



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2009/1325
Contact Officer: Gavin Jones
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30 October 2009

Ms Lisa Huett
Partner
Mallesons Stephen Jaques
Level 50, Bourke Place
600 Bourke Street
MELBOURNE VIC 3000

By email: lisa.huett@mallesons.com

Dear Ms Huett

Australian Payments Clearing Association (APCA) applications for revocation and substitution A91153 & A91154 – request for interim authorisation

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation in respect of the applications for revocation and substitution lodged by APCA on 13 July 2009. APCA sought interim authorisation for the arrangements on 27 October 2009. A copy of the ACCC's decision is attached.

Interim authorisation protects the arrangements for which authorisation is sought from legal action under the relevant provisions of the *Trade Practices Act 1974* while the ACCC considers and evaluates the merits of the application.

Next steps

For your information, the next step in the process is for the ACCC to release a draft determination which will take account of any submissions from APCA and interested parties and will indicate the ACCC's preliminary views on the merits of the application. The ACCC will give both APCA and interested parties the opportunity to provide a further submission on the draft determination before the ACCC issues its final decision.

As noted in the attached decision, the ACCC may review its decision on interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted by the ACCC.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Gavin Jones on 03 9290 1475.

Yours sincerely

A handwritten signature in black ink, appearing to be 'R Chadwick', written over the printed name.

Dr Richard Chadwick
General Manager
Adjudication Branch



**Australian Payments Clearing Association – applications for revocation
and substitution A91153 & A91154
– request for interim authorisation**

REASONS

DECISION

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation with respect to applications for revocation and substitution A91153 and A91154 lodged by the Australian Payments Clearing Association (APCA) on 13 July 2009. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

THE APPLICATION

APCA is seeking reauthorisation for those provisions of its Consumer Electronic Clearing System (CECS) Regulations and Manual which it considers may be exclusionary provisions. Specifically, APCA is seeking reauthorisation for the provisions in the Regulations and Manual concerning initial certification of CECS members and the suspension and termination of CECS membership.

APCA is seeking reauthorisation for a period of five years.

Further information regarding the application is available on the ACCC's public register at www.accc.gov.au/AuthorisationsRegister.

THE AUTHORISATION PROCESS

The ACCC can grant immunity from the application of the competition provisions of the *Trade Practices Act 1974* (the Act) if it is satisfied that the benefit to the public from the conduct outweighs any public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

INTERIM AUTHORISATION

Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.

The ACCC will only grant interim authorisation in appropriate circumstances. In many circumstances it is not appropriate to do so because interim authorisation allows an applicant, for a limited period, to engage in conduct before the ACCC has been able to fully assess whether the conduct satisfies the authorisation test.

REASONS FOR DECISION

APCA's CECS Regulations and Manual have been authorised since 2000. APCA is now only seeking reauthorisation for provisions in the Regulations and Manual concerning initial certification of CECS members and the suspension and termination of CECS membership. These provisions have not changed substantially since the ACCC last authorised the arrangements.

The ACCC considers that granting interim authorisation will preserve the status quo, allowing APCA and members of CECS to continue to engage in these arrangements while the ACCC considers the merits of the substantive application for revocation and substitution.

RECONSIDERATION OF DECISION

The ACCC may review its decision on interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.