



Australian  
Competition &  
Consumer  
Commission

# Determination

## Revocation of Authorisation

lodged by

**Australian Payments Clearing Association Limited**

*in relation to the Bulk Electronic Clearing System*

**Date: 1 June 2005**

**Commissioners:**

Samuel  
Sylvan  
Martin  
Willett

**Authorisation no.** A90563  
**Public register no.** C2005/680



## 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 TPA) 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 TPA in respect of the relevant provisions of the proposed conduct.

### Authorisations A90550, A90551 and A90552

- 1.2 Authorisations A90561<sup>1</sup>, A90562<sup>2</sup> and A90563<sup>3</sup> were initially granted by the Trade Practices Commission (now the ACCC) on 19 October 1994. The authorisations related to the Regulations and Procedures of the Bulk Electronic Clearing System (BECS). APCA sought authorisation as it considered the draft Regulations and Procedures may constitute a contract, arrangement or arrive at an understanding, where a provision of which may have the effect of substantially lessening competition within the meaning of section 45 of the TPA (A90561). Authorisation was also sought in relation to conduct that would or might be exclusionary conduct, including, without limitation, a number of the Regulations for BECS relating to participating membership, representation arrangements and entrance fees (A90562). In addition, authorisation was sought to engage in conduct that would or may constitute exclusive dealing (A90563). APCA described this conduct as the appointment of representatives under the BECS Regulations.
- 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 BECS manages the conduct of the exchange and settlement of bulk direct entry electronic low value transactions. The direct entry system allows approved organisations to make arrangements with their financial institution to debit and/or credit large numbers of customers' accounts on a regular basis.

### Revoking an authorisation

- 1.5 Section 91B of the TPA provides that a person to whom authorisation was granted may apply to the ACCC for the revocation of the authorisation. On

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<sup>1</sup> Application A90561 was made under sub-section 88(1) of the TPA 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 TPA.

<sup>2</sup> Application A90562 was made under sub-section 88(1) of the TPA 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 TPA.

<sup>3</sup> Application A90563 was made under sub-section 88(8) of the TPA for an authorisation to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

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 provision has not resulted, or is not likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.
- 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 11 April 2005 APCA lodged applications for the revocation of A90563 under section 91B of the TPA and the revocation of authorisations A90561 and A90562 and the granting of substitute authorisations under section 91C of the TPA.

### **Revocation of A90563**

- 1.9 Application A90563 was initially sought by APCA to engage in conduct that would or may constitute exclusive dealing. APCA described this conduct as the appointment of representatives under the Regulations for BECS.
- 1.10 APCA submits that it considers that no provision of the BECS Regulations or Procedures would constitute exclusive dealing in contravention of section 47 of the TPA such that this authorisation is no longer required.

### **Revocation and substitution of A90561 and A90562**

- 1.11 Applications A90561 and A90562 were initially sought in relation to those elements of the BECS Regulations and Procedures which may substantially lessen competition and which may be exclusionary conduct.
- 1.12 In applying for revocation and substitution of A90561 and A90562 APCA submits that only those provisions of its regulations pertaining to the suspension and termination of BECS membership would be likely to raise concerns under the TPA. Consequently, APCA applied to revoke authorisation A90561 and A90562 relating to its Regulations and Procedures and substitute authorisations on the same terms only in relation to the suspension and termination provisions of its Regulations. On 1 June 2005, the ACCC released a draft determination proposing to grant the revocation and substitution as sought by APCA. As the process differs from an application for revocation, the applications for revocation and substitution are subject to a separate determination.<sup>4</sup>

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<sup>4</sup> ACCC, Draft Determination - Applications for Revocation and Substitution lodged by APCA in respect of the Bulk Electronic Clearing System, 1 June 2005.

## **2. Submissions**

- 2.1 On 21 April 2005 the ACCC wrote to interested parties advising of APCA's request for revocation of authorisation A90563 and revocation and substitution of authorisations A90561 and A90562 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 A90563.

## **3. The Statutory Tests**

- 3.1 Under section 91B of the TPA, 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
  - 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.
- 3.3 After considering any submissions received, the ACCC may make a determination in writing:
  - revoking the authorisation
  - 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 11 April 2005 on the basis that it considered that there was no longer any need for immunity under the TPA as it considers that no provision of the Regulations or Procedures would constitute exclusive dealing in contravention of section 47 of the TPA.
- 4.2 The ACCC wrote to potential interested parties on 21 April 2005 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 13 May 2005.

- 4.3 The ACCC did not receive any submissions in relation to the revocation of A90563. The ACCC is satisfied that there is no objection to authorisation A90563 being revoked.

## **5. Determination**

- 5.1 The ACCC revokes authorisation A90563.
- 5.2 This determination is made on 1 June 2005. Pursuant to section 101 of the TPA, 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 22 June 2005.
- 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
  - 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 23 June 2005.