



Our Ref: A90617-A90619  
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**Australian  
Competition &  
Consumer  
Commission**

25 October 2006

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Dear Sal

**APCA's application for revocation of authorisations A90617 to A90619 and substitution of authorisations A91016 to A91018 in relation to the High Value Clearing System (HVCS) authorisations – Interested Party Consultation**

The Australian Competition and Consumer Commission (the Commission) is currently conducting an interested party consultation process in relation to an application made by the Australian Payments Clearing Association Limited (APCA) for revocation and substitution of the above authorisations, which were granted on 1 April 1998 for a period of 10 years.

APCA has sought re-authorisation in relation to certain provisions of its High Value Clearing System (HVCS) Regulations and Procedures.

**Background**

The ACCC is the independent Australian Government agency responsible for administering the Trade Practices Act 1974 (the Act). A key objective of the Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business resulting in a greater choice for consumers in price, quality and service.

The Act, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way businesses may obtain immunity is to apply for what is known as an 'authorisation' from the ACCC. Broadly, the ACCC may 'authorise' businesses to engage in anti-competitive arrangements or conduct where it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment.

In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process seeking comments on the application from interested parties. Following an initial consultation process, the ACCC will issue a draft decision for comment. Further information regarding the authorisation process is available from the ACCC website ([www.accc.gov.au](http://www.accc.gov.au)).



## **Application for re-authorisation by APCA**

The HVCS Regulations and Procedures were previously authorised by the ACCC on 1 April 1998. Authorisation was granted for 10 years. APCA is of the view that a blanket authorisation covering the HVCS Regulations and Procedures as granted in 1998, is no longer necessary and is seeking re-authorisation only for HVCS Regulations 5.2(h) and 5.16 to 5.31 and clauses 5.1 and 5.2 of the HVCS Procedures. These provisions relate to suspension and termination of HVCS membership and the requirement that members join SWIFT.

On 20 October 2006, the ACCC received an application for re-authorisation of the above mentioned provisions of the HVCS Regulations and Procedures.

In summary, APCA submits to the extent that the:

- *suspension and termination* provisions 5.16 to 5.31 of the HVCS Regulations may be an exclusionary provision within the meaning of s 4D of the Act, such provisions will result in such a public benefit that they should be allowed to remain in place;
- *suspension and termination* provisions 5.16 to 5.31 of the HVCS Regulations might have the purpose or likely effect of substantially lessening competition in a market within the meaning of s 45 of the Act, such provision in all the circumstances has resulted and will continue to result in a benefit to the public and that benefit outweighs the detriment to the public constituted by any lessening of competition that results from any such provision;
- HVCS Regulations 5.2(h) and clauses 5.1 and 5.2 of the HVCS Procedures, requiring the members of the HVCS to be members of SWIFT may constitute third line forcing within the meaning of ss 47(6) or 47(7) of the Act, such a provision in all the circumstances has resulted and will continue to result in a net benefit to the public and should be allowed to remain in place.

A copy of APCA's submission and an extract of the relevant provisions of HVCS Regulations and Procedures for re-authorisation are attached. Please refer to APCA's details of the public benefits and detriments that APCA claims are likely to result from the proposed arrangements.

A full copy of the application is also available on the ACCC's website <[www.accc.gov.au](http://www.accc.gov.au)> (by following the Public Registers & Authorisations links).

### **Request for submissions**

To assist the ACCC in its consideration of the application it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed arrangements.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that confidential information included in the submission be excluded from the public register. If information is excluded, the ACCC may take it into account, even though it is not publicly available. Guidelines seeking exclusion from the public register are attached.

If you wish to lodge a submission, please address your submission to:

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Submissions can also be lodged by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) or by facsimile on 02 6243 1211.

If you intend to provide a submission in relation to APCA's request for revocation and substitution of the above authorisations please do so by **Friday, 17 November 2006**.

Please inform us if you do not wish to make a submission at this time, but would like to be informed of the progress of the application at the draft and final determination stages. You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding this application.

In providing a submission or if you wish to be informed of the progress in this matter, could you please provide an email address so that future communications can be conducted electronically.

After its initial round of public consultation, the ACCC will generally only direct further correspondence, including in respect of its draft and final decision, to those parties who have provided submissions or otherwise indicate that they wish to be kept informed of the progress of the matter.

A copy of this letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact Ms Tina Pigliardo (03) 9290 1481 or at [tina.pigliardo@acc.gov.au](mailto:tina.pigliardo@acc.gov.au).

Yours sincerely



Jaime Norton  
Acting Director  
Adjudication Branch

**List of Interested Parties**

ABN AMRO Bank NV

ABS Building Society Ltd

Australian Association of Permanent Building Societies

Adelaide Bank Limited

Arab Bank Australia Limited

Australia and New Zealand Banking Group Limited

Australian Bankers' Association

Australian Consumers Association

Australian National Credit Union

American Express International

AMP Bank Limited

Australian Securities and Investments Commission

Australian Settlements Limited

B&E Limited

Bendigo Bank Limited

BNP Paribas (Australia)

Bankcard Association of Australia

Bank of America National Association

Bank of China

Bank of Cyprus Australia Pty Limited

Bank of Queensland Limited

Bank of Western Australia Limited

The Bank of Tokyo - Mitsubishi, Ltd. - Australian Branch

Bendigo Bank Limited

Business Council of Australia

Citibank Pty Limited/Citigroup Pty Ltd

Cuscal Limited

Credit Union Services Corporation

Creditlink Services Limited

Commonwealth Bank of Australia

Council of Small Business Organisations of Australia Ltd

Consumer Credit Legal Service (Victoria)

Credit Union Services Corporation (Australia) Limited

Consumer Credit Legal Centre (NSW) Inc

Consumer Credit Legal Service (WA)

Consumer Law Centre of Victoria

Deutsche Bank AG

Diners Club Australia

Financial Services Consumer Policy Centre

Financial System Division

GIO Building Society Limited

Greater Building Society Limited

Heritage Building Society Limited

Home Building Society

HBOS Treasury Services plc Sydney Branch

HSBC Bank Australia Limited

HSBC Bank plc

HSBC Building Society (Australia) Limited

Hume Building Society Limited

IMB Ltd

ING Bank (Australia) Limited

ING Bank, NV (Sydney Branch)

Investec Australia Limited

Investec Bank (Australia) Limited

International Commercial Bank of China

JPMorgan Chase Bank, N.A.

Laiki Bank (Australia) Limited

Macquarie Bank Limited

Mackay Permanent Building Society Limited

Maitland Mutual Building Society Limited

MasterCard Australia Limited

Members Equity Pty Limited

Mizuho Corporate Bank Ltd

National Australia Bank Limited

Newcastle Permanent Building Society Limited

Oversea-Chinese Banking Corporation Limited

The Police Department Employees' Credit Union Limited

Pioneer Permanent Building Society Limited

Rabobank Australia Limited

Reserve Bank of Australia

Royal Bank of Canada

The Rock Building Society Limited

St. George Bank Limited

State Street Bank & Trust Company

Suncorp-Metway Limited

Societe Generale Australia Branch

Standard Chartered Bank

State Bank of India

Taiwan Business Bank

The Hong Kong and Shanghai Banking Corporation Limited (Australian Branch)

The International Commercial Bank of China

Toronto Dominion Bank

The Office of Small Business

Commonwealth Department of Industry, Tourism and Resources

UBS AG (Australia Branch)

United Overseas Bank Limited

Visa International

Westpac Banking Corporation