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17 June 2024

Anthony Hilton
Director, Competition Exemptions
Australian Competition & Consumer Commission
Level 1, The Quadrant, 1 William Street Perth

Dear Mr Hilton

Application for Authorisation by the Australian Banking Association – response to Interested Party submissions

We refer to the application for authorisation by the Australian Banking Association (**ABA**) lodged on 27 March 2024 (the **Application**) and the interim authorisation granted by the Australian Competition and Consumer Commission (**ACCC**) on 28 March 2024 (the **Interim Authorisation**).

The banks are committed to the viability of cash distribution, noting that declines in the use of cash coupled with rising transportation costs have challenged the sustainability of the cash-in-transit industry. While cash is being used by fewer people, it plays an important role and banks are committed to providing access to cash, for our customers who need it. In recent months, banks, retailers and representatives of Treasury and RBA, under the auspices of the RBA BCP Working Group, have prepared in case any interruption to transportation occurs. We appreciate the opportunity to further comment on the ACCC authorisation that has enabled this important work to take place.

The purpose of this letter is to provide ABA's response to the interested party submissions received prior to the ACCC's draft determination.

The ABA notes that of the 12 public submissions, the majority were generally very supportive of the Interim and Final Authorisations (except for Linfox Armaguard Pty Limited who requests that the Application be withdrawn). This submission addresses the following feedback that emerges from submissions:

- definition of Authorised Party;
- the participation of third parties in BCP meetings;
- access to cash for regional small businesses;
- the existing conditions imposed by the ACCC;
- other matters.

1 Definition of Authorised Party

The ABA notes COBA's concern that the current definition of Authorised Parties may not specifically capture COBA (as opposed to its members) on the basis that it is not itself a business that distributes or utilises cash.

The ABA has no objection to clarifying this definition and accordingly, seeks to amend the list of persons who propose to engage in the Proposed Conduct in section 3.3 of its application as follows:

"The following parties (and their subsidiaries as relevant) may be involved in one or more aspects of the Proposed Conduct:

Our Ref 121204692:121204692
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- *the Member Banks listed in Annexure A, including the Major Banks;*
- *Armaguard;*
- *Commonwealth Treasury;*
- *the RBA;*
- *the Royal Australian Mint;*
- *Australia Post;*
- *suppliers of cash-in-transit services;*
- *non-Member commercial banks, mutual banks, credit unions and building societies;*
- *the Customer Owned Banking Association;*
- *Australian Payments Network; and*
- *retailers, supermarkets and other businesses who distribute and utilise cash in their businesses,*

*(collectively with the Applicant, the **Proposed Authorised Parties**).*"

2 Regional small business

The ABA notes the submission from the Australian Small Business and Family Enterprise Ombudsman which outlined the importance of cash as a means of payment and payment acceptance for regional small businesses and the impact that any reduction in the number of cash-access point in regional areas would have to the public benefit of the Proposed Conduct.

The ABA understands these concerns about regional access to cash and notes that access to cash for regional communities remains a particular focus of discussions under the Interim Authorisation granted on 28 March 2024 (in relation to BCP) but also of discussions relating to industry solutions more generally under the Authorisation granted on 27 May 2024 (Authorisation number AA1000654).

The ABA notes that material discussions under the Interim Authorisation are required to be reported to the ABA as part of regular reporting and so the ACCC will continue to have oversight over the parties' ongoing discussions, including in respect of measures to support regional access to cash.

3 Participation in BCP meetings

The ABA notes the submissions from CIT providers Linfox Armaguard, Authentic Security Pty Ltd and Amalgamated Cash Service and ATM and cash management solutions providers NCR Atleos and Next Payments requesting participation in discussions relating to BCP. NCR Atleos requests that the ACCC impose a condition which allows participation in BCP planning discussions upon request.

The ABA understands the interest of a range of stakeholders in the cash eco system to provide input on BCP planning. A number of interested parties have requested to participate in BCP discussions to date and those requests have been considered on a case-by-case basis. In a number of cases, interested parties have been involved and/or their input has been provided to the broader group for consideration where appropriate.

The CIT industry is complex and there is necessarily some sequencing required with BCP planning. While the RBA BCP Working Group has to date focused on BCP governance, BCP principles and other customer scoping matters, the ABA anticipates that it will need to consult with CIT providers (including Armaguard) in due course and that consultation with other stakeholders in the cash ecosystem will also occur.

However, due to the ubiquity of cash across the economy and the vast number of businesses and other groups which use and/or have views regarding cash, the ABA considers that it is important to strike a balance between involving key stakeholders and ensuring that the size of the RBA BCP Working Group remains workable.

The ABA does not consider it appropriate for any conditions to be attached to the authorisation relating to participation in discussions. Instead, the ABA considers that consideration of participation requests on a case-by-case basis continues to be the appropriate course. A requirement or condition to involve any and all third parties in discussions as a matter of course would quickly make the collaboration under the Proposed Authorisation practically unworkable and undermine the public benefits of the Proposed Conduct, increasing the risk of a disruption to cash services and reducing the potential for a BCP solution to be developed.

The ABA has provided monthly reports to the ACCC since interim authorisation was granted setting out the discussions which have occurred under the interim authorisation and the parties involved. To provide additional transparency and oversight, the ABA does not object to its existing reporting obligations being amended so that regular reports are also required to address at a high level whether the ABA has received any third-party requests for participation and whether those third parties have participated in discussions (although it may be appropriate for aspects of this reporting to be kept confidential).

Finally, the ABA notes with concern the suggestion in Armaguard's submission that the ABA's application *'raises a question about the actual objective of the planning processes being undertaken by the RBA BCP Working Group'* and whether the objective is in fact to *'establish a long-term alternative means of providing CIT services to that currently provided by Armaguard'*. The ABA submits that:

- the BCP planning which has occurred to date was agreed at the RBA BCP Working Group, a Working Group chaired by the Reserve Bank of Australia and attended by representatives of Commonwealth Treasury as well as external competition law advisors.
- the ABA and the funding parties have been working diligently and in good faith under the auspices of the RBA BCP Working Group to ensure that in the event of any disruption to CIT Services, that Australian communities continue to have access to cash and are supported in the event of any disruption to cash.
- the BCP activities of the RBA BCP Working Group would simply not be authorised if they did not occur for the prescribed purposes outlined in the application, namely:
 - to support the continued and safe distribution and availability of cash to banks, retailers, other businesses and/or members of the public in the short-term and prior to the implementation of a longer term regulatory or industry solution; or
 - to support customers and businesses who use cash in the event of, or in reasonable anticipation of, any suspension or disruption of Armaguard's CIT services.
- the ABA strongly rejects any suggestion that the ABA, the RBA, Treasury or any of the funding parties have participated in BCP planning activities other than for the purposes permitted under the authorisation. The ABA notes the RBA's submission that it supports the ABA's application *'because it will enable discussions, agreements and implementation of business continuity measures in the event of a suspension, disruption or exit of Armaguard's cash-in-transit (CIT) services'* and that *'given the adverse impact that a significant interruption in CIT services could have on the availability of cash in the economy, this is in the public interest'*.

4 Conditions

Armaguard refers to certain conditions imposed by the ACCC in the Interim Authorisation which require:

- (Condition 1) that any discussions, arrangements or implementation regarding the proposed conduct must occur at, in preparation for, or arise out of a meeting, meetings or communications of either the RBA Cash Sustainability Working Group or the RBA BCP Working Group; and
- (Condition 3) that an external lawyer with expertise in competition law and approved by the ACCC must attend meetings of the RBA cash Sustainability Working Group and the RBA BCP Working Group.

Armaguard submits that that Conditions 1 and 3 imposed by the ACCC are not adequate because

- the Interim Authorisation enables discussions regarding co-ordination relating to BCP to take place not just at meetings of the RBA working groups but also in preparation of them and in meetings or communications that arise out of RBA working group meetings; and
- the external lawyer with expertise in competition law only needs to attend meetings of the two RBA Working Groups.

The ABA considers that the existing conditions imposed by the ACCC are appropriate and do not require revision.

The ABA and the Authorised Parties are highly cognisant of their obligations under competition laws. While the Interim Authorisation requires an external competition lawyer to only attend the two RBA Working Groups, in practice, an external lawyer with expertise in competition law has been in attendance at the vast majority of discussions regarding BCP (as have other internal and sometimes external advisors). However, this may not be possible in an actual BCP scenario where a disruption to CIT may require a large number of discussions to take place urgently to ensure ongoing access to cash and where it would not be reasonably practicable for these discussions to occur in the RBA BCP Working Group setting and/or attended by competition lawyers.

5 Other Matters

In the submission by the Transport Workers Union of Australia (*TWU*), the TWU made two proposals:

- First, that any authorisation granted by the ACCC must require the ABA to rigorously review the payment terms offered to Armaguard and all other contracting and tendering practices with its major clients including the big 4 banks; and
- Second, that any arrangement or authorisation established for the purposes of ensuring the continued safe distribution of cash must meet established minimum criteria in order to ensure safe operations continue.


On the first point, although the ABA and the Funding Parties have been in discussions with Armaguard about financial assistance under the Authorisation granted on 27 May 2024, that is not the purpose of this Application which solely relates to BCP.

On the second point, the ABA acknowledges and agrees that CIT services must be provided safely at all times. However, the ABA does not consider that it would be within the remit of the ACCC to assess a CIT provider's compliance with minimum safety criteria.

In respect of the ongoing need for BCP discussions, the ABA and its Member Banks understand that Armaguard continues to face challenges due to the decline in the use of cash and there remains uncertainty about Armaguard's financial position. The challenges Armaguard is facing are significant and in circumstances where there is no other national provider of CIT services, the ABA considers that it is imperative that the Proposed Authorised Parties are able to implement BCP on an urgent basis. Further information is set out in confidential Schedule 1 to this letter.

Please do not hesitate to contact us to discuss anything in this letter.

Yours sincerely


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