



Australian
Competition &
Consumer
Commission

Draft Determination

Application for revocation and substitution of authorisations A90932 & A90933

lodged by

the Australian Payments Clearing Association

in respect of

**provisions contained within the
Australian Paper Clearing System (APCS)
regulations**

Date: 4 March 2010

**Authorisation no.: A91203
A91213**

Public Register no.: C2009/1963

Commissioners: Samuel
Kell
Schaper
Court
Dimasi
Walker
Willett

Summary

The ACCC proposes to grant authorisation to the Australian Payments Clearing Association (APCA) for those provisions of its Australian Paper Clearing System (APCS) regulations relating to suspension and termination of APCS membership.

The ACCC proposes to grant authorisation for five years.

APCA's charter is to co-ordinate, manage and ensure the implementation and operation of effective payments clearing and settlement systems, policies and procedures. The APCS is one such payment clearing and settlement system.

The APCS coordinates, manages and ensures the implementation and operation of policies and procedures for the processing of payments made using paper instruments, primarily cheques.

The APCS standards are set out in the APCS regulations. The APCS regulations encompass membership criteria, suspension and termination provisions, representation arrangements, fees, the management committee for the system, an advisory council, member meetings and clearing, settlement and dispute resolution processes.

The APCS regulations were first authorised in 1993. The APCS regulations relating to suspension and termination of APCS membership were reauthorised in 2005. These authorisations expired on 10 February 2010.

On 13 January 2010 the ACCC granted interim authorisation to the proposed arrangements. 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.

As was the case in 2005, APCA has not sought reauthorisation for the APCS regulations in their entirety. Rather, APCA seeks reauthorisation only for those provisions of the APCS regulations which it considers may be exclusionary provisions. Specifically, APCA seeks reauthorisation for the provisions of the APCS regulations governing suspension and termination of APCS membership.

The ACCC considers that the APCS suspension and termination provisions will produce a public benefit by promoting the efficient operation and enhanced security and integrity of the system for clearing and settling paper based payments instructions. The collective setting of these requirements may also result in transaction cost savings as they would otherwise be subject to bilateral negotiation between individual members.

Such bilateral negotiation is likely to be more difficult because, given that financial institutions currently operate under the APCS system, alternative clearing arrangements have not, in recent times, been developed or considered. In addition, such bilateral negotiation is likely to be more costly for the institution to negotiate and more difficult to manage than participating in the APCS.

Therefore, exclusion from the APCS would have an adverse effect on the institution concerned which has the potential to result in considerable anti-competitive detriment. However, the ACCC considers that the suspension and termination provisions do not place unreasonable requirements on members.

In addition, there are a number of checks and balances in place to mitigate any potential anti-competitive misuse of the suspension and termination provisions.

On balance, the ACCC considers that the public benefit is likely to outweigh the public detriment. The ACCC proposes to grant authorisation for five years.

The ACCC will now seek further submissions from the applicant and interested parties in relation to this draft determination prior to making a final decision. The applicant and interested parties may also request that a conference be held to make oral submissions on the draft determination.

The proposed authorisation does not extend to any provisions of the APCS regulations other than those relating to the suspension and termination of APCS membership as identified by APCA in its application for reauthorisation.

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List of abbreviations

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| ACCC | Australian Competition and Consumer Commission |
| The Act | <i>Trade Practices Act 1974 (Cth)</i> |
| APCA | Australian Payments Clearing Association |
| APCS | Australian Paper Clearing System |
| APRA | Australian Prudential Regulation Authority |
| CBA | Commonwealth Bank of Australia |
| Cheques Act | Cheques Act 1986 |
| RBA | Reserve Bank of Australia |
| The Tribunal | Australian Competition Tribunal |

1. The application for authorisation

- 1.1. On 7 December 2009 the Australian Payments Clearing Association Limited (APCA) lodged an application for the revocation of authorisations A90932 and A90933 and their substitution with authorisations A91203 and A91213 with the ACCC.
- 1.2. Authorisation is a transparent process where the ACCC may grant immunity from legal action for conduct that might otherwise breach the *Trade Practices Act 1974* (the Act). The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not. Further information about the authorisation process is contained in Attachment A. A chronology of the significant dates in the ACCC's consideration of these applications is contained in Attachment B.
- 1.3. Applications A91203 and A91213 were made under section 91C(1) of the Act. Under section 91C of the Act, the ACCC may revoke an existing authorisation and grant another authorisation in substitution for the one revoked (reauthorisation). In order for the ACCC to re-authorise, the ACCC must consider the substitute authorisation in the same manner as the standard authorisation process.
- 1.4. The Australian Paper Clearing System (APCS) coordinates, manages and ensures the implementation and operation of policies and procedures for the processing of payments made using paper instruments, primarily cheques. Current APCS members are listed in Attachment D.
- 1.5. The APCS standards are set out in the APCS regulations. The APCS regulations encompass membership criteria, suspension and termination provisions, representation arrangements, fees, the management committee for the system, the advisory council, member meetings, settlement and dispute resolution.
- 1.6. APCA seeks reauthorisation for those provisions in the APCS regulations which it considers may be exclusionary provisions. Specifically, APCA seeks reauthorisation for the provisions which concern the rules governing suspension and termination of APCS membership.

Regulations 4.27 and 4.27A – suspension of membership

- 1.7. Suspension can only occur in a limited range of circumstances. Two of these are if the member is subject to prudential supervision and the prudential supervisor requests suspension or if the member agrees to a suspension. The circumstances where APCA can suspend a member are as follows:
 - If a member no longer satisfies the membership criteria.
 - A disabling event occurs in respect of the participating member in which case the member can be suspended for the duration of the disabling event.
 - If a member becomes insolvent or fails to settle its clearing obligations. If an insolvent member is subject to prudential supervision by the Australian Prudential

Regulation Authority (APRA) then the APRA must be consulted before the member is suspended.

- If a member breaches relevant provisions of the APCS constitution, the regulations or the procedures and does not rectify the breach or provide a satisfactory explanation within a prescribed time period.

Regulations 4.28 to 4.32 – effect of suspension

- 1.8. Suspended members are not entitled to participate in the APCS, vote at any APCS meetings or be represented on the APCS Management Committee.
- 1.9. In lieu of suspending a member, the APCS Management Committee may impose conditions on the membership of the member, including changing the capacity in which the member can participate in the APCS or varying the procedures relating to the exchange of items addressed to or drawn on the member.

Regulations 4.33 to 4.35 – termination

- 1.10. Membership can be terminated where a member resigns, becomes insolvent, is wound up, dissolved or otherwise ceases to exist.
- 1.11. The APCA Board, which is ultimately responsible for the management of all APCA's payment clearing systems, can terminate a membership of the APCS provided the following pre-conditions have been met:
 - A suspension event has occurred and not been remedied.
 - If the member is subject to prudential supervision, the Board has consulted with the relevant prudential supervisor.
 - The Board has provided an opportunity for the member to make submissions to the Board regarding termination of membership.

Regulations 4.37 and 4.38 – effect of termination

- 1.12. Any member who resigns or whose membership is terminated is not entitled to affect exchanges in accordance with the APCS regulations.

Other relevant provisions in the APCS regulations

- 1.13. APCA has only sought reauthorisation for those provisions of the APCS regulations which APCA considers could potentially raise concerns under the Act - namely, those provisions relating to excluding corporations from directly participating in the APCS, as summarised above.
- 1.14. Further details of the APCS, including other relevant provisions of the APCS regulations, is provided in Chapter 2 of this draft determination.

Other parties

- 1.15. Under section 88(6) of the Act, any authorisation granted by the ACCC is automatically extended to cover any person named in the authorisation as being a party or proposed party to the conduct.
- 1.16. APCA has named both current and future APCS members as parties to the proposed arrangements.

Previous authorisations

- 1.17. The APCS regulations were first authorised by the Trade Practices Commission on 22 September 1993 (A90550, A90551, A90552). The APCS regulations relating to suspension and termination of APCS membership were reauthorised by the ACCC on 19 January 2005 (A90932, A90933). These authorisations expired on 10 February 2010.
- 1.18. APCA seeks reauthorisation for the provisions of the APCS regulations noted above for a further five years.

Interim authorisation

- 1.19. On 11 December 2009 APCA sought interim authorisation for the arrangements. On 13 January 2010 the ACCC granted interim authorisation.
- 1.20. In granting interim authorisation, the ACCC noted that the provisions in the APCS regulations concerning the suspension and termination of APCS membership have not changed substantially since the ACCC last authorised the arrangements.
- 1.21. The ACCC considered that granting interim authorisation would preserve the status quo, allowing APCA and members of the APCS to continue to engage in these arrangements while the ACCC considered the merits of the substantive application for revocation and substitution.

2. Background to the application

Payment systems¹

- 2.1. A payment is the transfer of a financial asset of the kind generally used as a medium of exchange from one person to another. Such assets are generally cash or obligations drawn on organisations which, in the normal course of their business, provide a means for their customers to transfer value to third parties.
- 2.2. In Australia, banks, building societies, credit unions and some card organisations provide a means for individuals and businesses to transfer value between each other. In that sense they all provide payment services.
- 2.3. While cash payments are still important in terms of volume, non-cash means of making payments predominate in value terms and are increasingly replacing cash.
- 2.4. The payment system is the institutional infrastructure that carries payment messages and transfers funds from one party's account to another's.
- 2.5. A payment system comprises payment instruments and delivery mechanisms. A payment instrument is the form the payment message takes (for example, cheque, credit card, etc) and is the means by which one party transfers value to a third party. Such a message is typically a request by one party (such as the drawer of the cheque or the holder of the card) to another party (the drawee of the cheque or the card issuer) to pay a certain sum to a third party (the payee).
- 2.6. A delivery mechanism is the means by which payment messages are carried from one point within the payments system to another.
- 2.7. Where both parties to a payment transaction maintain accounts with the same organisation, payment arrangements are relatively simple. The organisation debits the paying customer and credits the receiving customer. However, where the parties to the payment instruction are customers of different organisations, a process is needed for both organisations to reflect the change in their customers' accounts and for value to pass between those organisations. The process for doing so is called clearing and settling.

Clearing

- 2.8. Clearing is the cross-institutional exchange of individual payment messages for the purpose of obtaining settlement. It entails sorting, routing and exchanging payment instructions, verifying the integrity of instructions and the accuracy of the sums involved, correcting the sums for errors and other adjustments and finally, determining the net amounts which, once paid, will settle any resultant debt between the financial institutions involved.

¹ The information in this section is taken from APCA's submission in support of its application for authorisation.

- 2.9. In Australia, arrangements for the clearing of transactions involving cheques, direct entry payments, ATMs and debit cards and high value payments are co-ordinated through APCA under rules agreed between its members.
- 2.10. Other payments clearing systems such as credit cards (MasterCard, VISA and Bankcard), the BPAY system for the payment of bills and securities settlement systems are operated independently of APCA.

Settlement

- 2.11. Settlement is the exchange of value between institutions providing payment services for the purpose of providing finality of payment for the obligations arising out of payments clearing.
- 2.12. Settlement between financial institutions in Australia is achieved through transfers of their Exchange Settlement Account balances held with the Reserve Bank of Australia (RBA).
- 2.13. For transactions encompassed by the APCS, settlement is deferred, taking place on the morning of the next business day. Deferred settlement systems carry the inherent risk of an institution processing a third party transaction and then not receiving due settlement from the third party's organisation.

The Australian Payments Clearing Association

- 2.14. 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.
- 2.15. The impetus to establish APCA can be traced in part to recommendations of the Campbell Committee². The Committee did not specifically recommend the establishment of a separate body for the management and regulation of payments clearing. It recommended that there be general oversight by the RBA of applications for direct participation in cheque clearing and that there be agency facilities available for non-clearing banks and non bank institutions. This directed the banks initially towards the need to review arrangements for payments clearing and processing, which led to the formation of APCA.
- 2.16. APCA does not process payments. It co-ordinates and manages payments clearing arrangements for each of the clearing systems it establishes. Individual institutions are responsible for their own clearing operations and must conduct their operations according to APCA's rules as set out in the regulations and procedures for each of APCA's clearing systems.
- 2.17. APCA is currently responsible for five payment clearing systems, namely the:

² Committee of Inquiry into the Australian Financial System (chair Keith Campbell) Final Report September 1981.

- Consumer Electronic Clearing System (CECS) – which provides minimum standards to protect and facilitate the conduct and settlement of exchanges of consumer electronic payment messages resulting from EFTPOS and ATM transactions. These standards include specifications for equipment, cards, communication links and message formats.
- Bulk Electronic Clearing System (BECS) – which manages the exchange and settlement of bulk direct entry electronic low value transactions. The direct entry system allows approved organisations (for example utility companies and insurance providers) to make arrangements with their financial institution to debit and/or credit large numbers of customers’ accounts on a regular basis.
- High Value Clearing System (HVCS) - was established by APCA in 1997 as part of the more general development of Real Time Gross Settlement in Australia. It provides a best practice, efficient and highly secure electronic payments mechanism for the Australian finance industry.
- Australian Cash Distribution and Exchange System (ACDES) – which governs the exchange and distribution of wholesale cash. Until August 2001, notes and coins not in circulation were owned and managed by the RBA. The establishment of the ACDES followed the decision by the RBA to transfer the ownership and management responsibility for this cash to a number of banks.
- Australian Paper Clearing System (APCS) – which co-ordinates and manages policies and procedures for the conduct and settlement of exchanges of paper-based payment instructions, primarily cheques.

APCA membership and management

2.18. APCA has three categories of membership:

- owner members - which confers rights relating to the governance of APCA, including rights to appoint directors and vote at company meetings
- participating members - which confers rights of participation in the relevant clearing system or systems, and rights relating to the governance of that clearing system
- associate members - which allows individuals and organisations to be kept abreast of APCA’s activities.

2.19. APCA has also established three advisory councils. Advisory councils are comprised of “interested non-clearers”, being bodies corporate that issue payment instruments, process or switch payments messages or otherwise participate in payments transfers related to a particular clearing system. There is a recommendation to replace the APCS (and BECS) Advisory Councils by mid 2010 with expert panels and an annual stakeholder forum.

2.20. APCA’s constitution provides for the creation of additional categories of membership if required. A new category of participating membership, for example, might be needed if

technological change were to give rise to a new or different type of payment instrument.

- 2.21. The APCA Board of Directors, appointed by owner members, is ultimately responsible for the management of APCA.
- 2.22. Committees of management are appointed by the respective clearing system members to oversee the operations of each clearing system. Broadly, committees of management are responsible for technical and efficiency standards, operational procedures and policies, supervision of observance of clearing system rules, assessment of clearing volumes, dispute resolution, and approval of membership applications.

The Australian Paper Clearing System³

- 2.23. The APCS was established in December 1993. It has the role of coordinating, managing and ensuring the implementation and operation of policies and procedures for the conduct and settlement of exchanges of paper-based payment instructions, i.e. primarily cheques but also money orders and travellers' cheques, between its participating members.
- 2.24. A cheque is a written instruction to a financial institution made by its customer to pay a third party. Cheque facilities are provided to their customers by banks and other financial institutions. Eight banks are direct clearers, meaning that they process cheques and then exchange them with other direct clearers at regional exchange centres. Other financial institutions use a direct clearer to process and exchange cheques for them.
- 2.25. In 2009 more than 330 million cheques were issued, totalling over \$1.5 trillion. Of this, cheques written by individuals or business customers represented approximately 95% of cheques and 67% of the total value, while cheques drawn by financial institutions represented approximately 5% of cheques and 33% of the total value.⁴
- 2.26. APCA states that use of cheques is gradually falling with the number of cheque payments falling by 32 percent in volume and 11 percent in value between 2004 and 2008.
- 2.27. The Cheques Act 1986 (Cheques Act) governs the issuance of cheques in Australia. Non-bank financial institutions, as well as all licensed banks, have been able to issue cheques in their own name since 1998. Non-bank financial institutions also have the option to issue cheques carrying their name but which are drawn on a bank under a cheque issuance facility.
- 2.28. The Cheques Act does not detail the procedural and practical issues governing the clearance of cheques and payment orders. These are specifically covered by APCA's rules.

³ Unless otherwise stated, the information in this section is taken from Annexure 2 of APCA's submission in support of its application for authorisation and from APCA's website (www.apca.com.au).

⁴ Reserve Bank of Australia, Cheques and Direct Entry Payments statistics, <http://www.rba.gov.au/payments-system/resources/statistics/index.html>.

- 2.29. The APCS procedures encompass the rules for conducting exchanges, file specifications and standard forms. The regulations are technical in nature and are aimed at ensuring that exchanges are conducted efficiently and securely.
- 2.30. The APCS regulations encompass membership criteria, suspension and termination provisions, representation arrangements, fees, the management committee for the system, the advisory council, member meetings, settlement and dispute resolution. Some of the regulations are outlined below.

Membership Criteria

- 2.31. Entitlement to membership is functionally based. Members must be “issuers” or “collectors” (or represent and settle for such bodies) of payment instruments cleared under the APCS regulations. This contrasts with the position prior to 2004 where members had to be “providers of payment services” (essentially a deposit taking institution).
- 2.32. There are three membership categories based on whether the member:
- directly clears and settles to the system for their own obligations – Tier 1A members
 - appoints a representative to clear on their behalf while settling directly – Tier 1B members, or
 - appoints a representative to clear and settle on their behalf (i.e. indirectly clears and settles) – Tier B members.

Representation Arrangements

- 2.33. A member that does not directly clear in any region must appoint a Tier 1A member to receive items on its behalf. Although commercial relationship between the parties is not covered by the APCS rules and is a matter for the parties, the rules specify particular requirements for a representation arrangement to protect the efficiency and integrity of the system.

Fees

- 2.34. An entrance fee of \$5000 is levied on all new members of the APCS in order to recover APCA’s administrative costs.
- 2.35. An operational change fee of \$20,000 is levied on members that require other members to deliver items to a new BSB address. APCA advises that this fee is set to partly recover the cost incurred by members in changing their systems to recognise a new BSB and it is used to lower the operating fees charged by APCA.
- 2.36. APCA levies a monthly operating fee on each Tier 1A member to cover APCA’s costs of administering the system. A proportion of these costs is levied equally among members and the balance in proportion to transaction volume.
- 2.37. Tier 1B and Tier 2 members also pay an annual fee to APCA of \$1000 as a contribution to cover administrative costs.

Management Committee

- 2.38. Under APCA Board delegation a Management Committee oversees the APCS. The Committee is chaired by a director nominated by the Board under Article 8.3(a) of APCA's constitution.
- 2.39. Committee members represent a number of banks that each have more than 5% of transaction volume and are therefore entitled to individual representation. Two members represent constituencies of banks that collectively have more than 5% of transaction volume. Credit unions and building societies are represented by industry bodies.
- 2.40. The Chairman of the APCS Advisory Council also attends meetings of the Management Committee, usually with one other member of the Advisory Council. All current members of the APCS have representation on the Management Committee. However there is provision for two discretionary seats to be allocated by the Board to accommodate members of the APCS that do not have 5% of transaction volume and which cannot find representation through a constituency.
- 2.41. Each member of the Management Committee has a vote in proportion to the transaction volume of the APCS member or members that he/she represents. More than 50% of eligible votes is required to pass a resolution. Any matter can be referred to the Board. All changes to the regulations, as distinct from procedures, must be approved by a meeting of APCS members and by the Board.

Advisory Council

- 2.42. APCA established an APCS Advisory Council in 1999. Advisory Councils have access to the same information as Management Committees except for rare occasions when a particular piece of information is declared to be confidential by the chairman of the Management Committee.
- 2.43. Advisory Councils meet regularly and determine their work plans and agendas in consultation with the applicable Management Committee. Normally two members of the Management Committee attend Advisory Council meetings at the invitation of the Councils. Currently the APCS Advisory Council draws its members from processors/switchers, technology providers, fraud protection providers, cheque guarantee companies, cheque paper manufacturers, printers and larger users of cheques.
- 2.44. APCA is currently undergoing a stakeholder engagement review, which considers, amongst other things, the future of the Advisory Councils. A recommendation has been made to the APCA Board based on extensive review and consultation, to phase out the APCS Advisory Council by mid 2010 and to replace this form of engagement with the creation of expert panels, together with an annual stakeholder forum. APCA states that this is expected to enable more effective engagement on matters of broader industry interest. This proposal had broad support within APCA and the APCS Advisory Council membership.

Members' Meetings

- 2.45. At least one meeting of all participating members must be held each year.

Settlement

- 2.46. Tier 1 members are required to provide finality of settlement through an Exchange Settlement Account at the Reserve Bank or through another means recommended by the Management Committee and approved by the Board.

Disputes

- 2.47. A dispute between members or between the Board/Management Committee and a member, which has application to the APCS regulations or procedures, can be referred to the Management Committee or the Board for determination and allocation of costs.

3. Submissions received by the ACCC

- 3.1. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process. To this end the ACCC aims to consult extensively with interested parties that may be affected by the proposed conduct to provide them with the opportunity to comment on the application.
- 3.2. APCA submits that to function well, the economy requires the secure and efficient processing of paper transactions between financial institutions through a clearing framework of the kind constituted by the APCS.
- 3.3. APCA contends that the APCS contributes towards protecting and enhancing the integrity of payments clearance and settlement, and reducing risk within the payments system. APCA argues that this framework also contributes to the efficiency with which payment instructions are cleared, and the timeliness and certainty with which value is provided to customers.
- 3.4. APCA states that suspension or termination is only contemplated where the member's continuing participation would impair the efficiency or integrity of the APCS and that the suspension and termination provisions provide an important mechanism to ensure compliance with the APCS regulations and allow participants to have confidence in the system.
- 3.5. The ACCC sought submissions from a range of interested parties potentially affected by the application, including APCS members and other financial institutions, government departments and regulatory agencies and consumer and small business organisations. The ACCC received one public submission from the Commonwealth Bank of Australia (CBA).
- 3.6. The CBA advised that it supports the proposed arrangements and endorses APCA's view that the suspension and termination provisions of the APCS are vital to the security, efficiency, risk mitigation and integrity of the paper clearing process. CBA considers that the ability to contemplate suspension or termination where system efficiency or integrity is at risk is important to maintaining user and member confidence, as well as contributing to APCS efficacy.
- 3.7. The CBA considers that APCA is the appropriate forum for the setting and development of technical and operational rules, and that the maintenance and enhancement of the integrity and efficiency of APCA's paper clearing system, along with the mitigation of risks affecting participants, will be assisted by authorisation of the relevant APCS regulations.
- 3.8. The views of APCA and interested parties are further outlined in the ACCC's evaluation of the arrangements in Chapter 4 of this draft determination. Copies of public submissions may be obtained from the ACCC's website (www.accc.gov.au/AuthorisationsRegister), by following the links to this matter.

4. ACCC evaluation

- 4.1. Broadly, under section 91C(7) the ACCC must not make a determination revoking an authorisation and substituting another authorisation unless the ACCC is satisfied that the relevant statutory tests are met.
- 4.2. The ACCC's evaluation of the conduct is in accordance with tests found in:
- Section 90(8) of the Act, which states that the ACCC shall not authorise a proposed exclusionary provision of a contract, arrangement or understanding, unless it is satisfied in all the circumstances that the proposed provision would result or be likely to result in such a benefit to the public that the proposed contract, arrangement or understanding should be authorised.
 - Section 90(7) of the Act, which states that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:
 - the provision of the proposed contract, arrangement or understanding has resulted or is likely to result, in a benefit to the public and
 - that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.
 - Sections 90(5A) and 90(5B) of the Act, which state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:
 - the provision, in the case of section 90(5A) would result, or be likely to result, or in the case of section 90(5B) has resulted or is likely to result, in a benefit to the public and
 - that benefit, in the case of section 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of section 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.
- 4.3. For more information about the tests for authorisation and relevant provisions of the Act, please see [Attachment C](#).

Areas of competition

- 4.4. The first step in assessing the effect of the conduct for which authorisation is sought is to consider the relevant area of competition affected by that conduct.

- 4.5. APCA submits that, at the narrowest level, the APCS provides clearing regulatory infrastructure for paper based payment instructions, while, on a broader level, the APCS provides part of the architecture for the provision of payment services.
- 4.6. APCA provides a self regulatory framework for the conduct and settlement of exchanges in a number of payment systems. As such, decisions by APCA members have the potential to impact on competition in a range of areas. In particular, the ability to offer paper based payment options to customers is an important element of many financial institutions' business and offering these payment options requires financial institutions to have in place processes for clearing and settling such payments.
- 4.7. While authorisation has only been sought for those provisions in the APCS regulations concerning termination and suspension of APCS membership, these provisions, if invoked, affect a financial institution's ability to clear and settle paper based payment instruments and, potentially, their ability to offer paper based payment options to customers.

The counterfactual

- 4.8. The ACCC applies the 'future with-and-without test' established by the Tribunal to identify and weigh the public benefit and public detriment generated by conduct for which authorisation has been sought.⁵
- 4.9. Under this test, the ACCC compares the public benefit and anti-competitive detriment generated by arrangements in the future if the authorisation is granted with those generated if the authorisation is not granted. This requires the ACCC to predict how the relevant markets will react if authorisation is not granted. This prediction is referred to as the 'counterfactual'.
- 4.10. As noted, APCA has sought reauthorisation for those provisions of the APCS regulations which it considers may be exclusionary provisions. Namely, those provisions dealing with termination and suspension of APCS membership. Given the concerns that these provisions may breach the Act, the ACCC considers that the most likely situation absent authorisation is that these provisions would not be given effect to.
- 4.11. That is, APCS members could continue to collectively set minimum standards to protect and facilitate the conduct and settlement of exchanges of paper based payment instruments, but without the suspension and termination provisions, for APCS members to participate in the APCS.

⁵ *Australian Performing Rights Association* (1999) ATPR 41-701 at 42,936. See also for example: *Australian Association of Pathology Practices Incorporated* (2004) ATPR 41-985 at 48,556; *Re Media Council of Australia* (No.2) (1987) ATPR 40-774 at 48,419.

Public benefit

4.12. Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.⁶

4.13. In considering public benefits, the ACCC considers the extent to which the benefit has an impact on members of the community and the weight that should be given to it, having regard to its nature, characterisation and the identity of the beneficiaries. In relation to cost savings, the ACCC will consider who is likely to take advantage of them and the time period over which the benefits are likely to be received.

4.14. APCA submits that the suspension and termination provisions in the APCS regulations continue to result in a benefit to the public through the protection of the security, efficiency and integrity of paper clearing processes.

4.15. APCA contends that these benefits can only be realised if members act in accordance with its regulations and that its suspension and termination provisions provide last resort safeguards to ensure this. APCA argues that without these sanctions, the efficacy and integrity of the APCS would be diminished and the confidence of members and users of the APCS would be reduced.

4.16. CBA similarly submits that the suspension and termination provisions of the APCS are vital to the security, efficiency, risk mitigation and integrity of the paper clearing process. CBA considers that the ability to contemplate suspension or termination where system efficiency or integrity is at risk is important to maintaining user and member confidence, as well as contributing to APCS efficacy.

4.17. The ACCC's assessment of the likely public benefits from the proposed conduct follows.

ACCC view

4.18. The arrangements for which authorisation are sought provide for suspension and termination of APCS membership in certain circumstances.

4.19. In its 2005 determination, the ACCC concluded that the suspension and termination provisions were likely to result in a public benefit through the protection of the security, efficiency and integrity of the paper clearing process.

4.20. Since that time no concerns have been raised with the ACCC regarding the arrangements, and since their inception in 1993 the APCS suspension and termination provisions have never had to be used.

⁶ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976)ATPR 40-012 at 17,242.

- 4.21. The ACCC accepts that a public benefit, in the form of the efficient operation and enhanced security and integrity of the APCS, will continue to result from the APCS through the adoption of the suspension and termination provisions. Absent these provisions the confidence of users with the APCS system would likely be diminished.
- 4.22. It may also be argued that the collective setting of these requirements may result in transaction cost savings as they would otherwise be subject to bilateral negotiation between individual members.

Public detriment

- 4.23. Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁷

- 4.24. APCA states that the suspension and termination provisions, if invoked, have the effect of excluding the institution concerned from participating in and receiving services through the APCS. APCA submits that although this does not automatically exclude the institution concerned from the process of clearing paper payment instruments or settlement, continued participation would need to be done by bilateral arrangement with other participants outside of the APCS. APCA submits that because an excluded institution may have difficulty engaging other participants, exclusion from the APCS may have an adverse impact on the institution concerned.
- 4.25. However APCA submits that the suspension and termination provisions are necessary to maintain the integrity of the APCS, that they are last resort sanctions, and have not been used or specifically contemplated since APCA's establishment.
- 4.26. APCA also considers that, although exclusion from the APCS may have an adverse impact on the institution concerned as they may not be able to clear and settle paper payment instruments, the suspension and termination provisions do not place unreasonable requirements on members. Furthermore, to the extent that any anti-competitive detriment may arise in respect of excluding a particular member, APCA submits that this anti-competitive detriment does not affect competition more generally, given the number of competing providers of such services.

ACCC view

- 4.27. APCA is seeking reauthorisation for those provisions in the APCS regulations relating to suspension and termination of APCS membership. APCS membership can be suspended in a range of circumstances. Most relevantly, if a member no longer satisfies the membership criteria, becomes insolvent or fails to settle their clearing obligations. Membership can also be suspended where a member breaches relevant provisions of the APCS constitution, the regulations or the procedures and the member does not rectify the breach or provide a satisfactory explanation within a prescribed time period.

⁷ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

- 4.28. APCS membership can be terminated if a suspension event has not been remedied.
- 4.29. The termination provisions, if invoked, have the effect of excluding the institution concerned from participating in the APCS system.
- 4.30. The ACCC notes that termination of APCS membership does not preclude the institution from participating in the paper based payment system as the excluded party would still be able to establish other direct clearing and settling arrangements outside the APCS arrangements. However, the excluded party would likely need to negotiate bilateral agreements with APCS participants outside of the APCS arrangements.
- 4.31. Such bilateral negotiation is likely to be more difficult because, given that financial institutions currently operate under the APCS system, alternative clearing arrangements have not, in recent times, been developed or considered. In addition, such bilateral negotiation is likely to be more costly for the institution to negotiate and more difficult to manage than participating in the APCS.
- 4.32. Therefore, exclusion from the APCS would have an adverse effect on the institution concerned and potentially could make it very difficult, or at the very least, much more costly, for the institution to clear and settle paper payment instructions.
- 4.33. Absent appropriate checks and balances on the use of the suspension and termination provisions this has the potential to result in considerable anti-competitive detriment. However, the ACCC considers that the suspension and termination provisions do not place unreasonable requirements on members.
- 4.34. Further, a number of features of the suspension and termination provisions also safeguard against their anti-competitive misuse, including the requirement, where relevant, that if a member is subject to prudential supervision, that the prudential supervisor be consulted and the representation of the Reserve Bank of Australia on the APCA Board responsible for membership termination decisions.
- 4.35. In addition, the ACCC notes that since the APCS first began operating in 1993 the suspension and termination provisions have never been used.
- 4.36. Further, if the suspension and termination provisions were ever misused for an anti-competitive purpose or effect, the ACCC would be able to review whether ongoing authorisation of the arrangements continued to result in a net public benefit.

Balance of public benefit and detriment

- 4.37. In general, the ACCC may only grant authorisation if it is satisfied that, in all the circumstances, the conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment.
- 4.38. In the context of applying the net public benefit test in section 90(8)⁸ of the Act, the Tribunal commented that:

⁸ The test at 90(8) of the Act is in essence that conduct is likely to result in such a benefit to the public that it should be allowed to take place.

... something more than a negligible benefit is required before the power to grant authorisation can be exercised.⁹

- 4.39. The ACCC considers that the APCS suspension and termination provisions will produce a public benefit by promoting the efficient operation and enhanced security and integrity of the system for clearing and settling paper based payments instructions. The collective setting of these requirements may also result in transaction cost savings as they would otherwise be subject to bilateral negotiation between individual members.
- 4.40. Termination of APCS membership does not preclude the institution from participating in the paper based payment system. However, the excluded party would likely need to negotiate bilateral agreements with APCS participants outside of the APCS arrangements. Given that members operate under the APCS system, it would likely be significantly more difficult for institutions excluded from the APCS to negotiate such agreements outside of the APCS in the future. In addition, such bilateral negotiation is likely to be more costly for the institution to negotiate and more difficult to manage than participating in the APCS.
- 4.41. Therefore, exclusion from the APCS would have an adverse effect on the institution concerned which has the potential to result in considerable anti-competitive detriment. However, the ACCC considers that the suspension and termination provisions do not place unreasonable requirements on members.
- 4.42. In addition, there are a number of checks and balances in place to mitigate any potential anti-competitive misuse of the suspension and termination provisions.
- 4.43. Accordingly, the ACCC considers the public benefit that is likely to result from the conduct is likely to outweigh the public detriment. The ACCC is therefore satisfied that the tests in sections 90(7), 90(8), 90(5A) and 90(5B) are met.

Length of authorisation

- 4.44. The Act allows the ACCC to grant authorisation for a limited period of time.¹⁰ The ACCC generally considers it appropriate to grant authorisation for a limited period of time, so as to allow an authorisation to be reviewed in the light of any changed circumstances.
- 4.45. In this instance, APCA seeks reauthorisation for five years.
- 4.46. The ACCC proposes to grant reauthorisation to the arrangements for five years.

Conduct not proposed to be authorised

- 4.47. The proposed authorisation does not extend to any provisions of the APCS regulations other than those relating to the APCS suspension and termination provisions as identified by APCA in its application.

⁹ *Re Application by Michael Jools, President of the NSW Taxi Drivers Association* [2006] ACompT 5 at paragraph 22.

¹⁰ Section 91(1).

Variations to the proposed conduct

- 4.48. The ACCC notes that any amendments to the suspension and termination provisions of the APCS regulations during the proposed term of this authorisation would not be covered by the proposed authorisation.

5. Draft determination

The application

- 5.1. On 7 December 2009 the Australian Payments Clearing Association Limited (APCA) lodged an application for revocation of authorisations A90932 and A90933 and the substitution of authorisations A91203 and A91213 with the Australian Competition and Consumer Commission (the ACCC).
- 5.2. Application A91203 was made under section 91C(1) of the Act. Under section 91C of the Act, the ACCC may revoke an existing authorisation and grant another authorisation in substitution for the one revoked (reauthorisation). In order for the ACCC to re-authorise, the ACCC must consider the substitute authorisation in the same manner as the standard authorisation process. Relevantly, the ACCC may grant authorisation under:
- section 88(1A) of the Act to make and give effect to a provision of a contract, arrangement or understanding, a provision of which is, or may be, a cartel provision and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act, and
 - section 88(1) of the Act to make and give effect to a contract, arrangement or understanding, a provision of which is or may be an exclusionary provision within the meaning of section 45 of the Act.
- 5.3. Application A91213 was made under section 91C(1) of the Act. Relevantly, the ACCC may grant authorisation under:
- section 88(1A) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding a provision of which would be, or might be, a cartel provision (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act), and
 - section 88(1) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding, 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.
- 5.4. In particular, APCA seeks authorisation for those provisions in its Australian Paper Clearing System (APCS) regulations which relate to the suspension and termination of APCS membership.
- 5.5. Section 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

The net public benefit test

- 5.6. For the reasons outlined in Chapter 4 of this draft determination the ACCC considers that in all the circumstances the conduct for which authorisation is sought is likely to

result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct.

- 5.7. The ACCC is also satisfied that the conduct for which authorisation is sought is likely to result in such a benefit to the public that the conduct should be allowed to take place.
- 5.8. The ACCC therefore **proposes to grant** authorisation to applications A91203 and A91213 for five years.
- 5.9. Further, the proposed authorisation is in respect of the suspension and termination provisions as they stand at the time authorisation is granted. Any changes to these requirements during the term of the proposed authorisation would not be covered by the proposed authorisation.
- 5.10. This draft determination is made on 4 March 2010.
- 5.11. The attachments to this determination are part of the draft determination.

Conduct not proposed to be authorised

- 5.12. The proposed authorisation does not extend to any provisions of the APCS regulations other than those relating to the APCS suspension and termination provisions as identified by APCA in its Form FC.

Interim authorisation

- 5.13. On 11 December 2009 APCA requested interim authorisation for the arrangements. The ACCC granted interim authorisation on 13 January 2010.
- 5.14. 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.

Further submissions

- 5.15. The ACCC will now seek further submissions from interested parties. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the Act.

Attachment A — the authorisation process

The Australian Competition and Consumer Commission (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 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 in certain circumstances for conduct that might otherwise raise concerns under the competition provisions of the Act. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an ‘authorisation’.

The ACCC may ‘authorise’ businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.

The ACCC conducts a public consultation process when it receives an application for authorisation. The ACCC invites interested parties to lodge submissions outlining whether they support the application or not, and their reasons for this.

After considering submissions, the ACCC issues a draft determination proposing to either grant the application or deny the application.

Once a draft determination is released, the applicant or any interested party may request that the ACCC hold a conference. A conference provides all parties with the opportunity to put oral submissions to the ACCC in response to the draft determination. The ACCC will also invite the applicant and interested parties to lodge written submissions commenting on the draft.

The ACCC then reconsiders the application taking into account the comments made at the conference (if one is requested) and any further submissions received and issues a final determination. Should the public benefit outweigh the public detriment, the ACCC may grant authorisation. If not, authorisation may be denied. However, in some cases it may still be possible to grant authorisation where conditions can be imposed which sufficiently increase the benefit to the public or reduce the public detriment.

Attachment B — chronology of ACCC assessment for applications A91203 and A91213

The following table provides a chronology of significant dates in the consideration of the application by APCA.

| DATE | ACTION |
|------------------|--|
| 7 December 2009 | Application A91203 and A91213 for revocation and substitution lodged with the ACCC. |
| 11 December 2009 | Request for interim authorisation received. |
| 15 December 2009 | Closing date for submissions from interested parties in relation to the application for revocation and substitution. |
| 3 January 2010 | ACCC granted interim authorisation. |
| 4 March 2010 | Draft determination issued. |

Attachment C — the tests for authorisation and other relevant provisions of the Act

Trade Practices Act 1974

Section 90—Determination of applications for authorisations

- (1) The Commission shall, in respect of an application for an authorization:
 - (a) make a determination in writing granting such authorization as it considers appropriate; or
 - (b) make a determination in writing dismissing the application.
- (2) The Commission shall take into account any submissions in relation to the application made to it by the applicant, by the Commonwealth, by a State or by any other person.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.

- (4) The Commission shall state in writing its reasons for a determination made by it.
- (5) Before making a determination in respect of an application for an authorization the Commission shall comply with the requirements of section 90A.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.

- (5A) The Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a proposed contract, arrangement or understanding that would be, or might be, a cartel provision, unless the Commission is satisfied in all the circumstances:
 - (a) that the provision would result, or be likely to result, in a benefit to the public; and
 - (b) that the benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:
 - (i) the proposed contract or arrangement were made, or the proposed understanding were arrived at; and
 - (ii) the provision were given effect to.
- (5B) The Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a contract, arrangement or understanding that is or may be a cartel provision, unless the Commission is satisfied in all the circumstances:
 - (a) that the provision has resulted, or is likely to result, in a benefit to the public; and
 - (b) that the benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision.
- (6) The Commission shall not make a determination granting an authorization under subsection 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct (other than conduct to which subsection 47(6) or (7) applies), unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed

covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:

- (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
- (b) the proposed covenant were given, and were complied with; or
- (c) the proposed conduct were engaged in;

as the case may be.

(7) The Commission shall not make a determination granting an authorization under subsection 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.

(8) The Commission shall not:

- (a) make a determination granting:
 - (i) an authorization under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
 - (ii) an authorization under subsection 88(7) or (7A) in respect of proposed conduct; or
 - (iii) an authorization under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
 - (iv) an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- (b) make a determination granting an authorization under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.

(9) The Commission shall not make a determination granting an authorization under subsection 88(9) in respect of a proposed acquisition of shares in the capital of a body corporate or of assets of a person or in respect of the acquisition of a controlling interest in a body corporate within the meaning of section 50A unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to take place.

(9A) In determining what amounts to a benefit to the public for the purposes of subsection (9):

- (a) the Commission must regard the following as benefits to the public (in addition to any other benefits to the public that may exist apart from this paragraph):

- (i) a significant increase in the real value of exports;
 - (ii) a significant substitution of domestic products for imported goods; and
- (b) without limiting the matters that may be taken into account, the Commission must take into account all other relevant matters that relate to the international competitiveness of any Australian industry.

Variation in the language of the tests

There is some variation in the language in the Act, particularly between the tests in sections 90(6) and 90(8).

The Australian Competition Tribunal (the Tribunal) has found that the tests are not precisely the same. The Tribunal has stated that the test under section 90(6) is limited to a consideration of those detriments arising from a lessening of competition but the test under section 90(8) is not so limited.¹¹

However, the Tribunal has previously stated that regarding the test under section 90(6):

[the] fact that the only public detriment to be taken into account is lessening of competition does not mean that other detriments are not to be weighed in the balance when a judgment is being made. Something relied upon as a benefit may have a beneficial, and also a detrimental, effect on society. Such detrimental effect as it has must be considered in order to determine the extent of its beneficial effect.¹²

Consequently, when applying either test, the ACCC can take most, if not all, public detriments likely to result from the relevant conduct into account either by looking at the detriment side of the equation or when assessing the extent of the benefits.

Given the similarity in wording between sections 90(6) and 90(7), the ACCC considers the approach described above in relation to section 90(6) is also applicable to section 90(7). Further, as the wording in sections 90(5A) and 90(5B) is similar, this approach will also be applied in the test for conduct that may be a cartel provision.

Conditions

The Act allows the ACCC to grant authorisation subject to conditions.¹³

Future and other parties

Applications to make or give effect to contracts, arrangements or understandings that might substantially lessen competition or constitute exclusionary provisions may be expressed to extend to:

¹¹ *Australian Association of Pathology Practices Incorporated* [2004] ACompT 4; 7 April 2004. This view was supported in *VFF Chicken Meat Growers' Boycott Authorisation* [2006] ACompT9 at paragraph 67.

¹² *Re Association of Consulting Engineers, Australia* (1981) ATPR 40-2-2 at 42788. See also: *Media Council case* (1978) ATPR 40-058 at 17606; and *Application of Southern Cross Beverages Pty. Ltd., Cadbury Schweppes Pty Ltd and Amatil Ltd for review* (1981) ATPR 40-200 at 42,763, 42766.

¹³ Section 91(3).

- persons who become party to the contract, arrangement or understanding at some time in the future¹⁴
- persons named in the authorisation as being a party or a proposed party to the contract, arrangement or understanding.¹⁵

Six- month time limit

A six-month time limit applies to the ACCC’s consideration of new applications for authorisation¹⁶. It does not apply to applications for revocation, revocation and substitution, or minor variation. The six-month period can be extended by up to a further six months in certain circumstances.

Minor variation

A person to whom an authorisation has been granted (or a person on their behalf) may apply to the ACCC for a minor variation to the authorisation.¹⁷ The Act limits applications for minor variation to applications for:

... a single variation that does not involve a material change in the effect of the authorisation.¹⁸

When assessing applications for minor variation, the ACCC must be satisfied that:

- the proposed variation satisfies the definition of a ‘minor variation’ and
- if the proposed variation is minor, the ACCC must assess whether it results in any reduction to the net benefit of the conduct.

Revocation; revocation and substitution

A person to whom an authorisation has been granted may request that the ACCC revoke the authorisation.¹⁹ The ACCC may also review an authorisation with a view to revoking it in certain circumstances.²⁰

The holder of an authorisation may apply to the ACCC to revoke the authorisation and substitute a new authorisation in its place.²¹ The ACCC may also review an authorisation with a view to revoking it and substituting a new authorisation in its place in certain circumstances.²²

¹⁴ Section 88(10).

¹⁵ Section 88(6).

¹⁶ Section 90(10A)

¹⁷ Subsection 91A(1)

¹⁸ Subsection 87ZD(1).

¹⁹ Subsection 91B(1)

²⁰ Subsection 91B(3)

²¹ Subsection 91C(1)

²² Subsection 91C(3)

Attachment D — current APCS members

AMP Bank Limited
Arab Bank Australia Limited
Australia and New Zealand Banking Group Limited
Australian Settlements Limited
B & E Limited
Bananacoast Community Credit Union Limited
Bank of America National Association
Bank of China
Bank of China (Australia) Limited
Bank of Cyprus Australia Pty Limited
Bank of Queensland Limited
Bank of Tokyo-Mitsubishi UFJ, Ltd (The)
Bank of Western Australia Limited
Bendigo Bank Limited
Capricornia Credit Union Ltd
Citibank Pty Limited
Commonwealth Bank of Australia
Credit Union Australia Limited
Cuscal Limited
Deutsche Bank AG
Greater Building Society Limited
Heritage Building Society Limited
HSBC Bank Australia Limited
Hume Building Society Limited
Hunter United Employees' Credit Union Limited
IMB Limited
Indue Ltd
Industrial and Commercial Bank of China Limited
ING Bank (Australia) Limited
ING Bank N.V. (Sydney Branch)
JP Morgan Chase Bank, National Association
Laiki Bank (Australia) Limited
Lifeplan Australia Building Society Limited
Macquarie Bank Limited
Maitland Mutual Building Society Limited
Mega International Commercial Bank Co, Ltd
Members Equity Bank Pty Limited
Mizuho Corporate Bank Limited
National Australia Bank Limited

New England Credit Union Ltd
Newcastle Permanent Building Society Limited
Oversea-Chinese Banking Corporation Limited
Queensland Police Credit Union Limited
Queensland Professional Credit Union Limited
Queenslanders Credit Union Limited
Rabobank Australia Limited
Reserve Bank of Australia
St George Bank Limited
State Street Bank & Trust Company
Suncorp Metway Limited
Taiwan Business Bank, Sydney Branch
United Overseas Bank Limited
Uniting Financial Services
Victoria Teachers Credit Union Limited
Warwick Credit Union Ltd
Westpac Banking Corporation
Wide Bay Australia Limited

Any other organisation which satisfies the eligibility criteria for participating membership of the APCS as defined in the regulations for the APCS