SUBMISSION TO THE ECONOMICS COMMITTEE INQUIRY INTO COMPETITION WITHIN THE AUSTRALIAN BANKING SECTOR

13 December 2010

Mr John Hawkins
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Hawkins,

My submission is sent to the Senate Economic Committee's Inquiry into competition in the banking sector in the two sections.

It draws the Committee's attention to matters that inhibit the independence and competition between banks when offering services with upper limits to customers based on principles set out in the Code of Banking Practice (the Code).

My submission alleges that:

1. The Code allows the twelve banks to act as a cartel with practices governed by major banks containing safeguards dictated by a few. This is anticompetitive because banks promote a Code that is anti-competitive and fails to compete on safeguards in respect of customers' services (Annexure A).

Insofar as the Code is subscribed to by the major banks, the banks have engineered a monitoring and review process intended to protect their interests. The banks act as a cartel in which their collegiate position is presented to all customers instead of each bank fostering superior banking practices based on competition.

The lack of competition allows an agreement to limit benefits they offer customers as no bank can destabilise or undermine an arrangement of some time. The arrangement means each subscribing bank must retain the status quo as the monitoring and review practices fit the needs of their most powerful and influential members.

This agreement was designed by the banks' Association and bank CEO's to limit the protection they offer customers which is in the banks' best interests to maintain and it requires all the banks not to break ranks. If customers can switch banks to obtain more competitive rates or terms, competition for banks providing superior services and protection would further add to every customer's package.

2. The bank arrangements mean their pro-forma offers to customers require their customers comply with the banks Facility Offer and General Standard Terms whilst the banks are intended to comply with the Code, when in fact, banks can circumvent their Code commitments (Annexure B).

Annexure B demonstrates the anticompetitive relationship banks have with each other to retain control of their customer's. The banks bind customers to the Facility Offer and General Standard Terms whilst protection afforded to customers is misleading and potentially in breach of provisions under the Trade Practices Act.

With government legislation and non-bank regulation, each bank could adopt its own competitive standards of monitoring and review and promote a competitive advantage within an enhanced legal and supervisory framework. This could be supported by a commitment to prescribe Codes with basic principles of fairness and honesty.

In such circumstances, banks could not continue to act as a cartel because safeguards would be effective and not require their customers to rely on the courts for redress complaints as was the definite view of the Martin Committee in 1991.

I will be happy to appear before the Committee to answer any questions that arise from this submission.

Yours sincerely,

Archer Field

Enc: Annexure A, *The Australian Bankers' Problematic Code* dated 5 December 2010; and Annexure B, *Pro Forma Offer* which incorporates the bank's *General Standard Terms* and the *Code of Banking Practice*

DOCUMENTS SETTING OUT A PRO-FORMA OFFER WHICH BANKS REQUIRE SMALL BUSINESS CUSTOMERS' SIGN

Banks present a Facility Offer (Attachment B1) to customers bound by General Standard Terms (GST) (Attachment B2). Clause 35 of the GST states 'relevant provisions of the Code (Attachment B3) apply to this facility agreement if you are an individual or small business.'

- The Facility Offer presented to a subscribing bank's customer states that it: 'offer[s] facilities on the terms set out in this Facility Offer (B1, page 1 of 7) and the enclosed GST'.

- On 24 May 2004, the attached Facility Offer stated: '*by signing this document, you accept the facilities on the terms set out in this Facility Offer between you and us and acknowledge that [it is] a legally binding contract created between you and us [and] you have made your own independent judgment and decision to enter this Facility Agreement* (emphasis added) (B1, page 6 of 7).

- This offer was made by one of the twelve major banks was untruthful when the cartel relationship between the banks meant they did not have to comply with the Code as they had limited the powers, independence and authority of the monitoring Committee to investigate non-compliance and misconduct.

- When this offer was signed, the monitoring Committee was appointed by the banks and the BFSO (B3, clause 34(a)); the 2004 Code was published setting out 'the [Committee's] function is to monitor… compliance under this code' (clause 34(b)(i)) [and] investigate, and to make a determination on, any allegation… that [the bank] breached this code' (clause 34(b)(ii)).

- The GST states: '*[banks] may vary provisions of this facility agreement … if we do, we must notify you as required or permitted by the Code* (clause 30.2) *[which] applies to this facility agreement if you are an individual or small business*' (clause 35) (emphasis added). This is incorrect because banks had introduced an unpublished constitution limiting the Committee's powers.