



**Australian
Competition &
Consumer
Commission**

Revocation of Authorisation

Australian Payments Clearing Association Limited

In respect of the Australian Paper Clearing System

Date: 8 December 2004

Authorisation no. A90552

Public Register no. C2004/1437

Commissioners: Samuel
Sylvan
King
Martin
McNeill
Smith
Willet

1. Introduction

- 1.1 Organisations who engage, or propose to engage, in certain anti-competitive business conduct that might breach the *Trade Practices Act 1974* (the Act) may apply to the Australian Competition and Consumer Commission (the ACCC) for authorisation of such conduct. If granted, authorisation provides immunity from legal action under the Act in respect of the relevant provisions of the proposed conduct.

Authorisations A90550, A90551 and A90552

- 1.2 Authorisations A90550¹, A90551² and A90552³ were initially granted by the Trade Practices Commission (now the ACCC) on 22 September 1993. The authorisations related to the Regulations and Procedures of the Australian Paper Clearing System (APCS) as well as the Australian Payments Clearing Association's (APCA) Memorandum and Articles of Association.
- 1.3 APCA is a public company limited by guarantee, incorporated on 18 February 1992. APCA's charter, as set out in its Constitution, is to co-ordinate, manage and ensure the implementation and operation of effective payments clearing and settlement systems, policies and procedures.
- 1.4 The APCS co-ordinates and manages the implementation and operation of policies and procedures for the conduct and settlement of exchanges of paper based payment instructions which are primarily cheques, between its participating members.

Revoking an authorisation

- 1.5 Section 91B of the Act provides that a person to whom authorisation was granted may apply to the ACCC for the revocation of the authorisation. On receipt of such an application, the ACCC is required to write to interested parties advising them of the application for revocation, its basis and inviting submissions in respect of the application for revocation.
- 1.6 If any submission objects to the proposed revocation, the ACCC may not revoke the authorisation unless it is satisfied that the public benefit is outweighed by the public detriment from any lessening of competition associated with the conduct.

¹ Application A90550 was made under sub-section 88(1) of the Act for an authorisation to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of the Act.

² Application A90551 was made under sub-section 88(1) of the Act for an authorisation to make or give effect to a provision of a contract or arrangement, or arrive at an understanding, where a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act.

³ Application A90552 was made under sub-section 88(8) of the Act for an authorisation to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

- 1.7 Decisions of the ACCC to revoke an authorisation may be reviewed by the Australian Competition Tribunal (the Tribunal) provided the person dissatisfied with the determination applies to the Tribunal for a review within 21 days of the date of the determination.

Request for revocation

- 1.8 On 17 September 2004 APCA lodged applications for the revocation of A90552 under section 91B of the Act and the revocation of authorisations A90550 and A90551 and the granting of substitute authorisations under section 91C of the Act. As the process differs from an application for revocation, the applications for revocation and substitution are subject to a separate determination.⁴

Revocation of A90552

- 1.9 Application A90552 was initially sought by APCA to engage in conduct that would or may constitute exclusive dealing. APCA described this conduct as the appointment of clearing representatives under the Regulations for the APCS.
- 1.10 APCA submits that it considers that no provision of the Regulations, Procedures or Constitution would constitute exclusive dealing in contravention of section 47 of the Act such that this authorisation is no longer required.

2. Submissions

- 2.1 On 28 September 2004 the ACCC wrote to 104 interested parties advising of APCA's request for revocation of authorisation A90552 and revocation and substitution of authorisations A90550 and A90551 and inviting submissions in relation to this request.
- 2.2 The ACCC did not receive any submissions in relation to APCA's request for revocation of A90552.

3. The Statutory Tests

- 3.1 Under section 91B of the Act, a person to whom an authorisation was granted may apply to the Commission for a revocation of the authorisation.
- 3.2 On receipt of such an application, the ACCC must, by notice in writing given to any persons who appear to the ACCC to be interested:
- inform that the revocation of the authorisation has been applied for; and
 - indicate the basis on which the revocation has been applied for;
 - invite submissions in respect of the revocation within a period specified by the ACCC.

⁴ ACCC, Draft Determination - Applications for Revocation and Substitution lodged by APCA in respect of the Australian Paper Clearing System, 8 December 2004

- 3.3 After considering any submissions received, the ACCC may make a determination in writing:
- revoking the authorisation; or
 - deciding not to revoke the authorisation.
- 3.4 Under section 91B(5) if any submission objects to the proposed revocation, the ACCC may not revoke the authorisation unless it is satisfied that it would, if the authorisation has not already been granted, be prevented under subsection 90(6), (7), (8) or (9) from making a determination granting authorisation in respect of which the revocation is sought.

4. ACCC's Evaluation

- 4.1 APCA requested revocation on 17 September 2004 on the basis that it considered that there was no longer any need for immunity under the Act as it considers that no provision of the Regulations, Procedures or Constitution would constitute exclusive dealing in contravention of section 47 of the Act.
- 4.2 The ACCC wrote to potential interested parties on 28 September 2004 advising that the revocation had been requested and the basis on which the revocation had been applied for. The ACCC requested submissions be lodged by 29 October 2004.
- 4.3 The ACCC did not receive any submissions in relation to the revocation of A90552. The ACCC is satisfied that there is no objection to authorisation A90552 being revoked.

5. Determination

- 5.1 The ACCC revokes authorisation A90552.
- 5.2 This determination is made on 8 December 2004. Pursuant to section 101 of the Act, a person dissatisfied with this determination may apply to the Australian Competition Tribunal for its review. An application for review must be made within 21 days of the date of this determination; that is, on or before 29 December 2004.
- 5.3 If an application is made to the tribunal, the determination will come into force:
- where the application is not withdrawn – on the day on which the Tribunal makes a determination on the review; or
 - where the application is withdrawn – on the day on which the application is withdrawn.
- 5.4 If no application to review is lodged by this date, the ACCC's determination will come into force on 30 December 2004.