[redacted]

October 11, 2018

Mr R Sims

Chairman

ACCC

Dear Sir

Inquiry into foreign currency conversion services

The following is a submission in respect to the above inquiry.

Having read the Issues Paper I note in a no. of its sections that the ACCC is not limited in its examination of related issues and therefore I make a submission in respect to the ACCC examining the Economic Justification of Fees charged for A$ transactions undertaken with Overseas Vendors by use of a credit card.

Background

In April 2014 [redacted] introduced a 3% fee for transactions in A$ undertaken with Overseas Vendors. I questioned the Credit Card Terms & Conditions (CCT&C) upon being charged such a fee and following 17 months of correspondence with [redacted] whilst incurring further fees, the FOS ruled in my favour that Westpac was not entitled to charge such fees.

[redacted] refunded the sum of $20mill. to 820,000 card holders (see attached newspaper article). [redacted] subsequently changed its CCT&C to allow for the charging of the fee.

Following [redacted] reporting of the above to ASIC it appears that ASIC undertook a review of other banks charging such a fee and [redacted] was found to have a similar deficiency in its CCT&C and was required to reimburse 223,000 cardholders the sum of $5mill (see attached newspaper article and extract from Banking Royal Commission papers).

In addition to questioning the charging of a fee under the CCT&C I questioned the Economic Justification for such a fee with [redacted] (a [redacted]) together with putting the issue in front of RBA, ACCC & ASIC without getting a justification or an organization willing to examine the matter.

My questioning of the Economic Justification arises from my examination of the manner in which my transactions were undertaken and comparing them to transactions which required the conversion from foreign currency.

Rationale for Review of Economic Justification

Credit card foreign currency transactions are undertaken with Overseas Vendors in the following manner by cardholders –

Whilst overseas the transaction is completed in foreign currency and converted by the card provider e.g Visa daily and appears on the cardholder's statement showing the foreign currency amount, the A$ equivalent and the A$ fee.

Whilst overseas the cardholder is given the option of being charged in foreign currency or A$ and if the latter is chosen the conversion is carried out in real-time by a third party and appears on the cardholder's statement in a similar manner to above. This type of transaction is defined as Dynamic Currency Conversion and uses a special card reader that recognizes the home currency of the cardholder's card. I am aware that ACCC has examined and prosecuted in respect to the provision of these services.

From Australia by Internet or Telephone and converted by the card provider and appears on the cardholder's statement in a similar manner to above.

Credit card A$ transactions with Overseas Vendors are carried out in Australia in the following manner and I provide four examples of transaction types I have undertaken –

By Telephone with the Overseas Vendor which quotes an A$ price which is accepted. Attached is a copy of my [redacted] undertaken in this manner June 10, 2014 which was the first time I was charged a fee. My telephone call was to an Australian telephone no. and [redacted] advised me the transaction was undertaken in Ireland.

By Internet with the Overseas Vendor which quotes an A$ price on its website (I suspect that the website is programmed to recognize the internet enquirer's address location and provides a home currency price). Attached are two examples of these transactions firstly [redacted] June 7, 2016 and secondly [redacted] June 28, 2015, the latter I believe was undertaken in Luxemburg.

By Internet with the Overseas Vendor which quotes in various currencies, including A$ on its website, but does not allow a transaction in the home currency of the Vendor for non-residents of his home country. This transaction was for the purchase of a sheepskin from NZ. Attached is a copy of the transaction together with correspondence which I will refer to below in explaining why a review of the Economic Justification for fees on A$ transactions should be carried out.

All of the A$ transactions appear on the cardholder' statement as an A$ amount together with the A$ fee.

Reasons for Review of Economic Justification of Fees for A$ transactions with Overseas Vendors –

There have been recent reviews of A$ Merchant Fees and ATM Fees in Australia which have resulted in reductions in such fees for merchants & cardholders but Overseas Transactions Fees have not been reviewed. In the majority of local transactions in Australia no fee is paid by the cardholder as the merchant meets the cost.

The level of Fee (3%) being charged for A$ transactions with Overseas Merchants is the same as for Foreign Currency transactions but no conversion of currency procedure is undertaken.

[redacted] makes no charge for A$ transactions with Overseas Merchants whilst Banks issuing [redacted] make such a charge.

The costs of undertaking the A$ transactions with the Overseas Merchant is incurred by the Merchant and therefore does not justify the level of fee charged to the cardholder by the banks.

My correspondence with the Overseas Merchant from NZ (attached) identifies how the transaction is undertaken –

The Merchant produces a Price List in various currencies and puts it on its website (prices can be updated daily to take account of currency movements).

The Customer undertakes a transaction in his home currency or an alternative currency offered but not NZ$.

The Merchant has a multicurrency facility with its bank which enables it to convert the various currencies received to its home currency at its cost. This was confirmed as a process in my discussions with [redacted]

The Merchant pays his fees to the card providers.

I trust I have provided sufficient information for the Inquiry to review this matter but I can be contacted [redacted] for any clarification.

I would appreciate being advised that this matter will be reviewed in the Inquiry.

Yours sincerely

[redacted]

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Ombudsman wary of tribunal

Sally Rose

The financial services ombudsman has warned a banking tribunal could make matters worse for consumers.

Financial Ombudsman Service (FOS) chief ombudsman Shane Tregillis has urged the government to hold off deciding whether to establish a new banking tribunal and instead refer the idea to the independent panel, led by Prof. Ian Ramsay, it appointed last month to conduct a review into the external dispute resolution and complaints schemes in the financial sector.

The FOS is one of three external dispute resolution bodies covered by the Ramsay review, alongside the Credit & Investments Ombudsman (CIO), and the Superannuation Complaints Tribunal (SCT).

Mr Tregillis said that as an independent dispute resolution body the FOS remained "neutral" and would not "take sides" in debates as to whether customer outcomes in the financial services sector would be improved by a royal commission or "other means", such as a banking tribunal.

However he flagged concerns that a banking tribunal could lead to a "more costly, adversarial and legalistic approach" to dispute resolution for consumers and small businesses.

"If it [a banking tribunal] results in a system that is more legalistic, less accessible, less open, then that's not something we would support," he told *The Australian Financial Review*. "It depends on the design."

Treasurer Scott Morrison said last month he was open to hearing proposals on the establishment of a tribunal to hear victim grievances against banks. The idea continues to gain traction as the government wards off pressure for a banking royal commission.

Mr Tregillis said he would only support changes to the financial services dispute resolution framework that "reduced complexity" for consumers.

This is contrary to the guiding principles underpinning the trio of external dispute resolution bodies that were set up to provide consumers who had been unsuccessful in resolving small disputes with their financial services provider a free alternative to seeking redress through the legal system, he said.

In his address to the FOS annual conference in Melbourne on Thursday, Mr Tregillis pushed for an industry-funded compensation scheme of "last resort" for those missing out on ombudsman-ordered compensation because their financial services provider went out of business.

There are currently around $16 million worth of determinations ordered by the FOS that remain unpaid.

Shane Tregillis says a banking tribunal may make things worse. PHOTO: WAYNE TAYLOR

Australian Bankers' Association chief executive Steven Munchenberg, who in April offered in principle support for the scheme, expressed some concerns that as the largest players, banks would have to pay more even though their clients were the least likely to call on the scheme.

Financial Planning Association chief executive Dante De Gori said it was also important that problems with inadequate public indemnity insurance be addressed to reduce the risk of planners going out of business and leaving consumers in the lurch.

Mr Tregillis also pushed for the Ramsay review to recommend a merger of the competing financial and credit ombudsman offices.

He said 20 per cent of complaints heard by the credit ombudsman were referred via his office and having multiple dispute bodies for the financial services sector added unnecessary complexity for consumers.

Head of the CIO Raj Venga last month told the *Financial Review* he was opposed to a merger.

Westpac refunds $20m on cards

Clancy Yeates

Westpac has refunded $20 million after it failed to properly inform credit card customers that they would be charged foreign transaction fees for overseas purchases made in Australian dollars.

The payments, to 820,000 customers, were triggered by a customer complaint over being charged fees for Australian dollar transactions that were processed by overseas merchants.

The Australian Securities and Investments Commission said that from 2014, Westpac's terms and conditions failed to disclose that customers would be charged a "foreign transaction fee" when they paid in Australian dollars to an overseas entity. This included banks located overseas, Aussie dollar purchases from an entity outside Australia, and many types of online purchases.

"This may have led customers to believe that a foreign transaction fee would be charged only when a transaction was made in a foreign currency that required a conversion into Australian dollars at the time of the transaction," ASIC said.

Foreign transaction fees are generally charged as a percentage of the purchase price, typically up to 3.5 per cent of the transaction. It is understood 80 per cent of the refunds paid by Westpac were less than $25.

ASIC said Westpac had taken a co-operative approach, alerting it to the error and changing its terms and conditions so the charges are disclosed.

Citi puts blame on Visa, Mastercard

ames Frost

nternational banking giant Citi has oined the big four banks in rejecting he preliminary findings of the Hayne oyal commission and invited counsel ssisting to withdraw the assessment f events that led the bank to refund ustomers $5 million in transaction ees just 12 months ago.

Citi also sought to shift some of the lame for the issues with the fees to redit card providers Visa and Master-ard for the errors, describing changes o transaction rules made by the pay-nent giants as technical and commu-icated poorly.

Unlike the other banks, neither the Citi case study nor its witness, con-umer business manager Alan Machet, vere given a hearing despite being ssued with a summons and scheduled o appear.

The banking royal commission was orced to abandon because of time estrictions a planned public examina-ion of the case study and Mr Machet nd instead publish their conclusions fter the hearings had concluded.

The case study has its roots in a September 2014 rule change by Master-card where it said it would begin defin-ng a "cross-border transaction" as any transaction where a cardholder's country code differed from the country code of the merchant.

Citi would pass fees for these transactions on to consumers under the guise of International Transaction fees of about 3.5 per cent on any transaction where the shop owner or service provider was based overseas or used a foreign bank.

Citi says the wording used by Mastercard when notifying its transaction partners was complex and was not communicating the change with customers. Citi says it has not been able to locate Visa's notification.

Over February and March of 2017, the bank would refund $5 million to 229,936 card holders including Citi's partner organisations such as Bank of Queensland and Virgin Money. It followed $20 million in refunds made by Westpac to customers in September 2016.

Counsel assisting said was it open to Commissioner Kenneth Hayne to make findings of misconduct against Citi for breaches of the Corporations Act and the National Consumer Credit Protection Act as well as failing to comply with the Banking Code of Practice.

Counsel also argued it was open to find evidence of conduct that fell below community standards and expectations and that the inadequacy of Citi's internal systems contributed to the problem in the written statement.

But Citi has invited counsel assisting to "withdraw the proposed finding of misconduct", citing procedural fairness. The bank said its witness was not given a proper opportunity to respond and flesh out what had transpired properly.

Citi said that the banking royal commission must following the path of other royal commissions before it and be "intellectually sustainable, tempered by restraint" and bear in mind the damage it can do to reputations in a heartbeat.

The response from Citi is one of more than 20 documents published by the royal commission on its website from banks, mortgage brokers, regulators and customer groups on Thursday. The submissions all deal with consumer credit.

The royal commission has announced the next round of hearings will focus on financial advice and has added AMP to its list of companies it wishes to examine.

The Australian Financial Review understands the third tranche of hearings will deal with business loans.

customers in respect of car finance, the need for further explanation of car finance intermediaries and credit providers made these case studies a logical choice.

Westpac provides car finance under the brand names of St George and Bank of Melbourne and those loans are typically received via dealer intermediaries. We will hear evidence of a borrower and her experience of obtaining finance through an intermediary. The second case study in relation to car loans concerns Esanda Finance, which was owned by ANZ. As we have noted, ASIC has recently secured penalties in respect of breaches of the National Credit Act for lack of verification of borrowers' payslips. And this case study will look more broadly at the practices of Esanda in assessing and verifying loans through intermediaries.

We will also explore case studies dealing with credit cards and offers for increases to credit card limits. We will hear evidence about Westpac's approval of credit card limit increases in breach of the National Credit Act. Westpac recently completed a remediation program in respect of 3400 customer accounts, with a total of $11.3 million being refunded to consumers. We will also explore the incentive and remuneration programs of Westpac and CBA in respect of employees at those banks who are involved in the sale and marketing of credit card products.

The final case study involves Citibank's failure to properly disclose international transaction fees in respect of Australian Dollar transactions on credit cards. Those fees arose where the merchant used afternoon overseas-based bank or entity to process its transactions. In 2017, Citibank refunded approximately $5 million to around 223,000 credit card consumers. As with many case studies we have spoken of, this case study will be a useful example from which to consider the adequacy of entities' responses to consumer harm and whether internal processes and practices are in keeping with communicate standards and expectations.

The case studies we will examine in these hearings raise a number of common themes and questions for consideration. These include the following: first, was the misconduct in question attributable to a particular culture, system, or practice within the entity, including, in particular, in relation to remuneration, incentive or commission arrangements? Second, why did the misconduct go undetected and in some instances for a long period of time? Third, were the entities' processes adequate to prevent and detect the misconduct? And, fourth, did the entity respond in a timely and sufficient way to the misconduct?

Some case studies will present an opportunity to consider each of these questions, while others may present only a few. Over the course of the next two weeks, evidence will also be presented from a number of members of the public who will share their consumer lending experiences. The individuals who will give evidence include a home loan customer who has experienced financial hardship, a purchaser of unsuitable add-on credit card insurance, a car loan customer who experienced hardship after taking on a car loan, and a consumer with various credit cards and debts.

[redacted]

From: [redacted]
To:
Sent: Saturday, 25 April 2015 6:50 AM
Subject: [redacted] Shipped

Hi [redacted]
Thanks for your assistance.
Regards
[redacted]

----- Original Message -----
[redacted]
Sent: Saturday, April 25, 2015 6:44 AM
Subject: RE: [redacted] Shipped

Hello [redacted]
I can certainly provide details of how we charge.

For your order we billed you in Australian dollars so there was no currency conversion required by your bank, hence us feeling their overseas fee being unjustified. Our website prices are updated each day Monday to Friday and we don't benefit from exchange rate conversions as could be the case with dynamic currency conversion. Our Australian dollar prices are discounted by 2% compared to other currencies due to the slightly lower cost of delivery.

I hope this info helps.
Kind Regards

[redacted]

From: [redacted]
Sent: Saturday, 25 April 2015 8:12 AM
To: [redacted]
Subject: Fw: [redacted] Shipped

Attn [redacted]

I would like a favour from you "one Kiwi to another Kiwi".

The issue of the foreign currency fee has been around for a year and I have had the fee from another vendor refunded and have been debating the issue with numerous levels of my bank.

A journalist is now onto it and has published extensive articles in the last few weeks headed -

"Dynamic currency conversion - robbery by choice"

"Banks feast on fees as they sting travellers"

For my purpose of addressing the issue with the bank could you provide me with answers to the following -

Did you charge my card with an A$ amount (A$111.53) or did you charge my card with a NZ$ amount which when converted by Visa would result in my card statement showing A$111.53?

One of the articles by the journalist states that a portion of the foreign currency fee is paid to the merchant as an incentive for charging the card holder in their home currency, is this correct?

The first question is the important one for my request for refund whilst the second is not an issue to me but thought you may be missing out on a benefit.

Trust you can assist.

Regards

[redacted]

----- Original Message -----
From: [redacted]
To: [redacted]
Sent: Tuesday, April 07, 2015 3:24 PM
Subject: Re: [redacted] Shipped

Thanks for response. Your billing was correct it was an additional charge on my [redacted] statement.
Regards

> ----- Original Message -----
> **From:** [redacted]
> **To:** [redacted]
> **Sent:** Tuesday, April 07, 2015 2:40 PM
> **Subject:** RE: [redacted] Shipped
>
> Hello [redacted]
> I'm sorry to hear you have been charged more than we billed.
>
> The extra you have been charged was added on by your bank. Despite us billing in Australian dollars (so no conversion is needed), a few banks make this charge just because we are based outside of Australia. We also see it as "double dipping" and think it is totally unjustified, so feel free to complain to your bank and see if they'll refund it.
>
> I can confirm we charged just the AUD$111.53 amount and we paid the credit card merchant fees at our end.
>
> Do let us know how you get on with this.
>
> Kind Regards
>
> [redacted]
>
> ---
>
> **From:** [redacted]
> **Sent:** Tuesday, 7 April 2015 3:59 PM
> **To:** [redacted]
> **Subject:** Re: [redacted] Shipped
>
> Thanks for advice. Could you assist me with a query on my charges on my [redacted]. My bank has charged me a foreign currency transaction fee of 3% as if I made a purchase in NZ$ whilst my transaction with your firm was in A$. I suspect the bank may be "double dipping" and charging us both. Your transaction would involved a conversion of A$ to $NZ and I expect you were charged for that, is that correct?
> Your response would enable me to query my bank [redacted]
> Trust you can assist.
> Regards
> [redacted]