CONSUMER COUNCIL OF FIJI

A Submission to Commerce Commission on Banking Fees and Charges, and Competition

15 March 2011

1.0 PURPOSE OF THIS PAPER

The purpose of this submission is to highlight lack of competition in the banking sector which has adverse consequences on the consumers. The Council on behalf of consumers and the business sector calls on the Commerce Commission to investigate the fairness of the levels of interest rates charged and paid, and the fees and commissions levied by banks in Fiji.

2.0 INTRODUCTION

2.1 In Fiji, consumer concerns against the conduct of banks have for long been a matter of public debate. In 1998, the tide of public vexation against the banks led to the formation of a six-member Parliamentary Committee of Inquiry into Financial Services in Fiji. The then Minister of Finance, James Ah Koy said the inquiry was "a legitimate response to community concerns." Some of the main areas of concerns were high fees, charges and interest rates; poor levels of service by banks; profit maximisation attitude of banks; lack of choice in banking services and products; apparent cartel-like behaviour; and poor levels of information available to consumers. This inquiry into financial services, released as a parliamentary paper in February 1999 indicated widespread public dissatisfaction and a number of recommendations were made to address anomalies in the banking industry.

2.2 The Consumer Council of Fiji (CCOF) decided in early 2010 to commission an independent study of consumer protection aspects of banking service in Fiji. The findings and recommendations of this study published in the report *Banking Services in Fiji*: *From Consumers' Perspective* released on March 14, 2011 in Suva to mark World Consumer Rights Day. The report found that most findings revealed 10 years ago by the Committee of Inquiry into Financial Services remain unchanged.

2.3 Apart from probing the full competitiveness of the banking sector, foremost, the Council through this submission is calling for a full investigation on fees and charges levied by the banks. This investigation should entail full disclosure of cost and justification of fees and charges by the banks to the Commerce Commission.

3.0 JUSTIFICATION

Consumers for far too long has been questioning the Council whether Fiji has a fully competitive banking sector considering there is limited differentiation in fees and charges. As a watchdog, the Council is duty-bound to continuously flag to the regulatory bodies such as the Commerce Commission the obvious – that the banking industry in Fiji is not providing effective and true competition in the market.

3.1 COMMITTEE OF INQUIRY INTO FINANCIAL SERVICES REPORT 1999

The committee noted in its report that "...criticisms of banks had intensified and become more widespread during the three years prior to the inquiry, especially as some banks reported high levels of profit during this period." Although the committee's terms of reference broadly covered the financial services sector, the public submissions made during its 6-month inquiry prompted it to focus mainly on retail banking services.[1]

[1] Ministry of Finance, *Report of the Committee of Inquiry into Financial Services*, February 1999, Parliamentary Paper No.19 of 1999, page 2-3.

3.1.1 The Committee's findings that are of relevance to this submission are:

- **High fees, charges** - The structure and level of banks' fees, charges and interest rate margins are relatively high and have potential for reduction. The Committee found that the average interest rate spread across average lending rates on time deposit rates increased by 22% during 1996-98 and over 1993-95 savings deposit rates declined by 36%, time deposits rates declined by 42% against a decline of only 19% in the average lending rates across 1993-1998. The Committee had serious concerns about "inappropriate structure and relatively high level of fees, charges and interest rate margins and spreads in the Fiji banking and financial system."

- **High profitability** - Banks in Fiji had been achieving high interest rate margins and spreads, and very high levels of profits compared to global trends.

- **Competition**
  - Competition was uneven and delivered mixed results to consumers in Fiji. Committee noted that based on statistics and submissions it received, there is "...no real competition in the banking sector in Fiji," and that a major contributing factor was the "high level of concentration in the banking sector".
  - There was strong circumstantial evident to suggest that 'price leadership' exists in the banking sector.
  - The Committee was "not convinced" that competition was working in Fiji as indicated by poor service quality and inadequate investment in infrastructure, while profitability was high. It also noted that any competition in the banking industry would be reflected in improved quality of service.

- **Pricing**
  - A full analysis pricing of bank products was made difficult after financial institutions refused to provide appropriate data on costs and revenues associated with the provision of deposit accounts. Banks failed to provide quantitative evidence to demonstrate that their pricing regimes were efficient or that cost recovery was a problem. The Committee nevertheless concluded that fees and charges on deposit accounts can represent a substantial burden for an average family in a developing economy like Fiji. (The Consumer Council hopes that the Commerce Commission would be able to exercise its legal powers to order the banks to submit full data on costs and revenues)
  - The Committee found that fees and charges on deposit accounts were a "higher burden for families in Fiji compared with average incomes in developed countries".
  - The Committee concluded that price arrangements in Fiji's financial system were "neither equitable nor efficient" citing the fact that interest rate structure on loans appeared to favour more privileged, influential and higher-income customers compared to the less privileged ones who constituted the majority of bank customers.

- **Risk –** Committee found that the high risk of doing business in Fiji was no longer valid as the banks have been operating profitably for more than 100 years here. Banks have long accepted the risks and have become comfortable with the level of profitability and return on equity they enjoyed.

3.1.2 The Committee put forward recommendations on the above issues:

- High margins and spreads on interest rates need to be reviewed in light of overall level of profits earned by banks in Fiji.
- Fees and charges should be reduced.

- To address competition the Committee recommended that:
  - government should encourage new entrants to the banking industry to foster competition;
  - government to encourage foreign banks to form local subsidiaries and allow local share ownership, and that local owners should participate in bank policy and strategy formulation via board representation;
  - an in-depth study be carried out on the issue of localisation of foreign-owned banks and that consideration be given towards requiring foreign banks to operate in Fiji as subsidiaries, not branches; and that a second phase of localisation is for foreign banks to incorporate under Fiji laws and offer up to 49% local shareholding;
  - government encourage micro-financing in its many forms to make the industry less reliant on one or two dominant players

The RBF as principal regulator responded rather lethargically to the Committee's recommendation, taking three years to come up with the Banking Supervision Policy Statement (No.8) on disclosure of fees and charges which came into effect on 1st July 2002. As expected there was no initiative from the banks to respond proactively and institute changes to their trade practices because the situations has remained the same up till now. An important recommendation that the Commission should consider is the **disclosure of costing** by the banks, as precedents have been set by disclosures in other businesses such as hardware and supermarkets.

3.2 CONSUMER COUNCIL REPORT ON BANKING SERVICES

The banking industry has not changed much since the 1998-99 inquiry, in terms of industry-led changes to practices such as fees and charges as recommended by that inquiry. The sector continues to be characterised by lack of competition which is having negative consequences for choice and costs of banking services, and trade practices. Further, the scenario of the late 1990s in terms of widespread consumer concerns over high fees and charges, and some of the unfair practice of banks persist today. These factors had prompted the Council to commission a study on banking services. The findings of the study and recommendations are contained in the report *Banking Services in Fiji*: *From Consumers' Perspective* released to mark World Consumer Rights Day. For the purpose of this submission, the relevant findings and recommendations are summarised below.

3.2.1 Findings

- Almost all of the findings of the 1999 Committee of Inquiry in Financial Services report remain true today.
- The banking sector remains highly uncompetitive. (Only 4 banks now operating, compared to 5 during the 1998-99 government inquiry)
- Profits as a percentage of total assets are between 15 to 20 times more in Fiji than for the four major banks in Australia (ANZ, Westpac, Australian National Bank, Commonwealth Bank) with interest income 11 times greater and fee and commission revenue eight to 10 times greater, but bad and doubtful debts are lower in Fiji. (See Table 1 below)
- The interest spread is higher than in the developed neighbours and immediate island neighbours
- The penalty fees on overdraft excess and dishonoured cheques is exorbitantly high
- For an average customer who wishes to maintain a single account to both save and engage in transactions, there are difficulties encountered. No bank provides an account

where the customer could earn an interest on the account even if there are positive savings every month. In fact, the customer will lose money.

- The fees charged for loan approval and establishment is high and arbitrary and vary between banks.
- Services are not uniform and are substandard, such as:
  - variation in loan approval times between and within banks, and timelines seldom follower;
  - queues continue to be long despite advances in technology;
  - waiting facilities at some branches are poor;
  - many customers encounter difficulties when trying to open an account;
  - quality and timeliness of information provided by banks for products
  - customers not receiving bank statements
- Switching banks has restrictive financial and administrative hurdles, while banks make it difficult for customers to close an account.
- Terms and conditions for loans are not fully disclosed to customers and many customers are not always notified of changes to terms, fees, charges and interest rates.

Table 1: Net Profit After Tax and Minority Interests as Percentage of Total Assets

	Major 4 Australia	ANZ Fiji	Westpac Fiji
2004	0.20%	2.52%	3.51%
2005	0.19%	2.56%	3.74%
2006	0.17%	3.24%	3.41%
2007	0.17%	2.23$	2.94%
2008	0.16%	2.75%	4.11%

Source: APRA, RBF

3.2.2 Recommendations

- Commerce Commission to investigate the fairness of the levels of interest rates charged and paid, and the fees and commissions levied by banks.
- Banks should be required by RBF to justify the level of fees and charges they levy.
- RBF should review its Banking Supervision Policy No.8 to ensure:
  - complete and unambiguous disclosure that will also help consumers make meaningful comparisons of products and services;
  - disclosures should also be made available on the websites of the banks ABIF and RBF, and also be mandatory in all bank branches;
  - terms and conditions of loans to be disclosed in same manner as for disclosure of fees and charges;
- Banks should always notify all customers of changers to terms and conditions, fees, charges and interest rates.
- Banks should be required to adequately and timely warn loan defaulters and warning should also inform the customer of the possibility of the default being report to Data Bureau if it is not addressed within a specified period of time. Customer must be promptly informed when the default is reported to Data Bureau.
- A clearer and fairer complaints system be established via changes to the current RBF and bank complaints mechanisms such as:
  - banks to resolve complaints no later than 21 days from receipt of complaint unless legal proceedings are required;
  - new and existing customers be fully informed of complaints handling policy of banks and on information of where to submit complaints;

- RBF should place the consumer complaints unit separately from its prudential supervision work, and the unit be called the Financial Ombudsman Office and take responsibility for the Consumer Credit Act;

The Consumer Council urges the Commerce Commission to consider these recommendations and take necessary action where appropriate.

3.3 BANK OLIGOPOLY

The four major banks form a true and entrenched oligopoly with little or no existing or potential competition amongst its members. This is demonstrated by:

- Generally the banks have charged roughly the same level of exception fees. This in itself indicates lack of competition in the banking system in general. The same can be said for exit fees.
- The banks also offer the similar kind of deposit accounts and with very little or no difference at all in interest rates and fees/charges. Consumers do not have much choice over deposit products as the benefits (interest rates) are similar and not competitive enough. (This is discussed in detail in Part 3.4.3)
- The use of standard form of mortgage contract wherein the lender can set interest rates as and when it sees fit.
- The habit of the banks to speak in unison through the Association of Banks in Fiji (ABIF) tends to reinforce this impression.
- The power of the oligopoly is such that it is futile for government, regulators or the public to push for competition between the banks.

3.4 FEES AND CHARGES

Banks in Fiji enjoy a deregulated fees and charges regime, but this has not produced the desired effect, that is, lower fees and charges, and competitive rates. The opposite is happening as evidenced by an overabundance of fees and charges for every little item right down to photocopying and even simple requests by customers for information on their accounts. Banks have been unable to provide costing evidence for these fees and charges during the 1998-98 Government inquiry and even during the Consumer Council's 2010 commissioned research into banking services. **And there is a persistent gap in the disclosure and reporting system where banks have not provided their total revenues or profits earned just through fees and charges. This is an area that requires the Commerce Commission intervention in procuring such information so that a fairer fees and charges structure can be established.**

3.4.1 Unfair penalties

An unequal system of penalties and rewards exists within the Fiji banking sector. Consumers face a glut of penalty fees for items such as default on loans, dishonoured cheques, mortgage exit, ATM disloyalty and so forth. (These includes exit fees – discussed in Part 3.6) Further, consumers are penalised both ways if they pay their loans late and when they pay early! The Council urges the Commerce Commission to seriously investigate penalty fees and charges.

3.4.2 Cheque Dishonour Fees

The charging of dishonoured cheques to customers when the dishonoured cheques are from another parties is an example of unreasonable fees and blatant profiteering by the banks. This is an unfair trade practice as the consumer is being penalised for another person's fault. Banks charge both the recipient customer and the cheque owner, despite the fact that only one party –

the cheque owner – is at fault. ANZ charges an innocent customer $7.50, BSP $10 and Bank of Baroda $10. Inward dishonour fees should be removed.

Table 2: Cheque Dishonour Fees				
	ANZ	**BSP**	**BOB**	**Westpac**
Inward dishonour (cheques deposited to accounts)	$7.50	$10.00 per item on both Personal and Business Cheque Account	$10.00 per item	$10.00
Outward dishonour (cheques drawn on account)	$30.00	$30.00 per item	$25.00 per item	$35.00

3.4.3 Unfair Interest Rates – Fixed Deposits and Secured Loan

There is a gross imbalance between interest earned by consumers on fixed deposits (or savings) and interest charged on loans. For example on a $15,000 fixed deposit the customer earns 3.5% at ANZ bank, but if the same customer were to borrow a secured loan of $15,000 he/she incurs an interest rate of 11%. The interest charge is 214.3% higher than what a consumer would earn if he/she deposits the same amount of $15,000. For BSP the difference is at 262.5% (See Table 3 below). In other words the banks gives you less when taking the consumer's money, but charges 200% more than what it gives when you decide to take loan. As seen from the examples in Table 3, banks are taking a 100% more from consumers than what they give for consumers' money.

Table 3: Difference in interest rates earned on fixed deposit and interest charged on loan of $15,000

Banks	Interest on Fixed Deposit ($15,000)	Interest Charged on Secured Loan ($15,000)	% Difference
BSP	4.0%	14.5%	262.5%
BOB	3.5%	12.5%	257.1%
ANZ	3.5%	11.0%	214.3%
Westpac	3.0%	10.95%	265%

3.4.4 Recommendations on penalty fees and unfair interest rates

- Exit fees should be removed as they constitute restrictive trade practices – limit consumer choice and discourage competition.

- Banks should provide justification for their penalty fees and the Commission should investigate whether penalties bear any realistic relation to the costs incurred by the banks.

- Inward cheque dishonour fees should be eliminated by all banks. Customers are being unfairly penalised by someone else's error or negligence. In other words consumers are being charged for someone else's crime!

- Direct debit dishonour fees. Banks should give options to customers before processing transactions on accounts with insufficient funds, giving them an opportunity to avoid the fee. It is unfair to charge the customer for direct debit dishonours as the bank does not provide any service when an automatic payment like this is declined.

- Over-limit credit card fees should either be eliminated or set at a reasonable level. Customers should be notified that the transaction would cause their credit limit to be exceeded and be given an option to have the transaction declined at no cost, or processed with a reasonable fee.

- Banks should justify why is there an excessive difference between interest earned on fixed deposits and interest charged on loans. The over 100% gap between what consumers earn and what they are charged should be stopped.

3.5 THIRD PARTY SERVICES AND FEES

One less publicised area of concern for bank consumers is the trade practices used by banks where third party services are procured. This is particularly for loans and mortgages where the legal, engineering, valuation services and so forth need to be procured to complete a contract or transaction. The Council has been flagging this issue for a while, whereby banks have a list of panel of lawyers, valuers or engineers who provide these services. Consumers have no choice at all as the services of these third parties are at a cost which the bank passes on to the consumers as part of the total costs of acquiring loans or mortgages. **The Council urges the Commerce Commission to investigate this system which denies consumers' right to choice and at the same time contravenes fair trading rules as other non-listed third parties are not being given a fair access to customers/market.** Also the banks may be knowingly charging the collective service fees that are exorbitant or above market prices.

3.6 EXIT FEES

Banks are charging exit fees on loans and mortgages, which unfairly locks a customer into a contract and also stifles any efforts by the customer to seek competitive products elsewhere.
Exit fees restrict consumers from paying early and also from switching to another lender or mortgagee. The imposition of exit fees is also a disincentive to consumers against personal efforts to pay off loans and increase their credit ratings. For businesses it may have the effect of discouraging industriousness as the motive to make more money to pay loans is being thwarted by such unreasonable fees (See Table 4).

Table 4: Exit Fees (or Early Termination Fees)

Banks	Fees and Conditions
ANZ	Early repayment charge *Variable rate loans*: fee is payable if the customer wants to renegotiate the loan within 3 years from draw down date, the charge is calculated as 90 days interest at the prevailing rate at the time of repayment on the original amount borrowed. *Fixed rate Loans*: the fee is imposed if the customer chooses to break the fixed rate contract prior to the maturity date. An interest charge equivalent of 3 months interest for each year remaining of the fixed interest rate term (pro-rata) calculated on the loan balance outstanding at the time of the request, utilising the contract fixed rate of interest. For lease finance and insurance premium finance – equal to half of remaining unearned interest portion.
BSP	Payable if loan is repaid within 36months from acceptance of Letter of Offer. Fee is equivalent to 3months interest at prevailing rate applicable to the loan.
BOB	(Information not provided)
Westpac	Equal to 90days interest at the Westpac Banking Corporation variable Home Loan rate at the time your loan is repaid in full on an amount equal to the balance of your loan account immediately after the final drawdown. Applies to Premium Option Home Loans, Investment Property Loans and Business Access Loans Only.

3.6.1 Exit Fees Restricts Competition and Consumer Choice

Exit fees restrict competition by unfairly locking customers to one bank. The exit fees are high and as customers are discouraged from changing banks or moving to other credit providers, these other financial institutions find the market restrictive. Removal of exit fees thus has positive implications for competition. It would make it easier for non-bank credit providers to compete with the dominant banks. This is because it would be less costly and easier for customers to switch to competitors for their loan/mortgage accounts. **As Fiji's competition watchdog, the Commerce Commission is in a position to address exit fees. Exit fees constitute restrictive trade practices. The Commerce Commission should consider as a guide the action taken by the Australian Federal Government in its reform package for the banking industry (*Competitive and Sustainable Banking System*). Under this reform, exit fees on home loans will be banned outright from 1 July 2011 (further discussed in Part 3.8).**

3.7 CONSUMER BENEFITS

Consumers should benefit from better products, services and reduced costs as a result of increased scale and efficiency gains. However, this has not been the case, especially in relation to fees and charges. A large amount of activity in the banking market is based more on short term competition for growth or market share rather than sustainable practices to meet genuine consumer need. This type of activity is often expressed as sales targets for finance sector staff which are increasingly used as the only way staff can access increased remuneration. Bank staff often sell products in haste without due diligence on risk and not fully information or advising the customer of his eligibility and factors that may affect his/her ability to make repayments. It is evident from how banks advertise credit products such as home loans and credit cards, that there is a narrow focus on acquiring market share rather than an interest in customer needs. The Council believes that it is detrimental to consumers, finance sector staff and the provision of good customer service.

3.8 ACTION TAKEN IN AUSTRALIA

The Consumer Council is using Australia for comparative purposes primarily because the two major banks in Fiji – Westpac and ANZ – are Australian-based and registered. Banking reforms and trends in business practice in Australia cannot be ignored by Fiji or by the two banks. Banks will only react to legislation or effective state action such as the case in Australia where for a long time banks ignored and resisted public objections against exception fees. However when the Federal Government indicated in early 2008 that it was moving towards making unfair fees unlawful, the major four banks reduced or abolished exception fees. Banks also began abolishing ATM disloyalty fees; and by late 2009, in response to an outcry by consumers, Australian banks reduced penalty fees substantially.

3.8.1 Current Australian Reform of Banking Sector

In 2010 the Gillard Government had put forward a reform package to make Australia's banking system more competitive and sustainable. The reform package titled *Competitive and Sustainable Banking System* are in three broad streams: (1) empower consumers to get a better deal; (2) support smaller lenders to compete with banks and; (3) secure the long-term safety and sustainability of Australia's financial system. While this action may have been taken in reaction to the global financial crisis, Australian consumers have been raising the issues of unfair fees and penalties prior to the crisis. In 2004 a study by the Consumer Law Centre Victoria found Australian banks were charging penalties on overdrawn accounts, late payments, dishonoured cheques, and debit payments that were extravagant and exorbitant in relation to the provision of the services.[2]

3.8.2 Australian Government action to empower consumers for a better deal

The following are some of the policy actions of the Australian government's under stream one of its banking system reform package – *Empower Consumers To Get A Better Deal*:

- Exit fees on home loans banned outright from 1st July 2011

- Reserve Bank of Australia (RBA) to conduct comprehensive feasibility study into technological options, the potential timeline and processes for implementing full account number portability. This would enhance the capacity of Australian home borrowers to move their mortgages

- Introduce mandatory key facts sheet for new home loan customers — mandate that lenders provide potential borrowers with a simple one-page 'key facts sheet' showing how much they will pay every month and over the life of their loan, and where they can shop around so they can compare lenders side by side.

- Empower Australian Competition and Consumer Commission (ACCC) to prosecute anti-competitive price signalling —new laws to prevent banks from engaging in anti-competitive price signalling that are designed to keep interest rates higher than they would otherwise be.

- Crack down on on unfair treatment of credit card holders.

- Taskforce with RBA to monitor and enhance ATM competition reform

The Consumer Council believes that it would be unfair and unjust for Fiji's banking consumers not to expect similar empowerment reforms, bearing in mind that the retail banking market here is dominated by two Australian banks.

4.0 CONCLUSIONS

The Council firmly believes that the Commerce Commission should intervene and investigate the banking market and ascertain why there is virtually no competition under the current oligopoly. The Commission should investigate the restrictive trade practices of banks and provide the necessary remedies to create a level playing field.

[2] Nicole, R. (2004) *Unfair fees*: *A Report Into Penalty Fees Charged By Australian Banks*, Consumer Law Centre, Victoria.