of another, a fee which includes the recovery of the cost of having its own ATM infrastructure available. This ability derives to a significant extent from the banks’ market power and from the arrangements whereby the customer is treated as “belonging” to the issuer for all ATM transactions and the issuing bank’s own ATM service provision is accordingly sheltered from direct competition.

Figure 4 shows the net revenues accruing to the issuing bank, as the value of the transaction increases. In each case, except for Capitec – which has a flat fee regardless of the size of the transaction – revenue increases with the value of the transaction.

**Figure 4 Net off-us revenue as the value of the transaction increases**

Capitec’s pricing method is clearly very different from the big four. Capitec has targeted a particular cohort of customers given that their business has its origins in micro-lending where – up until the recent past – loans were exempt from a usury cap. Once Capitec gained a banking licence it gradually started opening deposit accounts for its clientele, who are typically low-middle income earners in the public and private sector. For this reason, while it appears from the figure above that Capitec would be heavily subsidising their clients for larger off-us transactions, it may be that there are few such instances and that the average size of a withdrawal is somewhat smaller than for customers of other banks.

As has been noted above, consumers have responded to the big banks’ higher pricing for off-us transactions by avoiding such transactions. In the data requested from the big four

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104 They have consistently pursued this customer niche and have a number of features which reinforce this such as higher interest rates for deposits up to R10 000, and so on.
banks and presented in Table 7, it appears that there were close to 1 billion ATM transactions in 2006, but only around 15 per cent went through Saswitch (which only deals with off-us transactions). This does not signify that there is little demand for off-us ATM withdrawals, but rather that there is restricted demand for such withdrawals at the high prices which the big banks have been able to impose.

<table>
<thead>
<tr>
<th>2006 – Volume</th>
<th>Absa</th>
<th>Standard Bank</th>
<th>Nedbank</th>
<th>FNB*</th>
<th>Total for big four</th>
</tr>
</thead>
<tbody>
<tr>
<td>On us</td>
<td>![on_us_absa]</td>
<td>![on_us_standard_bank]</td>
<td>![on_us_nedbank]</td>
<td>![on_us_fnb]</td>
<td>![on_us_total]</td>
</tr>
<tr>
<td>Off us</td>
<td>![off_us_absa]</td>
<td>![off_us_standard_bank]</td>
<td>![off_us_nedbank]</td>
<td>![off_us_fnb]</td>
<td>![off_us_total]</td>
</tr>
<tr>
<td>Total</td>
<td>![total_absa]</td>
<td>![total_standard_bank]</td>
<td>![total_nedbank]</td>
<td>![total_fnb]</td>
<td>![total_total]</td>
</tr>
<tr>
<td>Off us share of total</td>
<td>![off_us_share_absa]</td>
<td>![off_us_share_standard_bank]</td>
<td>![off_us_share_nedbank]</td>
<td>![off_us_share_fnb]</td>
<td>![off_us_share_total]</td>
</tr>
</tbody>
</table>


In Tables 7-9, the data are for all ATM transactions, including cash withdrawals and balance enquires, and where applicable, mini-ATM transactions. From Table 7, it appears that Absa, Standard Bank and ![bank_name] have been particularly effective in reducing the number of off-us transactions – both as a consequence of the high number of ATMs bearing their respective brands, and because of what are referred to as the relative “price incentives” associated with using one’s own bank’s ATMs.105 Once a bank has invested in ATM infrastructure, it makes sense to provide price incentives to customers to use the bank’s own ATMs, since the infrastructure becomes more viable, or more profitable, as more transactions are acquired through it. Typically, each ATM transaction will attract a fee. (It is perhaps worth pointing out that the price incentives to customers are sometime perverse – customers will travel some way to avoid paying off-us fees, discounting their travel costs in doing so.) Nedbank’s relatively small ATM infrastructure was bound to lead to a higher proportion of off-us transactions – which now make up around 27 per cent of the ATM transactions initiated by Nedbank clients.

In our view the expression “price incentives” in this context is self-serving and misleading. What is really happening is that price disincentives are applied to off-us transactions – enabling the on-us price itself to be raised to a supra-competitive level.106

At least 75 per cent of the off-us transactions are initiated at the ATMs of the big four banks, (i.e. more than three-quarters of all off-us transactions go through their terminals). This would include, for example, the clients of Investec, who by virtue of Investec’s membership

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106 The discussion of market power of the big four banks and their ability to price without reference to cost is dealt with in chapters 2 and 3.
of the ATM PCH can access the ATM network, even though Investec has no ATMs itself.\textsuperscript{107} 
Around 23 per cent\textsuperscript{108} of off-us transactions are initiated at the ATMs of the other nine participants of the ATM PCH.

![Table 8 Carriage revenue](https://example.com/table8)

<table>
<thead>
<tr>
<th>Carriage fee paid</th>
<th>Absa</th>
<th>Standard Bank</th>
<th>Nedbank</th>
<th>FNB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carriage fee received</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Carriage Revenue</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Banks' submissions, March and April 2007, Second Submissions, ATM Transactions.

In the data presented in the Table 8, the 2006 data for each of the big four banks is shown. The rows show respectively, the carriage paid away (when their customers use the ATMs of another bank), the carriage received, (when the customers of other banks use their ATMs) and the net carriage received. Two of the banks, Absa and FRB, are net receivers of carriage. This is not surprising in the case of Absa, which owns and brands almost twice as many ATMs as any other competitor. FNB’s case is rather more interesting, however. Ignoring mini-ATMs for now (which attract a far lower carriage), one might expect Standard Bank to receive the next highest value carriage fees, given that it is the second largest ATM provider.

While the carriage earned on mini-ATMs will make some difference, the extent to which FNB’s carriage earnings exceed those of Standard Bank suggests that FNB may have been more successful in identifying commercial locations for its machines than Standard Bank. The location of ATMs was raised by FNB as a critical factor in predicting winners and losers to any change in the existing model.\textsuperscript{109}

\textsuperscript{107} Investec did not take part in the Enquiry. We have not ascertained their reasons for not deploying their own ATMs. It may well be that their high net worth customer base is less likely to make numerous small cash withdrawals and hence they would be unlikely to be able to attract a sufficient number of transactions to enjoy economies of scale.

\textsuperscript{108} Bankserv, email correspondence of 3 September 2007.

\textsuperscript{109} For example in their February 2007 submission, Answers to the questions for discussion on ATMs/Saswitch.
Table 9 Gross ATM fee revenue from banks’ own customers

<table>
<thead>
<tr>
<th>R</th>
<th>Absa</th>
<th>Standard Bank</th>
<th>Nedbank</th>
<th>FNB</th>
<th>Total Big four</th>
</tr>
</thead>
<tbody>
<tr>
<td>On us</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Off us</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Off us share of total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Share of ATM revenue</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Banks’ submissions, March and April 2007, Second Submissions, ATM Transactions, q 20 and q 22.

The data in Table 9 above show that between them, the big four earned a total gross ATM fee revenue from customers of [redacted] in 2006, with Absa and [redacted] [redacted] (see last row of table). (Bankserv fees would need to be deducted and net carriage would need to be deducted or added as the case may be, in order to arrive at each bank’s own fee revenue. However, Bankserv fees were not supplied in every case.)

While we have seen that Nedbank and [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] with its small ATM infrastructure, earned close to [redacted] in off-us fees from its own customers – [redacted] Banks’ current ability to earn this revenue while not directly providing the cash dispensing service probably explains why Nedbank, in particular, placed such emphasis on possible negative consequences should the proposed change to direct charging be adopted. 111

110 The Standard Bank figures are derived estimates supplied by SBSA in a separate data submission dated 14 September 2007.

111 The list of “cons” on the direct charging model indicates their deep suspicion of the model. See Slide 12 of the Nedbank presentation at the hearings, 4 April 2007. Exhibit EE.
5.5 The argument for direct charging

The current Saswitch ATM network appears to have developed naturally as a result of each bank’s desire to provide its account holders with a convenient and easily accessible cash dispensing service. In terms of cost and risk sharing and enhancing one’s competitive offering, each of the banks has an incentive to share infrastructure and participate in a network arrangement that allows them to offer ATM functionality.

However the continued carriage arrangements and the indirect pricing to consumers raise a number of competitive concerns. These include the fact that it:

• Prevents competition between banks for the provision of ATM services to each other’s cardholders.

• Precludes the development of a cash dispensing market for non-bank providers.

• Entrenches each bank’s hold over its own customers in respect of its own ATM services, thus providing a shelter for uncompetitive on-us ATM pricing as well.

This section sets out the key arguments for direct charging. To begin, the justification of carriage on the basis of two-sided market theory is challenged. (The theory of two-sided markets is discussed more fully in the next chapter, on Payment cards and Interchange.) The argument for separating carriage fee arrangements from other interbank arrangements like the interchange fee on card transactions is set out. Thereafter, the competitive concerns associated with carriage are discussed.

The possibility of a two-sided market emerging, should direct charging be adopted and access for non-bank ATM providers be opened up, is then explored and finally some of the competition considerations associated with direct charging are examined.

5.5.1 Inapplicability of two-sided market theory to ATMs

The ability to draw cash from ATM facilities is usually provided as part of a bundle of services linked to an account at the bank. The bundle of services attached to the account generally includes the following transaction services:

• Receiving deposits to the credit of the customer (whether by cash, cheque, or electronic transfer)

• Enabling withdrawals by the customer whether directly or as a result of payments made by the bank on the customer’s behalf.

In terms of the arrangement between the account holder and the bank, a payment card is issued which allows the customer to perform various transactions electronically on his or her
This could be through the facility of an ATM (for purposes of a cash withdrawal) or through a point of sale device (for purposes of a debit or credit card purchase), or the internet.

In terms of transactional function there is no intrinsic difference between the merchant in the payment card purchase and the owner of the ATM cash dispenser. In both cases the cardholder has purchased a good or service, the issuing bank having transferred value to the merchant or the ATM provider, from the customer’s account.

So while the bank allows the transfer of value, there is a distinct transaction (in both the ATM and the payment card example) where the bank is not necessarily a party to the underlying transaction itself. In the ATM case, it is the cash dispensing service and in the payment card case, it is the sale of the item.

If the costs of providing the service at the point of sale are included this will not change the fact that the cardholder must participate in two distinct economic transactions. In this regard, the ATM cash dispenser could add by way of a charge (or deduct from the cash amount dispensed) an amount sufficient to cover the cost of dispensing the cash to the card holder. Similarly, the merchant recovers the cost of its service at the point-of-sale by raising the price of the item purchased (or conceivably by levying a separate charge). This is altogether separate from the service performed by the issuing bank in processing the payment necessitated by the purchase. For that service the issuing bank charges its account holder customer.

Currently in off-us transactions, as a result of the interbank arrangements and certain regulatory provisions which sustain them, the ATM service provider functions always as agent, or at least as mandatory, of the issuing bank. This applies both where the ATM owner is a bank and where the ATM owner is a non-bank whose terminals are contracted to a bank or banks.

Where only the issuing bank charges a customer for the ATM withdrawal, irrespective of whether the owner of the ATM is a bank or non-bank, the situation for off-us transactions is that, legally and commercially, the ATM owner supplies the issuing bank and the issuing bank supplies the customer. The issuing bank is thus involved as purchaser of the service in the one transaction and seller of the service in the other. This kind of matching of supply with demand occurs in any outsourcing arrangement and is not indicative of a two-sided market.

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112 Even a consumer who only transacts through the internet will typically be issued with a card, as the card number provides access to the internet banking facility.

113 “A contract of mandate is a consensual contract between one party, the mandator, and another, the mandatory, in terms of which the mandatory undertakes to perform a mandate or commission for the mandator.” The Law of South Africa, First Reissue, Vol 17, para 2, sv “Mandate and Negotiorum Gestic” by DJ Joubert and DH van Zyl. In our law “agency” implies in addition an authority given by the principal to represent him or her in concluding a juristic act.

114 For example, ATM Solutions or Bytes Technology Group.
A two-sided market involves two independent suppliers each transacting directly with a customer in respect of its own supply to that customer, in circumstances where the two separate supplies and the two demands need to coincide for either transaction to occur.

The carriage fee paid by the issuing bank to the ATM service provider is thus not in truth a species of interchange. It is simply a payment to that provider for the service which it provides to the issuing bank. All it has in common with interchange is that it is paid interbank. Interchange in contrast is not a payment for service provided. It is a balancing payment, which serves to overcome unavoidable imbalances between the costs and revenues on the two sides of a two-sided market where, but for the redistribution so effected, there would inevitably be a mismatch of supply or demand.

The current arrangement between the banks in respect of off-us ATM transactions is structured so as to eliminate all elements of two-sidedness in the market. The arrangement is one of reciprocal agency or mandate. This reciprocity is all-encompassing. The customer always belongs to the issuing bank. It is as customer of the issuing bank, and not as customer of the ATM service provider, that the customer receives and pays for the off-us service.

5.5.2 Competition concerns relating to carriage

Competition concerns related to carriage include several interrelated aspects that are discussed below. These are that carriage:

- Involves customer allocation, preventing competition between banks for the provision of ATM services to each other’s cardholders
- Precludes the development of a cash dispensing market for non-bank providers
- Entrenches each bank's hold over its own customers in respect of its own ATM services, thus providing a shelter for uncompetitive on-us ATM pricing as well.

We have shown above that cash dispensing is capable of being carried on as a service comparable to other services which are or can be performed by merchants, in respect of which payment cards are routinely used to effect settlement of the price between the customer and the merchant. Furthermore, there is no necessary connection between the cash dispensing service and deposit-taking: there is no need for the provider of the service to be a bank.

Why has the independent provision of ATM services to the consumer not been developed as a distinct market, standing on its own feet, and to that extent independent of the market in which banks provide deposit-taking and related payment services, including payment card facilities, to consumers?
Obviously, in this country, banks as deposit-takers were the first to appreciate the need for and advantages in automating the dispensing of cash which otherwise had to be dispensed to their account-holders by bank tellers. They were thus naturally placed to pioneer the development of the network recounted in section 5.2 and 5.3 above. However this initial development itself brought into being the potential for a further development of a different kind: the separation of cash dispensing as a commercial activity from deposit-taking, so that a distinct competitive market in (for example) ATM cash dispensing services became feasible.

In our view that potentiality has existed for some time, but has been prevented from bearing fruit by the historically established arrangements between the banks – together with certain regulatory provisions crafted by banks and their representatives in order to sustain and validate such arrangements.

We refer here not simply to the terms of the PCH agreement and clearing rules, as such, but also to the accompanying industry practice and agreed technical protocols which do not allow for the alternative. There is no provision either in the PCH agreement or in the corresponding clearing rules which expressly bars the collecting participant (the ATM service provider) from charging directly for transactions, and from recovering that charge from the paying participant (the issuer) by way of the customer’s payment instruction(s). However, it is clear that both documents are premised on the carriage model, in which the ATM service provider in off-us transactions provides that service to the cardholder on behalf of the issuing bank. Thus, Schedule 5 (par 1) of the PCH agreement states: “It is recognised that the parties will in the normal course of business conducted in terms of this agreement be obliged to process transactions on behalf of the other party and as such are entitled to mutually agreed upon compensation in respect of such services rendered.”  

The clearing rules document specifically “supports” the PCH agreement and states that, “[s]hould it happen that these rules differ from the agreement, the agreement takes precedence.”

The interbank arrangements which do not enable the off-us ATM service provider to charge the cardholder directly for the use of its machine have come to constitute, in our opinion, a form of customer allocation which restricts competition contrary to the objects of our competition law. Whether they also contravene the letter of the law is a matter discussed below.

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117 These objects include inter alia the promotion of competition in order to provide consumers with competitive prices and product choices. Section 2 of the Competition Act 89 of 1998.
“An agreement to divide markets is a classic method of cartelization,” writes the American appellate judge and antitrust author, Posner. In our Competition Act, section 4(1)(b)(ii) prohibits parties in a horizontal relationship (i.e. competitors) from agreeing or engaging in a concerted practice to divide a market and so restrict competition “by allocating customers, suppliers, territories or specific types of goods or services”.

It is enough that the firms be potential competitors. As was held in Nedschroef Johannesburg (Pty) Ltd v Teamcor Ltd and others [2006] 1 CPLR 98 (CT):

[Market division does not require that both firms be competitors prior to the act of division. If they are potential competitors this will suffice. Frequently firms will divide a market before they become de facto competitors precisely to avoid that outcome. Anticompetitive outcomes are no less serious as a result…]

Usually when markets are divided, this is done by allocating territories to different suppliers who would otherwise be competing with each other. But other forms of allocation may be just as effective in avoiding competition. Potentially competing suppliers may divide between themselves the products that each may manufacture. “In a horizontal customer division scheme, firms divide the market by classifications of customers – e.g., one chemical manufacturer will sell only to hospitals, another only to schools, and another only to factories, etc”. This is only one example of dividing a market by customer allocation.

Any agreement between or concerted practice by firms in a horizontal relationship which, by its nature, treats a particular class of customers as belonging to a particular firm or group of the firms for the purposes of a particular kind of supply – so that the other firms in that relationship, being potential competitors for that supply to the same customer or customers, are prevented from doing so – amounts in our view to a division of the market by means of customer allocation.

The particular agreement or practice must be characterised as restrictive of competition before it can be held to fall within the prohibition provided by section 4(1)(b). In American Natural Soda Ash Corporation and another v Competition Commission and others 2005 (6) SA 158 (SCA) the Court held that the essential enquiry is:

...to establish whether the character of the conduct complained of coincides with the character


120 In Palmer (supra) the U.S. Supreme Court declined to overrule United States v Topco Associates, Inc. 405 U.S. 596, 92 S.Ct. 1126, 31 L.Ed.2d 515 (1972), reaffirming that “agreements between competitors to allocate territories to minimize competition are illegal” and are one of the classic examples of a per se violation.

121 It is implicit in the requirement of a “horizontal relationship” that the parties could and probably would compete but for the restrictive agreement. See Neuhoff (ed.) A Practical Guide to the South African Competition Act, p 74.

122 See Nedschroef (supra) para 14.

of the prohibited conduct: and this process necessarily embodies two elements. One is the scope of the prohibition: a matter of statutory construction. The other is the nature of the conduct complained of: this is a factual enquiry. In ordinary language this can be termed ‘characterising’ the conduct...

While the judgment, which concerned alleged prohibited price-fixing contrary to section 4(1)(b)(i), left the question of the proper construction of section 4(1)(b) open, it suggested that conduct which is not designed to avoid competition but which “merely has that incidental effect” may not fall within the prohibition. As Sullivan and Grimes point out, “market division” is more than just a choice about what markets to serve. “The concept implies an effort to stifle or at least reduce competition in order to reduce output and increase price.”

How should the current interbank arrangements in South Africa for off-us ATM transactions — and in particular the arrangements concerning carriage — be characterised?

An arrangement whereby payment cards can only be used for ATM cash dispensing if the cash is dispensed by or on behalf of the issuing bank, is an arrangement that effectively prevents the service provider from having a direct commercial relationship with the customer in respect of that transaction where a payment card issued by another bank is used. The arrangement thus prevents the off-us provider from competing directly with the issuing bank for that piece of business with that customer.

The all-encompassing arrangement whereby the acquiring bank or the non-bank provider always acts on behalf of the issuing bank in off-us ATM transactions, and the concomitant absence of any arrangement to enable interoperability between the banks on the basis of direct charging for ATM services, amounts in our view, to an agreement (or at least a concerted practice) whereby the customer is effectively allocated, for purposes of off-us transactions, to the bank which issued the card. The customer is treated as “belonging” to the issuing bank.

If (to illustrate the point), banks were to decide to take in laundry and were then to arrange among themselves that payment cards issued by them could only be used to pay for laundry services supplied by the issuer or by a firm contracted to, or acting on behalf of, the issuer,

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124 Para [47].
125 See e.g. para [49].
126 The Law of Antitrust: An Integrated Handbook, 2nd edition, p 255. In our law and in other comparable jurisdictions, there are of course legitimate restraints of trade which involve temporary market division. “Thus [in the United States], one that sells a business can agree not to compete with the purchaser within a territory and for a time reasonably necessary to protect the capital value of the assets sold from undue erosion. The rule enables sellers to cash out the reasonable value of the good will in a business and protects buyers from the risk of paying for something that soon disappears.” Sullivan and Grimes, op. cit., p 231. Our law is similar. For our current common law approach to reasonable restraints of trade, see generally Reddy v Siemens Telecommunications (Pty) Ltd 2007 (2) SA 486 (SCA); Automotive Tooling Systems (Pty) Ltd v Wilkens and others 2007 (2) SA 271 (SCA); also e.g. Prism Holdings Ltd and another v Liversage and others 2004 (2) SA 478 (W); and see further Botha and another v Carapax Shadeports (Pty) Ltd 1992 (1) SA 202 (A).
127 The notion that the customer “belongs” to the issuing bank was in fact the very terminology used by SBSA at the Enquiry hearing in Cape Town on 13 November 2006. (Transcript 13 November p 117.)
would anybody doubt that this constituted unacceptable customer allocation (quite apart from other possible categories of restrictive conduct)?

Because the consumer is not free to shop around directly for the cheapest and most convenient ATM services but is treated as belonging to the issuing bank in all ATM transactions, banks’ own ATM services to their customers are also significantly sheltered from competition.

The customer is obliged to receive her or his ATM service as a service tied together with the issue of the payment card and the related bank account holding. In this way, banks’ customers are subjected to an unnecessary degree of captivity. To change ATM service provider – to enter into a direct transactional relationship with another ATM service provider – the consumer is obliged to change her or his bank. This is clearly inimical to competition in conditions where the potential for an independent market in ATM cash dispensing services exists.\(^{128}\)

Currently in the ATM network, each bank is a service provider to each other bank in the arrangement. It may be thought that, as suppliers to each other, the banks are simply in a vertical relationship where off-us ATM transactions are concerned. However, that approach fails to recognise that parties stand in a horizontal relationship to each other not only where they are actual competitors in respect of the same supply but where they are potential competitors as well. In other words: could and would these firms compete with each other for the same ultimate customers in respect of the service supplied but for the existence of arrangements between them to the contrary? In our view the answer to this question is yes – in respect of those banks engaged in supplying ATM services interoperably under the present PCH arrangements.\(^{129}\)

The arrangement between them whereby they are suppliers of ATM services to each other is at the same time an arrangement to the effect that they will not supply each other’s cardholders with ATM services independently when the card is used. As potentially

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\(^{128}\) This does not imply that ATM services necessarily constitute a distinct market for purposes of measuring market power. ATM services are nevertheless a distinct service, and section 4(1)(b) does not require that the whole market including that for substitute products or services has to be divided by the competitors before the section is contravened. Even where only two competitors among many allocate their own customers between themselves there may be a contravention if their conduct is properly to be characterised as such.

\(^{129}\) There is a further distinct aspect to the question whether the banks are in a horizontal relationship in regard to off-us ATM transactions. As we have seen, under current arrangements, when Bank A provides its ATM service in an off-us transaction, it provides that service commercially to Bank B, albeit that the actual use of the ATM is by Bank B’s customer. There is a supply arrangement between Bank A and Bank B, and Bank A charges its fee to Bank B for that supply. In each particular ATM transaction, therefore, the two banks involved are in a vertical relationship (the one supplying the other). But that does not mean that the two banks are not also in a horizontal relationship with each other in the market for the supply of such services by a bank to other banks. Inasmuch as each bank, in a number of transactions, will find itself in the position of Bank A, all of them are potential competitors, at least in the sense that the supplier could agree with the purchaser of the supply to make the supply at a different price, or not make it at all. The fact that they have agreed a common price means that the question properly arises as to whether there is an agreement between them, or a concerted practice by them, which ought to be characterised as prohibited price-fixing in contravention of section 4(1)(b) of the Competition Act. Similarly the question arises as to whether the effect of their agreement or concerted practice brings it into conflict with section 4(1)(a).
competing suppliers to the end consumer in off-us ATM transactions, all agree to make their supply only to each other, and at the same price. It could be argued that this entails price-fixing by firms in a horizontal relationship. At the very least they fix a trading condition.

Both in this respect and in respect of customer allocation, to the extent that it cannot be shown to be necessary it objectively serves a restrictive purpose either in actual contravention of, or at least at odds with the policy underlying, section 4(1)(b) of the Competition Act.

In its earlier development, the arrangements entered into between banks and other financial institutions, whereby the ATMs of the one were made available to the customers of the other, could not properly be characterised as the kind of conduct prohibited by section 4(1)(b). It may well have been necessary to develop the network that way. At least initially, it is unlikely that its purpose was conceived as anti-competitive. Nor is it likely that the arrangement would, in the sense now contemplated by section 4(1)(a), have initially had anti-competitive effects outweighing the pro-competitive gains inherent in the establishment and extension of the network. But a highly developed ATM network now exists, and the anti-competitive implications of the all-encompassing arrangements between the banks in this regard are now apparent.

As is dealt with more fully in our discussion of the feasibility of a direct-charging model for ATM services, interoperability can no longer be said to depend on carriage. No practical necessity now exists to justify the continuation of the present off-us ATM charging arrangements between banks. Nevertheless, there is a view that the banks could currently have a defence to a complaint brought against them for having contravened section 4 of the Competition Act by virtue of these arrangements.

This is not because we accept the argument advanced during the hearings that “concurrent jurisdiction” as contemplated by the Competition Act justifies the arrangements notwithstanding anything to the contrary in section 4. In an Appendix to this report, we consider the general principles likely to apply to a defence of “concurrent jurisdiction” – principles comparable to those which apply to the defence of “state action” (in the United

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130 See footnote above. Cf also Brennan et al v Concord EFS Inc. et al 369 F.Supp.2d 1127 (N.D. Cal), discussed below.

131 We note the interpretation given by the Competition Tribunal to “trading condition” in the context of section 4(1)(b)(ii) of the Competition Act, in Competition Commission v Patensie Sitrus Beherend Bpk (Case No. 37/CR/Jun01), decided on 8 April 2002. There the Tribunal concluded that the rules of a producer co-operative which required each producer/member to deliver his crop to the co-op was not a “trading condition” the fixing of which is prohibited under section 4(1)(b). In reasoning its way to this conclusion (per D. Lewis, F. Fourie and D. Maponya concurring), the Tribunal maintained the view that all that is required to sustain a complaint under section 4(1)(b)(i) is proof that parties in a horizontal relationship “have agreed to fix a price or any other trading condition.” However – without the benefit of the subsequent judgment of the Supreme Court of Appeal in American Natural Soda Ash (supra) – it approached the matter as if no characterisation of the conduct as restrictive of competition was called for. But it realised that this approach would make the prohibition too wide, so it cut down the meaning of “any other trading condition” so as to refer only to trading conditions which are “part of the price-quantity-quality nexus of the concerned transactions/trade” (para 35). This aspect was not addressed in the appeal to the Competition Appeal Court. In our view, even on the Tribunal’s version, setting uniform carriage would involve the setting of a uniform trading condition intimately related to the price and output of ATM transactions with end customers.
States) and “state compulsion” (in Europe). If the banks’ defence to a complaint, say, of market division by way of customer allocation in relation to off-us ATM transactions were to rest solely on the current PCH arrangements having been approved by PASA and ultimately the SARB, we would not be deterred from recommending the initiation and investigation of the complaint – leaving the defence to be tested in referral proceedings in due course.

The legal point we have in mind is a different one. For reasons set out in section 5.6.6 of this chapter, we have concluded that the regulations in force under the Financial Intelligence Centre Act 38 of 2001 (“FICA”) could present a challenge to the necessary change to a direct charging model for ATM transactions without a small technical amendment attainable by way of exemption. Notwithstanding the above mentioned view, there is another opinion submitted by the National Treasury\textsuperscript{132} which concludes that FICA does not create such an obstacle.

The point to be made here is that the current situation is one which needs to be changed. This chapter proceeds on the assumption that the slight difficulty which may be presented by FICA regulations can be and will be ironed out. We are firmly of the view that only a change to a direct charging model for ATM transactions would overcome the serious competition concerns that we have identified above. The fact that a direct charging model is accepted to be feasible, technically and commercially, shows that any necessity for the present arrangement – if we assume necessity once existed – has now fallen away.

Assuming that the necessary exemption is given, or the slight complication is otherwise cleared away, if the banks then fail to make all reasonable efforts to replace the current carriage model for off-us ATM transactions with a direct charging model, it would be difficult to avoid the conclusion that their arrangements have the purpose of restricting competition in contravention of section 4(1)(b). It could also, in our view, be shown that the anti-competitive effect of the arrangements is substantial, thus justifying a complaint in the alternative in terms of section 4(1)(a).

We therefore recommend that the Competition Commissioner should initiate and investigate such complaints in the event that a change to direct charging for off-us ATM services has not been made \textit{within one year} of this possible regulatory complication having ceased to exist.

5.5.3 Two-sided markets and direct charging

We have indicated above that carriage fees are not justified by two-sided market theory.

\textsuperscript{132} The National Treasury submitted this opinion by Adv MD Kuper SC, entitled Legal nature of inter-bank charging relationships – Section 21 of the Financial Intelligence Centre Act, 38 of 2001, on 30 November 2007.
Chapter 5 ATMs and Direct Charging

Should a change to direct charging be made, then ATM cash dispensing would more clearly reveal the characteristics it has in common with the provision by merchants of other goods and services directly in exchange for payment by means of payment cards. The question then arises whether, in this altered context of direct charging, two-sided market theory would apply.

If customer B, who banks with Bank B, uses the ATM of Bank A, a payment card is being used to effect the transaction and its acceptance is necessary to complete the transaction.

So long as the cardholder is dealing simply here with two banks, as the other transacting parties, it is difficult to see that the market can properly be characterised as two-sided. This is because, while two independent suppliers exist, two independent demands, which have to be reconciled, do not exist.

When, however, non-bank providers are able to enter the market for cash dispensing services, independent of an ATM agency relationship with a bank, there would be a further party, whose willingness to accept the payment card has to be taken into consideration.

In principle, if the costs and the demand elasticities on the issuing side were to be out of balance with the costs and the demand elasticities on the acquiring side in regard to such use of payment cards, there could in principle be redistribution by way of interchange to enable the two-sided market to function. But, as in the case of other merchandise and service provision, that would be confined to addressing any imbalance in the costs and revenues.

The cost of the actual service of cash dispensing is a different matter. Irrespective of whose ATM is used, the same customer will end up bearing this cost. There is thus no “two-sidedness” needing to be or capable of being balanced by interchange in relation to this aspect of the transaction.

One can readily envisage a situation where the cardholding customer making the off-us transaction is charged a fee to compensate the ATM provider for the cash dispensing service, and a fee to compensate the issuing bank for its service in processing the payment for the cardholder.

So far, no-one has suggested that interchange would in fact be necessary to enable a market for ATM service provision to function effectively on the basis of the direct charging model. As we explain in the chapter on Payment Cards and Interchange, where interchange is not necessary to the viability of a payment stream, it should not be allowed. Further reasons why interchange would be inappropriate in the ATM context are addressed below.
5.5.4 Competition considerations of the direct charging model

For the shift to direct charging to be a sustainable and beneficial change for the consumer, a number of issues need to be considered.

These include:

- Acceptable reciprocal arrangements between issuers or ATM providers
- Discriminatory pricing to customers of different issuers or ATM providers
- The compensation of the issuing bank.

**Acceptable reciprocal arrangements between issuers or ATM providers.**

It is not suggested that an ATM service provider (including a bank) should be precluded from offering its services to customers by way of, or with the assistance of, outsourcing arrangements or a joint venture with another actual or potential provider. The assessment of each such arrangement from a competition standpoint would depend upon its own facts.

Quite different in principle, however, would be a reciprocal arrangement of agency or mandate, whereby an issuing bank agrees with another issuing bank that each will service the other’s cardholders on the basis that the customer remains, for purposes of the transaction, simply the customer of the issuer. For reasons previously explained, this might well be considered as amounting to a prohibited agreement between actual or potential competitors not to compete in respect of each other’s cardholders for cash-dispensing business (i.e., for example, as customer allocation prohibited in terms of section 4(1)(b) of the Competition Act).

**Discriminatory pricing to customers of different issuers**

The possibility for price discrimination between different issuers or providers has been raised as a concern both by smaller banks that are part of the existing ATM network and by non-bank providers which have existing arrangements with a registered bank.

They envisage the possibility of, say, two large banks agreeing with each other a lower direct charge for dispensing cash to each other’s cardholders than the fee charged to the cardholders of other issuers. This would have the potential to seriously distort and retard the development of an independent market for ATM services. Such an agreement, if not ruled out by the terms upon which interoperability is established for purposes of the direct charging model, would have to be evaluated on its particular facts in the light of the Competition Act. It might warrant investigation in connection with possible anti-competitive effects (section 4(1)(a)), or indeed as constituting price-fixing (section 4(1)(b)). It might serve
to create or enhance the degree of market power on the part of one or more of the participants over its own customers or in the market more generally, and might, on that basis, give rise to a finding of exclusionary conduct amounting to an abuse of dominance (section 8 of the Competition Act). It might likewise constitute prohibited price discrimination if it is likely to have substantial anti-competitive effects (section 9).

The advantages of incumbency are so great, and the development of an independent market for ATM service provision is so important, that we are persuaded of the need to remove uncertainties by addressing the above problem on a regulatory basis before it rears its head.

Our recommendation is that 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.

On the other hand, unilateral discrimination in price between a bank’s own cardholders and other customers in the provision of its ATM services should not, we think, be prohibited. From a competition perspective, it appears to make sense to allow issuing banks to incentivise their clients (thereby offering the clients lower fees) to use their infrastructure. If an abuse of market power arises in such cases this can be addressed in terms of section 9, and possibly also section 8, of the Competition Act.

The compensation of the issuing bank

While the bulk of the costs for a cash withdrawal fall on the acquiring side, and include the installation of the machine, the cost of cash distribution, maintenance of the ATM, etc, there is clearly a basis for the issuing bank to charge a fee of its own, apart from the direct charge that flows to the acquiring institution. The issuing bank processes the transaction and performs other functions related to the transaction such as making the necessary payment on the customer’s behalf to the ATM service provider. Moreover, the current convention is that it is the issuing bank that pays Bankserv for the processing of the instructions from the ATM of another bank to the issuing bank and back again, and it is also the issuing bank that deals with customer queries. In principle, the issuing bank should be compensated for the work it does in ensuring a completed ATM transaction.

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133 Our Competition Act does not recognise “collective dominance”: the position of each firm has to be assessed individually. However, arrangements between firms, while they might not affect the market share of each participant, might enable one or more “to behave to an appreciable extent independently of its … customers…” and thus provide a basis for a finding of market power. (See Competition Act, section 7, read with the Appendix of this report).

134 Although the direct charging model has the potential for discrimination in that it allows a bank to offer a discount to its own customers in terms of on-us ATM transactions, this may occur in any ATM model. Currently, for example, Absa charges its customers more when they use the ATMs of ATM Solutions – which are branded and sponsored by Absa itself.

135 Although both of these conventions could presumably be changed.
There are two obvious possibilities in terms of facilitating this compensation:

- A direct charge by the ATM service provider, with a separate issuer fee by the issuer
- A direct charge with an “interchange fee” flowing from acquirer to issuer.

The direct charge with a separate issuer fee allows for both the acquiring institution or other firm that provides the cash dispensing and the issuer that processes the transaction to charge an explicit fee to the consumer. The key advantages of this model are that it potentially allows for price competition on both the acquiring and issuing sides, and avoids an interbank fee of any sort being set. In addition, there is transparency regarding the distribution of the relative fees, so the consumer knows what the ATM service provider charges relative to the issuer of the card.

This appears to be the approach proposed by the Australian banking industry which aims to have this model in operation by October 2008.

The key disadvantage is that the consumer may be only partially informed about the full charge at the time of the transaction – the direct charge by the ATM service provider will be known, but the issuing bank may charge a fee that is only appreciated by the customer later (as it appears on a statement). However, if customers are adequately advised generally in advance by their banks of applicable ATM transaction charges, and given ongoing consumer education, this disadvantage can be minimised.

A direct charge with an “interchange fee” would entail the ATM service provider collecting and transferring to the issuer the latter’s compensation for processing the transaction. The ATM service provider would charge an aggregate fee sufficient to cover not only its own costs plus profit, but also those of the issuer. The ATM service provider would then pay the agreed amount of “interchange” to the issuer for its share of the work. The direct charge displayed on the ATM screen would be all-inclusive.

The “interchange” in question would presumably need to be set on a multilateral basis, based on a study inter alia of relevant issuing costs and the extent to which these could not reasonably be recovered from issuers’ direct revenues. (See the approach to interchange discussed and recommended in the chapter on Payment Cards and Interchange.) A submission of Absa lists the possible basis for the calculation of the ATM “interchange” to include transaction processing costs, general overheads, fraud losses, disputes and system errors.

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136 In practice, of course, the issuer would deduct and retain this portion as the payment due to it when remitting to the acquirer the amounts appropriately debited from the cardholder’s account.

137 WWB, for Absa, September 2007, Direct charging models for ATM’s, p 10.
The key advantage of this alternative for the consumer appears to lie primarily in the nature of the all-encompassing charge for the ATM transaction. From the consumer’s point of view this allows for a simple “what you see is what you pay” system.

However, there are a number of concerns with this proposed model which make it inappropriate in our opinion.

First, as a matter of principle in competition policy, if agreement between parties in a horizontal relationship – i.e., between actual or potential competitors – goes beyond what is reasonably necessary for the proper functioning of a payment network, it ought not to be entertained. This must apply a fortiori to agreements involving price uniformity instead of competitive pricing. As has already been explained, we find no reason to conclude that any element of interchange would be necessary to enable a direct charging ATM network to operate effectively. There is no reason to allow the elimination of price competition on the issuing side.

Second, there is a significant danger that the use of ATM “interchange” in the context of a direct charging model would tilt the competitive playing field against non-banks, and indeed also to a lesser extent against smaller banks in the provision of ATM services directly to the public. This is for a combination of reasons.

The ATM provider would have to charge an aggregate fee high enough to include the “interchange” component to compensate the issuer as well as its own remuneration as acquirer. The impression may well be created among consumers that the off-us provider is the cause and beneficiary of the entire charge. That would tend to chill off-us transactions.

Even where interchange is legitimate, the difficulties in arriving at an appropriate level of interchange are acknowledged to be considerable. In this case, where banks are themselves ATM service providers and may have a continuing interest in discouraging off-us transactions, there could well be a heightened incentive to inflate interchange. Given that “interchange” is not necessary in the ATM context, this serves as an additional reason to avoid it.

For these reasons, in our view, “interchange” as a means of compensating issuers for their processing and related functions in off-us ATM transactions should not be permitted.

Our recommendation accordingly is that the necessary compensation to the issuer for the work that it does in connection with an off-us ATM transaction be obtained through the issuer levying its own charge directly on its customer, whether as a separate charge or in any other manner.
5.6 Implications of the direct charging model

5.6.1 Flow of funds in direct charging model

For the direct charging model, the carriage fee would be replaced by a direct charge, set by the 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 basic obligation to pay the ATM service provider would shift from the issuing bank to the customer, and so carriage would altogether fall away. In this instance – i.e. an off-us transaction – any existing basis for a “cash withdrawal fee” charged by the issuing bank would also fall away. It would remain simply for the issuing bank, if it wishes, to charge a fee in respect of its own processing and related service to its customer for using the payment card. A description of the model is set out below.

![Figure 5 Proposed direct charging model](image)

In the figure above, Cardholder B uses the ATM of Bank A, and agrees explicitly, by using the ATM key pad, to the direct charge. The request for funds will be processed through Bankserv (Saswitch), and if funds are available, authorisation will be given and the cash dispensed. The direct charge is recovered, together with the value of the cash dispensed, at settlement and the customers’ account will reflect both of these deductions. To be more specific, Cardholder B instructs Bank B to pay the direct charge plus the value of the cash dispensed over to Bank A on her or his behalf.

In this model, the issuing bank remains responsible for the small switching fee to Bankserv. Over and above this, the issuing bank may charge the customer for the work it has done,
and so the customer may be liable for a processing fee. All fees must be transparently recorded on the cardholder’s statement.

While this model does not necessarily reduce the number of charges, the consumer ought to face lower charges, as ATM providers are able to compete on the direct charge. The fees charged by the issuing bank will also become more transparent.\(^\text{138}\)

Whether in fact ATM charges do come down will depend upon whether the banks engage in effective price competition; whether there is entry by new ATM providers; and whether consumers are responsive to the new opportunities to shop around.

Direct charging undermines a fundamental source of power for the banks – that of control over customers in terms of the provision of payment services. In the case of off-us transactions, this has allowed banks to charge their customers for the services provided by others. This practice has served to obscure what each participant receives. This lack of transparency, together with the industry-wide setting of carriage, has ensured that the provision of ATM services has largely been sheltered from competition. Direct charging eliminates the need for any price setting or industry agreement relating to carriage, as the customer will be charged directly by the cash dispenser.

The elimination of the need to agree on the level of a carriage fee has been mentioned as an advantage of the direct charging model by most of the banks during the course of the Enquiry. This has much to do with the apparently widely held view that only bilateral negotiations of interbank fees would be deemed acceptable by the Competition authorities. In both the first and second round of hearings, banks also pointed to the logistical burden of having to conduct such negotiations on a bilateral basis for each of the payment streams.

There are a number of possible areas of concern associated with the implementation of the direct charging model. Among them is the possibility of discriminatory pricing with regard to areas, different times of day and the clients of different banks. We have given consideration to some aspects of this issue above, and will explore it further below.

### 5.6.2 Direct charging and interoperability

Direct charging has a number of potentially positive outcomes from the perspective of competition, but for it to be recommended in place of the existing carriage based model, we have needed to be sure that it would do no harm to the interoperability of the system.

Banks rightly regard interoperability as a basic requirement of a functional payment system:

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\(^{138}\) The Reserve Bank of Australia expects that the move to direct charging in Australia will ultimately lead to substantial reductions in the issuer’s off-us processing fee and – even to the abolition thereof. Media release, 13 August 2007.
The ATM network is not like a normal consumer market where e.g. retailer A is under no obligation to stock the branded goods of retailer B, or if a price cannot be agreed upon, they do not have to accept the goods. In the payments industry, banks are obliged to provide service to the customers of other banks in the name of interoperability.\textsuperscript{139}

The interoperability of the system relates to the ability of consumers (from any issuing bank) to use any ATM. Technically, this has been achieved in large part by the central switching hub - Saswitch, but also through the technical specifications of ATMs, including the standards implicit in the use of MasterCard and VISA.\textsuperscript{140} Historically, the PCH agreements (in terms of which members agree to accept the transactions initiated on competitors' ATMs) and the commercial arrangements associated with the carriage fee have served to underpin interoperability.

While the direct charging model proposed here would entail a change only in regard to carriage, some banks’ initial responses appeared to associate the model with the unravelling of all the existing arrangements. We believe the use of the central switching hub, the existing standards, and the ATM PCH agreement need to be retained. Since the PCH agreement has certain restrictive clauses, it would presumably have to be amended.

There was some suggestion that the carriage fee is required to cover unavoidable costs and provide an incentive to invest in ATM infrastructure. However, in our view it is clear from the submissions as a whole that direct charging provides an alternative model by which these unavoidable costs would be covered, with interoperability being maintained, and with incentives to invest being, if anything, strengthened.

From the outset FNB acknowledged “that there are a number of ways that ATM charges and fees can be charged and this is reflected in a number of different regimes across the world.”\textsuperscript{141} It went on to propose that, among alternatives to the current system, consideration should be given to:

The move to a model of elimination of interchange\textsuperscript{142} with ATM owners charging customers directly. This would involve dropping interchange altogether on ATM withdrawals, and so would be a significant change for the industry requiring careful investigation and consideration.\textsuperscript{143}

FNB later stated specifically, in answer to the Enquiry’s question whether “the carriage fees associated with ATM transactions [are] … essential for interoperability in the system”:

\textsuperscript{139} SBSA, October 2006, First Submission, p 56.
\textsuperscript{140} See for example, the rules stated in the VISA international operating regulations Ch 2, 4 and 8.
\textsuperscript{141} FRB, October 2006, First Submission, p 72.
\textsuperscript{142} The expression “interchange” is being used here, as in other quotations, to refer to carriage. That is also a way in which it was referred to in (e.g.) the Enquiry’s questionnaire to the banks on ATM transactions. We have subsequently clarified our thinking on the correct and incorrect use of the expression “interchange”.
\textsuperscript{143} Id., p 73.
Although cost recovery is essential to support interoperability, this does not necessarily need to occur via interchange fees.\textsuperscript{144}

Nedbank agreed:

It is Nedbank’s view that the current carriage fee is not essential for interoperability in the provision of a shared ATM network, as an alternative surcharge model could be adopted with an equal ability to support interoperability.\textsuperscript{145}

And further:

It is Nedbank’s view that the surcharge model is equally capable of addressing the critical success factors for offering ATM cash withdrawal services.\textsuperscript{146}

(The term “surcharging” is sometimes used by the banks to refer to direct charging, but we prefer to avoid it. It can lead to confusion with the US model where there is surcharging over and above carriage. For this reason, “direct charging” is preferred throughout this report.)

Although Standard Bank did not directly answer the question whether carriage was essential to interoperability, it implied that carriage is not in fact essential when it acknowledged:

For ATMs, “surcharging” [is an] alternative system of recovering network costs whereby the bank that owns the ATM (acquirer) surcharges the other bank’s (the issuing bank) customer directly on the use of the ATM, with no interbank fees paid.\textsuperscript{147}

Absa, too, did not directly answer the question about interoperability. It concentrated on expounding the historical role that carriage fees have played in the development of the ATM network and in its own investment in an extensive ATM infrastructure. It has been the existence of carriage that has made Absa willing to allow other banks the use of its ATMs.

This access is only provided because Absa receives compensation for some of their costs through the carriage fee.\textsuperscript{148}

While the ability of a direct charging model to ensure interoperability and the recovery of adequate compensation was not specifically addressed, it was implicitly conceded by Absa when it said that without carriage fees, one of the choices facing ATM operators would be “recovering the costs of network access by rivals’ customers through surcharges at the ATM”.\textsuperscript{149}

\textsuperscript{144} FRB, March 2007, Second Submission, Access and Interoperability, p 10.
\textsuperscript{145} Nedbank, March 2007, Second Submission, Access and Interoperability, p 63.
\textsuperscript{146} Nedbank, March 2007, Second Submission, ATM transactions, p 3.
\textsuperscript{147} SBSA, October 2006, First Submission, p 58.
\textsuperscript{149} Id, p 11.
It went on to develop arguments concerning “negative consequences that could arise if the current system of interbank fees was altered in any material respect”, which we address further below, and concluded that:

Absa believes that carriage fees are essential for consumer welfare benefits relating to ATM networks.

In a similar way, Standard Bank initially argued against a direct charging model (calling it surcharging) on the following lines:

We do not believe that a surcharging model would have any pro-competitive effect and would, in fact, have a negative social impact on the market for ATM services in South Africa.

The implication was that the carriage model is essential to avoid these negative social consequences. However, by March 2007, Standard Bank was prepared to concede that:

SBSA believes that the ATM infrastructure in South Africa may be sufficiently developed to eliminate the carriage fee and replace it with a model of direct charging...

Subsequently Absa, having performed some additional analysis in anticipation of the possibility that a change to a direct charging model might be recommended, provided the Enquiry with constructive views on various ways in which such a change could in fact be implemented. This was in September 2007, after FNB (in May 2007) and Standard Bank (in August 2007) had themselves undertaken preliminary studies and independently confirmed to the Enquiry’s Technical Team the feasibility of the envisaged change.

The responses, considered together, lead us to conclude that the elimination of carriage and replacement with direct charging will not undermine interoperability, taking fully into account the continued need for high standards of technical reliability. At the same time, certain rules will be required to ensure accessibility and affordability. Such rules are explored below.

5.6.3 Direct charging, accessibility and affordability

As indicated, some banks have raised concerns regarding the extent to which consumers may be placed at a disadvantage by a shift to direct charging.

Some of these arguments appear to link a shift to direct charging with other changes – such as the demise of the PCH agreement, for example. Standard Bank pointed to the complexity

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150 Id., p 10.
151 Id., p 12.
152 SBSA, October 2006, First Submission, p 58.
154 Absa, September 2007, Direct charging models for ATM's.
155 It is our view that balance enquiries could also be charged for directly, as well as the service of cash deposits at ATMs, although the latter would require some kind of agency arrangement with the issuing bank.
and large number of required negotiations that would pose a significant barrier to the entry of small banks. In a similar vein, Absa talked of how smaller banks would need to invest in their own ATM network as they would be “unable to access the existing ATMs of other banks”. As has been stated before, the proposed change has to do with pricing, not with disrupting the other technical and commercial arrangements.

The key arguments raised against shifting to a direct charging model relate to the extent to which consumers will be assured an accessible and affordable ATM service from the network and the possible confusion arising from such a change. These are discussed below:

- **Accessibility**
  
  A number of the banks, including FNB, Nedbank and Standard Bank, acknowledged that direct charging would provide incentives to acquiring banks to deploy ATMs. This suggests that investment in the ATM infrastructure will not be adversely affected and that the accessibility of the ATM network for consumers will not be negatively affected, should such a change be made. In our view, the model creates incentives for banks to compete for ATM transactions and opens the possibility of non-banks to independently deploy ATMs. Hence we would anticipate more, rather than less, ATMs in the direct charging environment.

  We are not persuaded by the contrary argument advanced initially by Absa. In particular, we reject the contention that, “[i]n the absence of carriage fees, banks will make decisions about the investment in ATMs on the basis of only their own customer base”, and such investment would not be justified in rural areas where “banks may have insufficient customers of their own to justify investing in an ATM because transaction volumes will be too low.”

  The assumption of the direct charging model is that ATM service providers (whether banks or non-banks) will serve all card-holding customers within a continuing interoperable network. The pricing flexibility that will accompany direct charging is, we believe, more likely to encourage ATM service provision in areas currently underserved, and where poor people often have to incur enormous additional costs and difficulties – including having to take taxis to other villages or towns – in order to get access to cash.

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156 SBSA, October 2006, First Submission, p 59.

157 Absa, March 2007, Second Submission, Access and Interoperability, p 12. A bank which refused to make its ATMs available on a direct charging basis to the cardholding customers of smaller banks while making them available to the bigger ones would likely face investigation for exclusionary conduct – quite apart from having to explain to its shareholders why it was foregoing the extra revenue.

158 Id., pp 10-12.
• **Affordability of ATM transactions**

  The banks hold different views regarding the effect a shift to direct charging would have on affordability. In its March 2007 submission, Absa pointed out that there was no certainty that consumer prices would be lower, and reiterated this at the hearings.

  FNB associated direct charging with price competition among acquirers which would encourage “entry, competition and innovation”. FNB also noted that “Acquirers would have to offer transactions at market-accepted levels”.

  Standard Bank were Nedbank are concerned that a shift to direct charging may lead to less affordability for those in remote areas. Nedbank stated that:

  In areas with lower population density, the impact of the increase in pricing to the card holder outweighs the benefit of access to more ATMs.

  We are not persuaded that the banks’ weighing of the relative costs and benefits will correspond with that of consumers who are currently seriously deprived of cash dispensing services.

  The possibility that an ATM provider could exploit its dominant position as a sole provider of ATM services by charging significantly more for the remote service than in an urban area, (price gouging) was raised by both Standard Bank and Nedbank. A higher charge may well be justified in a remote area – given the associated costs - as the banks themselves have pointed out.

  Should a particular ATM provider make super profits in a remote location, it is likely that other service providers will enter and introduce competition. This is all the more to be expected if access to the market is opened up, under appropriate regulation to non-banks. Nedbank indicates that market forces may be undermined, however, as the viability of maintaining an ATM is highly dependent on the number of transactions initiated, and two ATMs may not be viable in such areas. (Note that research

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160 Transcript 11 April 2007, p 7.
161 FRB, March 2007, Second Submission, ATM transactions (Initial Questions), p 5. Here one can logically take “acquirers” to be intended to refer to both bank- and non-bank ATM service providers.
163 Nedbank, March 2007, Second Submission, ATM transactions, p 21. Nedbank appears to be taking this view directly from the US literature on surcharging, which may not be strictly comparable with direct charging in South Africa.
164 SBSA, October 2006, First Submission, Standard Bank Voluntary submission to the Competition Commission Enquiry into Competition in Banking, p 58.
165 Nedbank, March 2007, Second Submission, Access and Interoperability, p 64.
suggests that a few hundred transactions a month can still ensure viability\(^{166}\) – but of course such calculations depend on the actual price of such infrastructure, information which was not made available to the Enquiry.) It appears that Nedbank is discounting the likelihood that the costs will not be standard across all acquirers – which may well work in the favour of consumers. Price competition in remote areas may well be more vigorous should non-bank ATM providers be permitted to operate independently of a sponsoring bank.

With regard to the compensation banks would receive from direct charging, we do not see any reason why they would be unable to fulfil their ATM commitments in terms of the Financial Sector Charter.\(^{167}\)

- **Uncertainty for customers resulting from differentiated pricing**

  The banks have pointed out that currently, within a particular market segment, their customer prices are standardised, regardless of when or where a transaction is initiated at an ATM. They have accordingly raised the possibility that under direct charging arrangements, cash providers may charge differentially, depending on the location, time of day and issuer.\(^{168}\)

  The last can perhaps be most easily dealt with: It appears to be commonplace that where direct charging (as opposed to surcharging) is adopted elsewhere in the world, a rule of non-discrimination on the basis of issuer holds. Such a rule would prohibit price discrimination on the basis of the issuing institution in off-us transactions, something that has been raised as a concern by smaller banks.\(^{169}\)

  Should this rule be instituted as we have recommended above, then the other possible variations of differentiating in price for peak hours, or remote areas remains. Such differentiation would not necessarily be anti-competitive, and could indeed serve to increase output and ultimately lower price. At the same time it is worth noting that differentiated ATM pricing for time and place is unprecedented in South Africa – although clearly possible under the current arrangements – and banks would have to consider the possible consumer backlash should they make such a move. The only differentiated pricing that currently may have geographical implications is Absa’s higher pricing structure for ATM Solutions ATMs, which are sponsored and branded

\(^{166}\) See for instance, data from the US which suggests that technology has advanced so that a mere 300 transactions per month make an ATM viable (ATM Cash Machines, 2007) and data on cash machines in the UK, which suggest that non-bank owned ATMs typically attract 550 withdrawals a month (www.apacs.org.uk).

\(^{167}\) These commitments are listed, for example by Absa, October 2006, First Submission, p 19.


\(^{169}\) See e.g. Capitec, March 2007, Second Submission, Supplementary Submission to the Banking Enquiry, p 2.
by Absa.\textsuperscript{170} These ATMs look distinct from Absa ATMs, although they carry the Absa brand, and are more likely to be located in remote areas. Hence customers in remote areas that currently bank with Absa are probably paying more for their ATM transactions than Absa’s city-dwelling customer base.\textsuperscript{171}

While bank customers may have a feel for the pricing of their own bank’s ATMs and even the pricing structure for off-us transactions, the ability to state these precisely is highly unusual.\textsuperscript{172} Direct charging would have the advantage that at the time of the transaction, the consumer would be told the amount of the direct charge.\textsuperscript{173} If the bank charges a processing fee over and above this, the consumer would probably only know the value later. While this falls short of full disclosure, it is at least much more information than is currently presented to the consumer at the time of making the cash withdrawal. In spite of this, banks have made much of the customer uncertainty that will result with direct charging.

Capitec, for example raised the following:

> The introduction of a surcharge in South Africa will create uncertainty among users of ATMs. It is not a concept we are used to and it may take a long time before it is fully understood …. One concern is that there may be factors that are used in setting surcharge fees that may discriminate against smaller banks, individuals or service areas …. It is therefore possible that every ATM may charge a different fee; some ATMs may be free, at others it may vary from town to town or even suburbs … Unsophisticated and illiterate users of ATMs may not be aware of the cost implications when using the ATM. Illiterate persons may not comprehend the effect of the surcharge with the transactions, paying more than [they] expected.\textsuperscript{174}

The uncertainty that consumers will have to deal with is of course associated with the extent to which banks themselves institute price differentiation for time and place. Hence while they make much of this, it will be entirely in the hands of the banks individually how much price uncertainty is generated, as they currently have exclusive right to acquire ATM transactions from consumers and hence levy fees. It is perhaps worth noting that the current fee structures are not necessarily comprehensible to even sophisticated customers.

Of course it is possible that, should independent non-bank ATM providers be permitted to acquire ATM transactions, they could have highly differentiated pricing, based on time and location. The extent to which this would generate consumer resistance would have to be weighed up by the service provider against the possible benefits of such an approach.

\textsuperscript{170} A premium of R2.80 is charged for each ATM transaction from an ATM Solutions machine. Absa, October 2006, First Submission, p 8.

\textsuperscript{171} This was confirmed by ATM Solutions in the hearing on 11 April 2007, in which Mr Kark confirmed that “a significant proportion of the machines provided and serviced by ATM Solutions are in rural and otherwise underserved areas”, p 27.

\textsuperscript{172} Kaufman Levin Associates, July 2007, Research Presentation.

\textsuperscript{173} And we recommend that the consumer must have the option to cancel the transaction free of charge, should the disclosed price be unacceptably high.

\textsuperscript{174} Capitec, March 2007, Second Submission, Supplementary Submission to the Banking Enquiry, p 2.
5.6.4 Direct charging and the smaller banks

A possible negative outcome of the model is that smaller banks might be less able to attract new customers, as their smaller ATM infrastructure will militate against their offering a meaningful discount to their customers for on-us transactions. Nedbank, for example, has stated that direct charging will lead to customers being attracted to banks with bigger ATM market shares.\(^{175}\)

There are two parts to this argument.

First, while it is impossible to predict the extent to which banks will offer their customers on-us discounts, it is a feature of the current model that customers of smaller banks already experience the disadvantage of a smaller ATM infrastructure, since they would be paying the disincentive fee over and above the standard cash withdrawal fee in more instances. Such customers must thus have reasons for signing up with smaller banks that outweigh the disadvantage of a small on-us ATM infrastructure.

Second, while direct charging will create a new dynamic, the assumption that appears to be implicit here is that banks will use the off-us revenue of the direct charge, as well as other customer account fees, to discount – or apparently discount – on-us ATM transactions. This will attract those customers who typically rely on many cash withdrawals. If this amounts to an abuse of dominance, it will need to be tackled as such.

However, if lower prices on the part of bigger banks are simply the result of competitive efficiency brought about by economies of scale, this should be seen as a positive competitive outcome for consumers. Although the adoption of a direct charging model will remove the shelter from relative inefficiencies, this is not an adequate basis to resist the change. As in other markets, when competitive forces prevail, smaller players have to rely on advantages such as flexibility, innovation and entrepreneurial drive in order to out-compete larger incumbents.

Some banks impress upon consumers the benefits of other electronic transactions, which avoid the need for multiple cash withdrawals. Hence one cannot assume that all customers will switch merely for the benefit of cheaper on-us transactions.

At the same time, each bank’s price for the direct charge for off-us transactions – which we assume will be standard for all card holders\(^{176}\) – will have to be pitched so as to maximise the usage of their ATM infrastructure, whether by their own or other bank’s cardholders. Hence there is a good prospect that competitive forces will bring ATM prices down.

\(^{175}\) Nedbank, March 2007, Second Submission, ATM transactions, p 21.

\(^{176}\) If a rule of non-discrimination on the basis of issuing institution is put in place, as we recommend.
5.6.5 Conditions for success of the model

There are two possible phases associated with a switch to direct charging: the first relates to the adoption of the direct charging pricing model and the second relates to allowing non-bank providers into the network. As noted before, the latter is not a foregone conclusion, but is a possibility that may arise – and in our view ought to be allowed – when the direct charging model is introduced.

The following appear to be necessary requirements should the direct charging model be adopted:

- **Industry-wide education**
  The shift to direct charging will require consumer education, the cost burden of which would fall to the banks. FNB has pointed out that changes to transaction processing are high risk in terms of customer knowledge and understanding etc. Since this would amount to a substantial change, there would be a need for education through different media and the process may require personal interaction in less sophisticated client cohorts.

- **Disclosure standards**
  Disclosure standards should include requirements for disclosure on ATM screens and the option for consumers to opt out free of charge once the direct charge has been shown. It would also need to be designed to minimise confusion for consumers resulting from changes to their previous ATM experience. Lessons from the UK indicate that these standards need to be agreed upon prior to implementation.

- **Agreed clearing and settlement procedures**
  Such procedures should allow the acquiring bank – or non-bank provider whether directly or through a clearing bank – to recoup its direct charge at settlement, along with the value of the cash dispensed, from the customer’s (i.e. the issuing) bank.

- **Software and possible hardware upgrades**
  Both banks and Saswitch (Bankserv) would need to make some changes. For example, banks would have to allow for direct charging disclosure screens on ATMs. Saswitch would have to be able to facilitate two claims for each off-us transaction – the amount of the cash dispensed and the amount of the direct charge. Moreover,

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177 See, for example, Grim and Balto, 1992.
178 FRB, March 2007, Second Submission, ATM transactions (Initial Questions), p 5. However, it should be pointed out that the banks do change their ATM interface from time to time, but do not necessarily re-educate consumers in this regard. Hence they may be overstating the case.
179 Absa, September 2007, Direct charging models for ATMs, pp 21-22 for example sets out a number of media and formats in which this education could take place.
the calculation of carriage would have to be eliminated. The facility to be able to track transactions would also be necessary.

- **The establishment of dispute resolution mechanisms**
  These mechanisms would form part of the arrangements associated with the PCH agreements between network providers. They would deal with matters such as which institution would be the first port of call for the consumer should there be a false transaction, or insufficient funds dispensed. Up until now, the consumer had no commercial relationship with the off-us cash dispenser, and would have automatically consulted his or her issuing bank should such queries have arisen. If direct charging comes into force, it is possible that the issuing bank may feel it has no incentive to sort out queries on behalf of the customer. Experience elsewhere suggests this is unlikely.

- **The establishment of network rules**
  This would include rules identified here as necessary for the success of the model, such as:
  
  - no discrimination between issuers in off-us transactions
  - arrangements to accommodate Mzansi cardholders (who are currently not charged an extra fee for off-us transactions)
  - arrangements for holders of payment cards issued abroad.

Should the adoption of the direct charging model be followed with a move to allow direct participation by non-bank providers, additional measures and concerns would have to be addressed. This would include changes to the ATM PCH agreement and the clearing rules. (This matter is dealt with at length in the chapter on Access to the Payment System, and only a few brief points are raised here.)

Participation by non-banks could take the form taken in the UK (through the establishment of a separate scheme such as LINK) to manage such an arrangement. This route would require a change to the PASA constitution to allow for a combined bank and non-bank scheme to be established under its auspices, and hence a change to the NPS Act. The establishment of an ATM scheme would require criteria for entry that would be objectively applied by the executives of such a scheme. This is further discussed in the chapter on Access to the Payments System.

As discussed in the chapter on Access to the Payments System, we consider that duly qualified non-banks should be able to become full participants in the clearing and settlement process of appropriate payments streams. While not necessarily becoming settlement participants, non-banks could alternatively acquire transactions, and present them to the switching operator, Saswitch, while still having a banker that would settle on its behalf. Should such a route be followed, provisions of the NPS Act would have to be clarified as
would certain clauses in the PCH agreement which relate to restrictions on the nature of the relationship between banks and non-banks in the ATM PCH.

5.6.6 Direct charging and FICA implications

It has been pointed out that the Financial Intelligence Centre Act, 38 of 2001 ("FICA") may pose a challenge to a change to direct charging for ATM services.\(^\text{180}\) However, there is also a view to the contrary.\(^\text{181}\) In our view, any possible challenge is no more than a technical anomaly which serves no policy objective, and can be overcome by a simple regulatory intervention on the part of the Minister of Finance.

In Mr Grobler’s (of the Banking Association) opinion, the challenge can be cured by a special exemption from the National Treasury. In our view it would be a simple matter for such an exemption to be promulgated,\(^\text{182}\) so as to exempt accountable institutions from compliance with the provisions of FICA in respect of a category of transactions\(^\text{183}\) – namely single transactions\(^\text{184}\) – in which the accountable institution provides an ATM service to a client for the purpose of the transaction a card not issued by or on behalf of that accountable institution itself.\(^\text{185}\)

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\(^\text{180}\) Memorandum by Stuart Grobler of the Banking Association, dated 23 April 2007 (File Ref: 35265), furnished to the Enquiry on 11 May 2007. He explained that “All ‘accountable institutions’ (which includes banks) are under statutory obligation to identify and know the client whether they are in an ongoing business relationship together, or whether the institution performs a “single transaction” that is not part of such an ongoing relationship…[W]ith the proposed direct charge model, the ATM owning (or acquiring) bank will be charging the client of the other (issuing) bank a direct fee, presumably recovered from his/her bank account via the switch network. In this case, the acquiring bank is no longer the agent of the issuing bank, but there is a direct banker-client relationship between the acquiring bank and the ATM-using client, for the single transaction. There is therefore an obligation under FICA….” (pp 1-2). The view that there may well be an obligation under FICA and reasons for such a view are considered in the Appendix to this report on FICA and Direct Charging.

\(^\text{181}\) Opinion by Adv. MD Kuper SC, in which he writes “The purpose of FICA is to combat money laundering activities and terrorist activities by establishing a Financial Intelligence Centre which can identify the proceeds of unlawful activities and make information available to the relevant authorities. An effective method of advancing these objectives is to require banks to verify the identity of their clients or those who act for their clients. This, no doubt, facilitates investigations into money laundering and the financing of terrorist activities. However no purpose can be served by requiring another bank which does not do banking business with the person concerned to undertake a like verification exercise. The Financial Intelligence Centre by definition already has the necessary information, or access to the necessary information, from the verifying bank which does have a banking relationship with the relevant individual. How can this purpose be further served by requiring duplicate or triplicate information from other banking institutions which are not involved in any banking business with that person?” (Submitted by the National Treasury, November 2007, Legal nature of inter-bank charging relationships. Section 21 of the Financial Intelligence Centre Act, no 38 of 2001, p 12.) Having regard to this context, Mr Kuper concludes that the customer in an off-us ATM transaction is not a “client” of the bank providing the ATM service in the sense contemplated by FICA, and that FICA therefore would not apply to the transaction so far as that bank is concerned.

\(^\text{182}\) As is pointed out in paragraph 3 of the Financial Intelligence Centre’s guidance note issued by way of Government Notice 715 in Government Gazette 27803 of 18 July 2005, FICA and the regulations “require that banks identify all clients with whom they do business unless an exemption applies in a given circumstance.”

\(^\text{183}\) See section 74(1)(b) of FICA.

\(^\text{184}\) A “single transaction” is defined in section 1 of FICA as meaning “a transaction other than a transaction concluded in the course of a business relationship”.

\(^\text{185}\) A qualification as to the maximum value of such exempted transactions would, we think, serve no useful purpose – having regard to the fact that the issuing institution would or could in any case impose its own limits on ATM transaction values, and would in each instance authorise (or decline to authorise) electronically the amount of cash to be dispensed or other payment undertaken through the ATM.
It should be noted that the opinion submitted to the Enquiry on behalf of the National Treasury dated 30 November 2007, concludes that an exemption would not be necessary. Absa also appears to share this opinion when it states "We are of the view that there will not be any FICA implications as a result of the introduction of a direct charging ATM model". Should the National Treasury issue a statement to this effect on which banks could firmly rely, the need for a special exemption may be avoided. Either way, certainty needs to be created for the industry in this regard.

An exemption – or statement of clarity by the National Treasury – would not undermine the anti-money laundering objects of FICA, inasmuch as, whenever an ATM is used to effect a withdrawal, transfer or addition of funds held on deposit to the credit of a cardholder, the accountable institution which issued the card and which keeps the customer’s account would have been obliged in terms of FICA – and would remain obliged – to establish and verify inter alia the client’s identity, and to maintain the prescribed records of the transaction. Each ATM transaction, even when carried out off-us, involves at the same time a transaction between the issuer and the cardholder as its account-holder in connection with the use of the card. An exemption for off-us ATM transactions of the kind suggested would thus not reduce the intended effectiveness of FICA in bringing about the proper detection and reporting of suspicious transactions.

5.7 Direct charging, mini-ATMs and cash-back

While we do not believe that the case for direct charging stands or falls on its ability to also deal with mini-ATM cash withdrawals and cash-back at point of sale, they are frequently touted as alternatives to ATM cash withdrawals. Accordingly, the existence of carriage needs to be examined here as well.

5.7.1 Direct pricing and mini-ATMs

A mini-ATM is a cashless device that is initiated as if it is a self-service activity, but requires the assistance of the merchant to fulfil the transaction. It is supported by the cash floats of merchants.

As in the case of ATMs, the mini-ATM carriage that flows from the issuer (who issues the card and charges the customer) to the acquirer (who provides the service and negotiates the

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186 Absa, September 2007, Direct Charging models for ATMs, p 19.
187 It should also be noted that the Financial Intelligence Centre Amendment Bill (B18 of 2008) has recently been published. If enacted, it would make provision (under a new section 43A of the principal Act) for the Financial Intelligence Centre or a supervisory body (after consultation with the Centre), where a category of accountable institutions is concerned, to issue by notice in the Gazette directives regarding the application of the Act. This may itself provide a basis for resolving any uncertainty. In terms of Schedule 2 of FICA, the SARB would appear to be the relevant supervisory body in this case.
188 Unless exempted, for example in terms of the above-mentioned paragraph 17.
placement of the mini-ATM in the merchant’s store), appears to be a compensation from the
issuing bank to the acquiring bank for the use of infrastructure by the issuing bank’s
customer.\footnote{There is, of course, no reason why suitably qualified non-banks couldn’t directly offer mini-ATM services, just as they could offer ATM services.} Once again, this is not a balancing payment between two sides of a market, in
other words it is not a form of interchange, but merely the payment for an outsourced facility,
that happens to have been agreed upon within the interbank space.

For these reasons, the direct charging approach appears applicable to mini-ATM
transactions as well. Nevertheless, we do not consider it advisable to recommend such a
change for mini-ATMs at this stage.

The submissions of the banks have raised aspects regarding mini-ATMs that need to be
considered. These include the fact that:

- Mini-ATMs are in their infancy and the existing model of carriage provides
  appropriate incentives for the roll-out of these machines – while taking into account
  the risk associated therein\footnote{SBSA, April 2007, Second Submission, ATM transactions, p 37.}
- Merchants are not regulated and hence cannot be trusted in imposing a direct
  charge\footnote{Id.}
- \footnote{Absa, September 2007, Direct charging models for ATM's, p 23.}

Various submissions confirmed the view that mini-ATMs are in their infancy. While no bank
appeared to accept the notion that ATM themselves now represent a mature market, it is fair
to say that the mini-ATM cash dispensing mode is new. However, there is some contention
as to whether or not the existing model of carriage provides appropriate incentives for the
roll-out of these machines and whether or not it takes into account the risk associated
therein.

Standard Bank's view on mini-ATMs was ambiguous\footnote{Contained in SBSA, April 2007, Second Submission, ATM transactions, pp 22-25 and pp 37-38.} and involved pointing out how the
clearing rules in the ATM PCH are \textit{not} adequate to deal with the possible additional risks
introduced by merchants. Moreover, MasterCard and Visa have not certified mini-ATM
devices. In addition, Standard maintains that some central banks have banned mini-ATMs.
However, Standard is itself experimenting with AutoMoney devices, which are mini-ATMs.
Hence, while it appears that Standard does not believe the current arrangements deal with
the possible risks, it appears to be arguing for the status quo with a slight tweak (for instance
by placing mini-ATMs in a separate PCH, or with that of debit cards).\textsuperscript{194} It also maintains that due to technical limitations, no participants in the ATM PCH can distinguish between mini-ATM and ATM transactions,\textsuperscript{195} and so while cheaper carriage fees have been negotiated with mini-ATM providers, customers are charged the same as for the full ATM service.\textsuperscript{196}

The irony is that the mini-ATM carriage fee that FNB has negotiated with its larger competitors (in one case as high as R2.50) is substantially greater than the default fee (of 25 cents) that a smaller bank would receive should it roll-out mini-ATM devices. Indeed, one of the non-bank providers, Smart ATM, is in such a position, where the smaller bank through which it operates by way of an outsourcing relationship has been unable to negotiate a carriage fee above the default for Non ATM Devices (NADs). The NAD default carriage fee of R0.25 was imposed sometime after Smart ATM had been operating under the auspices of the ATM PCH through its sponsoring bank. At the time, Smart ATM had negotiated an 80 per cent share of the ATM carriage fee, which was subsequently massively reduced to the default NAD fee after mini-ATMS were reclassified as such by PASA.\textsuperscript{199} If it is true that most banks in the ATM PCH cannot distinguish between ATM and Mini-ATM transactions, then while a carriage of R0.25 is paid away to the acquirer, the issuing bank charges the customer the full fee for an off-us transaction (on average in excess of R11).

While this bears out the concerns that are discussed more fully elsewhere about the problems of leaving interbank fees to be negotiated on a bilateral basis, it also raises the question as to why such a fee needs to be determined within the interbank space at all.

\textsuperscript{194} SBSA, April 2007, Second Submission, ATM transactions, p 22.
\textsuperscript{195} SBSA, April 2007, Second Submission, ATM transactions, p 25.
\textsuperscript{196} SBSA say they will be getting this soon. FRB appears to have it as they do mention lower customer fees for mini-ATMs.
\textsuperscript{197} FRB, March 2007, Second Submission, ATM transactions, p 4.
\textsuperscript{198} FRB, March 2007, Second Submission, ATM transactions, p 4.
\textsuperscript{199} Smart ATM, May 2006, The National Payment System and Competition in the Banking Sector, p 1.
As for the conduct of merchants, the concern is that it would be “difficult to monitor, detect and act against instances of customer abuse by literally thousands of merchants.” In the case of banks or registered ATM providers – so the argument goes – ensuring good conduct is far simpler. While this may be true, it is a frequent theme of the banks to presume that they alone have some kind of commitment to protecting consumers – while all other purveyors are to be considered suspect. However, the evidence does not support such a view. The potential dangers of a merchant in an outlying area abusing his or her dominance in the provision of mini-ATM cash dispensing is probably not very different from such abuse in the provision of any other good or service. There may be some abuse, but consumers are themselves reasonably savvy and abuse of cash dispensing services may lead to the loss of considerably more business than the merchant had bargained for. It is also unclear precisely what is meant by this abuse. Higher pricing by a sole trader in an outlying area may well occur – but is this necessarily abuse of the customer? The banks themselves have argued that they will feel at liberty to charge different prices for ATM services in more remote areas.

The point regarding the possibility of fundamental changes with financial consequences for a number of players is well made. The implications of having direct charging for mini-ATMs have not been fully considered by this study and there may be other issues which require further consideration. If carriage is to be retained in relation to mini-ATMs, then the appropriate carriage fee should be determined through an independent process, comparable with that which is proposed for the setting of interchange. This is outlined in the chapter on Payment Cards and Interchange.

However, the mini-ATM payment channel remains an example of how poorly the existing interbank and accompanying regulatory arrangements operate – arrangements that is, with regard to rule-setting in the PCH, process management dealing with banks and non-bank operators and both interbank and customer pricing. While banks say that mini-ATMs can improve the cash dispensing services to many of those currently underserved by branch and ATM facilities, they do not generally appear to have played as constructive a role as possible in ensuring this.

5.7.2 Direct charging and cash-back at POS

One of the anomalies of the South African retail payments system, which is highly sophisticated and interoperable, is the apparent delay in the facilitation of cash-back at point-of-sale. In less sophisticated payments environments, this feature became available more-or-less in line with ATM rollout as an attempt to provide consumers with alternative cash-dispensing services.

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200 SBSA, April 2007, Second Submission, ATM transactions, p 38.
In the UK for example, this was a widely used feature from the mid 1990s. In South Africa, this functionality is still in its infancy and hardly marketed at all. Indeed, only two large retailers (Pick n Pay and Shoprite Checkers) have instituted the facility, and it applies only to debit card transactions.

There are various reasons for this – including resistance to rolling-out a substitute for the ATM network which might undermine its profitability. Another must have to do with the uncertain application of the MasterCard and VISA rules prohibiting pure cash-back transactions (those not accompanied by a purchase). The VISA and MasterCard rules in this respect, and the extent to which they are observed in South Africa, are discussed in the chapter on Payment cards and Interchange.

As appears to be the case with mini-ATMs, there is little to support the view that those involved have done all that they might have done to support the development of this service.

However, adoption of direct pricing for cash-back at POS is complicated by a number of realities. As the banks are quick to point out, the POS device exists for a different reason – primarily to allow the processing of debit and credit card transactions – which clearly affects the economics and viability thereof. Hence, while dispensing of cash at a till may be highly effective, ultimately such cash dispensing would need, for the most part, to be accompanied by a purchase for it to make sense for the retailer.

The carriage for cash-back takes into account the following considerations:

- The retailer has cash at its premises (hence cash does not have to be supplied from elsewhere)
- The retailer adds to its revenue and reduces its overall cash handling costs by dispensing cash-back to customers as a service
- The investments in POS devices have already been made (typically by the retailer) and so no new investment is required.

These considerations have led to a far lower carriage fee in the case of cash-back at POS than in the case of a typical ATM withdrawal. (See Table 5.)

Given the infancy of cash-back at POS, and the dearth of information available to us in this regard, we are not in a position to draw conclusions as to whether carriage could effectively be replaced by a direct charging model in these contexts. We therefore recommend that the Competition Commission revisit this question once adequate experience has been obtained of direct charging in ATM services and consider at that stage the case for and against extending the direct charging model.
In the meanwhile, we recommend that the independent process of carriage setting referred to in connection with mini-ATMs above, be adopted for cash-back at POS.

5.8 International precedent and learning

Two countries – the UK and Australia - provide recent international precedent for the adoption of the direct charging model.

5.8.1 ATM pricing models in the UK

In the UK, direct charging was implemented as a dual alternate system in 1999. ATM providers have a choice of charging carriage, through interbank arrangements, or imposing a direct charge on the customer. The key reason given for the dual approach has to do with the historical adoption of the so-called “free banking” model, where customers are typically not charged by their banks for payment services if they have positive balances in their accounts (on which no or low interest is earned). There has been considerable consumer resistance to any moves away from this model.

The implementation of direct charging in the UK was associated with non-bank ATM providers gaining access to the network. This also dates back to 1999.

A scheme to allow for non-bank membership, known as LINK, was set up to manage arrangements. LINK has allowed for two pricing alternatives – one where carriage is retained (used by almost all of the banks in the network) and another where a direct charge is imposed on the consumer (used by non-banks). Where carriage is retained, the consumer experiences the cash dispensing service as “free-to-use”. This makes the ATM service provided by non-banks, for which a direct charge is levied, seem more expensive even if it isn’t – a situation far from ideal for competition.

The carriage fee model is dominant. Of some 60,000 ATMs in the UK, 35,000 are “free-to-use” and 25,000 charge a direct fee. Not surprisingly, 96 per cent of all ATM transactions are carried out through the “free-to-use” ATMs while only 4 per cent of the transactions are facilitated through the charging ATMs (the 25,000). Each ATM operator has a choice as to which of these two models it wants to apply. Most banks have only “free-to-use” ATMs, while the independent operators use the direct charging model. One of the banks does have pay-to-use ATMs, but these ATMs are deployed under another brand. In most cases there would be no charge to the consumer if they used a bank-branded ATM, whether it was an

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201 This was confirmed by the Office of Fair Trading in a tele-conference with the Enquiry’s Technical Team on 17 May 2007. The description of the current situation given in this section is our understanding of the situation at the time the information was received.

on-us or off-us transaction; however, if the consumer used the ATM of a non-bank, he or she would be charged a fee, as shown on the ATM screen, prior to the transaction.

Non-banks employ the direct charging model, as they find carriage levels too low. Double charging is prohibited, so a choice needs to be made between direct charging and carriage. A non-bank typically sets its direct charge at around GBP1.50 to GBP1.75 per transaction. This is a flat fee, and *ad valorem* rates are uncommon. The non-bank ATMs tend to be deployed in convenience areas, within pubs and stores rather than in the high street. While only 4 per cent of all ATM transactions are made through these direct charging non-bank machines, the non-banks still find the business profitable.

Almost all of the banks’ ATMs are “free-to-use” for customers of other banks; however, the issuing bank will be obliged to pay the acquiring bank the applicable “interchange” (i.e. carriage fee). One bank currently employs the direct charging method for other banks’ customers, but this is unusual. This particular pricing structure has led to most banks expanding their ATM network so that they can avoid having to pay the carriage. There may accordingly be over-extension of ATMs in some areas, while in other areas, the lack of viability of the “free-to-use” model has meant that there are relatively few bank ATMs. Commercially, banks have found the entry of non-banks to be acceptable. When a customer uses a non-bank ATM, the interchange is saved and the customer is charged directly.

**LINK**

There are currently 49 members of the LINK Scheme. New members are required to meet certain criteria, such as an evaluation of the business, the ability to ensure data protection and a viable business plan, which is discussed only with the Director of the Scheme. Existing incumbents are not consulted on the applications of new entrants, the decision rests with the Scheme’s executive.

LINK is divided into two distinct entities – the Scheme and the Company. The Scheme deals with inter-member trading issues and the rules of the game. There are three categories of membership: issuer only, acquirer only and issuer and acquirer. The Company is owned by 23 member banks and is a for-profit company that provides services to LINK scheme members under the rules set by the scheme. Like Bankserv, the LINK Company competes for switching business against VISA and MasterCard, and is currently cheaper.

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203 Prior to 1999, it appears a “foreign fee” of around GBP 1 was charged. Barclays, for example scrapped this on 5 July 1999, for most customers. Press release available on http://www.prnewswire.co.uk/cgi/news/release?id=42580.

204 This could be likened to the PASA Payments Clearing House for ATMs and its associated PCH Participant Group.

205 This could be likened to the Saswitch processing capability owned by Bankserv.
The carriage fees are set to recover acquiring costs, and the costing method employed includes items such as the cost of cash, rental space, IT costs, maintenance, telecoms and hardware costs. The data for both banks and non-banks are included in the annual costing study and four carriage levels are set: branch and non-branch cash withdrawals and branch and non-branch balance enquiries and reject fees.

The carriage for branch ATM cash withdrawals is currently set at around 20 pence and that for non-branch cash withdrawals at 31 pence. Balance enquiries or rejection fees at a branch ATM are around 10 pence and balance enquiries or rejection fees at a non-branch ATM are just under 20 pence. KPMG is currently the consultant commissioned by LINK to undertake the costing study.

In a tele-conference with the Office of Fair Trading (OFT) and the Enquiry’s Technical Team, the OFT pointed out that the carriage fee approach was allowed to be retained only because of the so-called “free-banking” model in the UK and consumer resistance to a change in this regard. The trade-off imposed on the industry for maintaining the carriage fee was that it would be set on the basis of an independent study, as described above. It was also pointed out that since the costing studies have been conducted, the carriage fee has been set at progressively lower levels.

We are advised that lessons relating to the adoption of the direct charging model in the UK include:

- With better handling and enforcement in the early stages of the expansion of the LINK membership, the reputational risk brought about by a few non-banks could have been avoided. The risk resulted from failure to disclose the direct charging approach adequately, while charging the client. This has now been addressed by setting requirements for disclosure to clients – such as minimum font size on the screen – and an opt-out choice for the consumer should he or she not accept the direct charge, and so on.

- In retrospect, the criteria for non-bank entry should perhaps have included safeguards on the probity of the business. While no non-bank has failed since membership has been extended to them, capital requirements would give the executive of the LINK scheme greater comfort.

The following is an extract from the Banking Association of South Africa (BASA) submission to this Enquiry relating to the implementation of the direct charging model. In the course of

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206 These data have been confirmed by Mr. Edwin Latter of LINK and Mr. Paul Smee of APACS, in interview on 11 June 2007.

207 As raised by Mr. Edwin Latter of LINK, in interview on 11 June 2007.

Banking Enquiry Report to the Competition Commissioner
Contains confidential information
its own investigation, BASA posed certain questions to LINK, and received answers as follows: 208

**How easy / difficult was it for the banks to change agreements & rules to incorporate carriage fees and direct charging?**
Issuing banks have been fairly relaxed regarding the implementation of surcharging [direct charging] as it saved them the carriage that they would pay in the alternative.

**Was the establishment of a set of minimum criteria with regard to direct charging not viewed as anti-competitive?**
No, the establishment of minimum criteria was not a problem.

**Who set the criteria?**
The scheme facilitated sessions between the banks and independent operators, who jointly agreed the rules.

**Why has the OFT prohibited double charging? Was it ever allowed or was it uncommon?**
Double charging was initially allowed. However, as a result of the political pressure relating to this practice, it was later discontinued.

**How were the Association rules (Visa & MasterCard) prohibiting ATM surcharging addressed?**
The Association rules were ignored as the transactions are facilitated via Link and not through the Associations.

**Are there any agreements between the Issuers and the Acquirers as to the level of direct charging that the Acquirers may apply?**
No.

**Can the Acquirer apply different direct charges in terms of:**

**Different Issuers, e.g. having preferential agreements with large Issuers versus small Issuers? If so, what was the impact of this on the smaller Issuers?**
Scheme rules do not allow for differentiation between Issuers.

**Different times of the day, e.g. charging a higher surcharge during peak periods?**
There is no restriction to such differentiation. It is however not something that is done.

**Different locations, e.g. having higher surcharge in rural areas which have low transaction volumes?**

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208 In their telecom of 6 June 2007. Note that the terms carriage and direct charging have replaced the terms interchange and surcharging, for consistency.
Direct charging does differ per location as mentioned earlier. In exclusive locations, the fee may be higher. However, in low income areas free-to-use ATMs are being deployed due to political pressure.

In contrast to South Africa, where each existing PCH member has to provide written permission for a new entrant to operate in the payment stream, in the UK the LINK executive applies the criteria for entry into the scheme objectively. The decision to permit entry is not referred to existing members.

5.8.2 Direct charging in Australia

From 1 October 2008, the direct charging model will be adopted in the Australian ATM networks. This is a consequence of an industry agreement reached in August 2007.\textsuperscript{209}

The stimulus for change arose from the concerns expressed in a 2000 review, and reiterated in 2005, by the Reserve Bank of Australia and the Australian Competition and Consumer Commission, regarding the bilaterally negotiated carriage fees at the time. In particular, a substantial mark-up on off-us fees was seen to persist owing to a lack of competitive pressure in the setting of the fee.\textsuperscript{210}

The length of time that the Australian industry took to consider the move to the direct charging model led some to suggest that they must be having doubts about such a move. For instance, both Nedbank and Absa cast doubt during the hearings in April that the direct charging model would ever be adopted across the Australian industry.\textsuperscript{211} Within a few months, they were contradicted.

The changes agreed to by the Australian industry include liberalising access to the ATM network.

The key elements of the proposed system are:

- The development of objective and transparent entry requirements, and the obligation of incumbents in dealing with new entrants
- The clear disclosure of any charges levied by the ATM owner before a customer proceeds with a transaction

\textsuperscript{209} RBA, 2007, Reform of the ATM System in Australia. Media Release, 31 August.
\textsuperscript{210} CRA, 2007. Implementation of direct charging in Australia. Submitted by ABSA.
\textsuperscript{211} See Transcript 4 April 2007, p 64 and Transcript 11 April 2007, p 211-212, respectively. For example, Mr Norton (for Absa) stated: “I think the industry has moved away from that proposal and the current proposal as I understand it, that is on the table in Australia, is the retention of bilaterally negotiated interchange fees but with oversight by the Reserve Bank in Australia to ensure that those fees are at the appropriate level. That seems to us to be the position in Australia after sort of lengthy and careful consideration of the very similar issues that you are looking at today, and it might be helpful for the panel maybe to have regard to the Australian experience because it may have some bearing on your deliberations”.
• The abolition of bilateral interchange (read carriage) fees paid by banks and other financial institutions to ATM owners for the provision of such services.

The carriage fee in Australia is typically around Aus$1, and as elsewhere is seen to be objectionable as the fees are:

... neither transparent to customers nor subject to the normal forces of competition. With these fees abolished, ATM owners are free to charge customers who use their ATMs, but must disclose the fee, increasing the overall transparency of pricing.212

At the time of writing, the self-regulatory code for the new model had yet to be finalised by APCA (the Australian Payments Clearing Association). It is expected that the code will forbid discrimination by issuer. APCA currently has 80 members including the Reserve Bank of Australia, building societies, credit unions and banks.

In addition, it is expected that issuers will be able to charge a fee to their customers for the processing work they have done. Currently, issuing banks pass on the carriage fee to customers when they make use of another institution’s ATM, with a fee that is typically between AUS $1.25 to AUS $2. This is considerably higher than the on-us fees imposed on customers, ranging from 20 AUS cents to 50 AUS cents.213

The lessons from the Australian case are that:

• Other jurisdictions are uncomfortable, as we are, with interbank fees that are sheltered from competition. Moreover, competition does not appear to be advanced by the bilateral negotiation of such fees
• The direct charging model clearly appears to be entirely feasible
• Access to the network by non-deposit-taking institutions is both conceivable and supported by the shift to direct charging.

5.8.3 Surcharging in the United States

The discussion above has excluded any examples from the US, where a system combining surcharging and carriage exists.214 In our view, this is not a particularly functional model, nor

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212 RBA, 31 August 2007, Reform of the ATM system in Australia, Media release.
214 The element of carriage faces ongoing legal challenge. In Brennan et al v Concord EFS Inc. et al 369 F.Supp.2d 1127 (N.D. Cal), plaintiffs claimed that banks and others owning ATMs in the Star ATM network committed violations of section 1 of the Sherman Act by setting fixed “interchange” (i.e. carriage) fees in off-us transactions. This constituted – so it was alleged – horizontal price-fixing. The plaintiffs relied purely on the defendants’ conduct being condemned per se, and disclaimed any intention of proceeding on a “rule of reason” theory. The defendants moved to dismiss the action before trial on the ground that Star was a pro-competitive cooperative joint venture subject only to rule of reason analysis. This contention was rejected, and the motion to dismiss on this ground failed. Walker, Chief Judge, after an extensive review of the US authorities, held that horizontal restraints in the context of a pro-competitive joint venture “remain unlawful per se unless they are necessary to (or, in certain formulations, ‘reasonably ancillary to’) the achievement of the joint venture’s pro-competitive benefits.” (At 1135.) The question whether “interchange” (i.e.
does it have any particular redeeming features. It is set out here merely to bring out the
differences between it and the direct charging model proposed.

ATMs were introduced into the US in the 1960s. Initially customers were only able to
withdraw cash from their own branded ATMs but banks soon realised that unit transaction
costs declined with an increase in volume. The US, unlike SA, has many networks and this
led to the formation of shared ATM networks which could link machines from regional and
national networks to one another and thereby increase the volume of transactions by
increasing the access to the customer through off-us transactions.

In the mid-1980s banks introduced a service fee for off-us transactions for ATM withdrawals.
"Interchange" (carriage) fees were established to compensate ATM owners for the costs of
handling network transactions that were not their own. A uniform fixed “interchange fee” was
set collectively by network operators and rules against surcharging by ATM service providers
were initially adopted. This restriction did not survive legal attack. The ATM service provider
became free to charge a surcharge over and above the carriage applicable within the
network.

In the surcharging model, a carriage fee is still payable by the cardholder’s bank to the ATM
owner. A direct surcharge may also be levied on the cardholder by the ATM owner. In this
case, the ATM owner receives the proceeds of the carriage, the direct surcharge, and the
cash dispensed at settlement. The carriage is an interbank fee, which is set by the network
participants and would not be subject to competition. The surcharge on the other hand is set
by the ATM owner and is an additional charge to the normal carriage fee. To the extent that
the surcharge fee is disclosed, before the transaction is initiated, this fee would then be
transparent.

Surcharging provides ATM owners with the opportunity of generating direct fee revenue and
may even act as a strategic tool for potentially attracting account holders who wish to avoid
surcharging by making on-us transactions. The probability of surcharging increases with a
bank’s market share of ATMs. The average level of surcharging in the US has reached an
all-time high in 2007 to its current level of USD1.64.

In a direct charging model, in contrast, carriage is not charged. A direct charge is simply
levied by the ATM owner (or acquirer) to customers using cards issued by other banks. This

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carriage) was necessary, or whether the network could viably rely on “surcharging” (i.e. direct charging) alone, was a
question of fact which could only be determined by a trial. The latest information which we have been able to obtain at
the time of writing indicates that the case is proceeding to trial.

While one of the authorities relied on in the analysis was Dagher v Saudi Refining Inc. 369 F.3d, 1108 (9th Cir.2004) –
subsequently reversed in Texaco Inc. v. Dagher, 547 U.S. 1, 126 S.Ct. 1276, 164 L.Ed.2d 1 (2006) – it should be noted
that the reversal turned on the fact that the Supreme Court, in contrast with the view of the Court a quo, considered
the price in question in that case to be simply an integrated joint venture’s own price to its customers, and that accordingly
no price-fixing between competitors had taken place.

In Brennan, the Chief Judge noted incidentally that “interchange” (i.e. carriage) in the ATM context is structurally
different from interchange in the context of payment card schemes.
charge is recouped, together with the cash dispensed, at settlement. In addition, a processing fee covering the switching fee for routing transactions through the network, and other processing costs, may be charged by the issuing bank. Fees in the direct charging model are set unilaterally in each case by the institution offering the service. These fees can promote transparency to the customer. Competition is enhanced as off-us pricing will be done on a competitive basis between banks.

5.9 Other pricing models

In this section, two models other than direct charging are briefly reviewed. The lesson to be learnt from them is that each one is likely to provide a different competitive dynamic – with different winners and losers.

The two models are:

- Elimination of “Saswitch” premium or “convenience” fee to the customer
- Setting of carriage by an independent third party.

5.9.1 Elimination of the “Saswitch” premium or “convenience” fee

FNB proposed an elimination of the so-called “Saswitch” premium fee (also known as the convenience fee, the interbank fee and the disloyalty fee\(^{215}\)). As a result customers would have the benefit of experiencing the same price for ATM withdrawals whether they are made at their own bank’s ATM or that of another service provider or bank. However, the carriage fee – the amount which is paid over by the issuing bank to the acquiring bank – remains intact. Hence, while reducing the price to the consumer, the banks within the network continue to pay the carriage fee over to each other if their consumers use another bank’s ATM terminal.

FNB argued that this proposal has the benefit that “from day one there will be a reduced direct cost to customers of at least R500 million”.\(^{216}\) The proposal grabbed media attention, but closer scrutiny shows that the proposal in this one-sided form is far from adequate and would in any event tend to distort competition and thus not ultimately benefit the consumer.

As we have shown earlier in this chapter,\(^{217}\) the aggregate amount of carriage that Bank B, in its role as card-issuer, pays away to Bank A and other banks in their role as ATM service providers to Bank B’s cardholders, depends on factors such as the relative extent and

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\(^{215}\) So-named, for example, by Capitec, March 2007, Second Submission, Supplementary Submission to the Banking Enquiry, p 1.

\(^{216}\) Transcripts of 9 November 2006, p 33 and 3 April 2007, p 55.

\(^{217}\) See section 5.4.5 above and especially Table 7 and Table 8.
convenience of Bank B’s own ATM infrastructure made available to its customers. Conversely, the amount of revenue that Bank B will receive by way of carriage from other banks will depend on its provision of ATM infrastructure relative to theirs, and to their ability themselves to meet their cardholders’ ATM needs. The relationship between the size of a bank’s card-issuing base and the size of its ATM infrastructure will clearly play an important part in whether it is a net payer or net receiver of carriage.

The fact is that some banks are net payers of carriage and others net receivers. The simple abolition of a fee category which serves (whether in whole or in part, or in excess) to recover carriage paid away, can only disadvantage the net payers of carriage relative to those which are net receivers. In other words, it is not neutral in the competition stakes between banks that are simultaneously issuers of cards and providers of ATM services.

Since the customer would have no incentive to seek out her or his own bank’s ATMs – given that there is no longer a pricing differential – it is likely that a bank with a small acquiring but relatively large issuing base would find that a disproportionate number of withdrawals are off-us, resulting in considerable value (in the form of carriage) being paid away to competitors. Only a bank with a relatively large acquiring base, reinforced by confidence in the location of its ATMs, would be likely to find the proposal sustainable and attractive.

### Table 10 The number of ATMs and cards issued for each bank

<table>
<thead>
<tr>
<th></th>
<th>Absa</th>
<th>Standard</th>
<th>Nedbank</th>
<th>FNB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of ATMs (incl. mini-ATMs)</td>
<td></td>
<td>3,863</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of cards issued (debit and credit)</td>
<td></td>
<td>21,605,659</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ratio of card issued to ATMs</td>
<td>5,593.0</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Source: Banks’ submissions, March and April 2007, Second Submissions, ATM Transactions.*

The ratio of the number of cards issued relative to the number of ATMs deployed is indicated in the last row of Table 10. The higher this ratio, the worse off the bank tends to be with the forgoing of the “Saswitch premium”, while still having to honour the carriage fee payable to the acquiring bank.

A large issuing base is likely to result in a higher number of Saswitch transactions. Unless balanced with a large acquiring base and the ability to generate a large number of off-us transactions from customers of other banks, this is likely to result in higher carriage fee payments to other acquiring banks.

As was revealed in the hearings, the key constraint to the implementation of such a change would be that all banks within the ATM PCH would need to agree to implement the abolition of the Saswitch premium together. If one bank were to implement this unilaterally, the
savings to the consumer would not be guaranteed and it is unlikely that this would be sustainable. In the words of FNB, its proponent,

... in the process we would lose a lot of volume from our own devices that would go to competitive devices, rendering our devices far less economical. And what would simply happen is that we would shoulder the load on our own and our devices would become less efficient. ...it would be extremely naive from a commercial perspective if we were to do something like that.218

In addition,

... the possibility of us attracting enough customers by dropping that fee (the “Saswitch” premium) to cover the very significant loss we would take, in our assessment is probably unlikely.219

Part of [the] reason for this is that the Saswitch fee (“Saswitch” premium) is ultimately different to other prices in the sense that if you drop it you do not get additional business, you lose carriage...220

The hearings revealed that none of the banks, apart from FNB, was in favour of the proposal of dropping the “Saswitch” premium while carriage remained. Nedbank said bluntly:

We do not believe we should spend a lot of time on the FRB proposal. By their own admission they would be mad to do it.221

In fact FNB admitted only that they would be “mad” (not their expression) to do it alone. If it were implemented across the board, they would stand eventually to gain.

However, we do not believe that the proposal, even if so implemented, has merit. As this chapter has explained, the source of the problem lies in the system of carriage as the means of compensating the off-us ATM service provider. This system has complex anti-competitive effects, including the sheltering of issuing banks’ prices for both off-us and on-us transactions from effective competition. Nominally eliminating one fee category would not prevent one or more other fee categories from creeping up to recover the lost revenue. The present problem would thus not be tackled at root, but merely be obscured in a way calculated to impress and lull the paying public while disadvantaging other banks relative to the bank that has made the proposal.

In our opinion, it is not an acceptable alternative to the change to a direct charging model which we recommend.

219 Id., p 110.
220 Id., p 120.
221 Transcript 4 April 2007, p 94.
5.9.2 Independent third party to set carriage fee

The notion of an independent third party to set the carriage fee may be influenced not only by the UK example, but also by the approach emerging in various jurisdictions as far as the interchange for card payments is concerned. The justification for this approach is that where there is a two-sided market and a four-party model, it may be necessary to balance the revenue generated in a way that is commensurate with the costs in order to ensure participation on both sides of the market.

While this would be a departure from the process by which carriage has been set, the argument is that if this approach can provide assistance in the case where debit and credit cards are used in other transactions, then why not in the case of ATM transactions?

Essentially, acquiring banks would provide details of their costs to a third party. The third party would then, using an agreed methodology, arrive at the uniform level of the carriage fee payable by the issuing bank to the acquiring bank.

In the UK, the LINK ATM network has a dual system in which both banks and non-banks are involved in providing cash dispensing services. Both a carriage fee system and a direct charging model are employed – although never together. Where the carriage fee applies (typically between banks that do not charge their consumers an explicit ATM withdrawal fee), it is calculated by an independent third party, in this case KPMG, on the basis of the costs of both issuers and acquirers including those that do both. Hence the use of an independent third party has a precedent.

It is our view, however, that there is no justification in South Africa for carriage to continue to exist in regard to ATM transactions. The submissions made to the Enquiry do not point to the need for carriage to continue – in fact all of the banks which engaged in the argument have admitted that carriage is not essential to interoperability. While the banks raise social concerns that might arise should carriage be abolished and a direct charging model be introduced, none of their concerns appears insurmountable if sensible rules are implemented. The benefits of a pricing structure that is transparent and subject to forces of competition outweighs any appeals to the retention of the existing model on the basis that in the eyes of the banks "it ain’t broke, don’t fix it".