



Australian
Competition &
Consumer
Commission

Determination

Application for authorisation

lodged by

Australian Payments Clearing Association Limited

in respect of

certification, suspension and termination provisions in
Regulations and Code Set for the Issuers and
Acquirers Community

Date: 31 August 2015

Authorisation numbers: A91497 & A91498

Commissioners:

Rickard
Schaper
Cifuentes
Court
Featherston
Walker

Summary

The ACCC has decided to grant authorisation for five years to Australian Payments Clearing Association Limited for the certification, suspension and termination provisions of its proposed Issuers and Acquirers Community (IAC) Regulations and Code Set.

The IAC will replace the Consumer Electronic Clearing System (CECS) as the framework for managing ATM and EFTPOS payments, but will have a broader remit to engage in card payments industry policy development, admit a broader category of entities as members than is currently provided under the CECS framework and have a stronger focus on monitoring and managing members' compliance with security standards and requirements. The CECS framework has been authorised by the ACCC since 2000.

The ACCC grants authorisation until 22 September 2020.

The applications for authorisation

1. On 1 May 2015, the Australian Payments Clearing Association Limited (APCA) applied for authorisation for the certification, suspension and termination provisions of APCA's proposed Issuers and Acquirers Community (IAC) Regulations and IAC Code Set. APCA is proposing to establish the new IAC framework to replace the existing Consumer Electronic Clearing System (CECS) framework.
2. On 24 July 2015, the ACCC issued a draft determination¹ proposing to grant authorisation for five years. A conference was not requested in relation to the draft determination.

The conduct

3. APCA seeks authorisation of the following provisions contained in its proposed IAC Regulations:
 - 4.1(c) – Eligibility for Membership – requirement to comply with Certification Requirements
 - 5.1(b) – Compliance with Certification Requirements
 - 6.3 – IAC Membership – Suspension
 - 6.4 – Effect of Suspension
 - 6.5 – Termination, and
 - 6.7 – Financial Claims Scheme – Suspension.
4. APCA also seeks authorisation of the following provisions contained in its proposed IAC Code Set:
 - Volume 1 of the IAC Code Set, Part 3 (Certification)
 - Clause 3.1 – Compliance with applicable requirements for Framework Participants
 - Clause 3.4 – Certification of Prospective Framework Participant
 - Annexure A – Annual Security Audit Checklist, and

¹ Subsection 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

- Annexure B – New Framework Participant Certification, and
 - Volume 5 of the IAC Code Set, Part 3 (Failure to Settle)
 - Clause 3.5 – Suspension for Failure to Settle Event
- (collectively, the certification, suspension and termination provisions).

The applicant – APCA

5. APCA is a public company limited by guarantee, incorporated on 18 February 1992. APCA's charter, as set out in its constitution, is:
 - (a) to enable competition and innovation, promote efficiency, and control and manage risk in the Australian payments system, and to generate and collate ideas and information in support of that objective, and
 - (b) to facilitate industry collaboration, self-regulation and system-wide standards, and to co-ordinate the operation of effective payment systems.
6. APCA does not process payments. It coordinates and manages payments clearing arrangements for each of the clearing systems it administers. 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.
7. APCA is currently responsible for five payment clearing systems. These are:
 - the Consumer Electronic Clearing System (CECS) which provides minimum standards to protect and enhance the security, integrity and efficiency of ATM and EFTPOS interchanges. CECS will be replaced by the new IAC framework once it is established
 - the Australian Paper Clear System (APCS) relating to exchanges of paper-based payment instructions, primarily cheques
 - the Bulk Electronic Clearing System (BECS) relating to bulk direct entry low value transactions, allowing businesses (such as for example utility companies) to make arrangements to direct debit and/or credit large numbers of customers' accounts on a regular basis
 - the High Value Clearing System (HVCS) established as part of the development of real time gross settlement in Australia to provide an efficient and secure electronic payments mechanism for the finance industry, and
 - the Australian Cash Distribution and Exchange System (ACDES) which governs the exchange and distribution of wholesale cash.
8. With the exception of the ACDES, relevant provisions of the regulations governing the operation of each of these payment clearing systems—predominantly relating to membership criteria, suspension and termination of membership—have been authorised by the ACCC.
9. Membership of APCA is open to participants in, and operators of, Australian payment systems which are recognised by the Board of APCA to meet a set of recognition criteria.
10. APCA's Board is comprised of three independent directors (including the Chair), one director appointed by the Reserve Bank of Australia (RBA), the CEO of APCA (non-voting) and a number of directors appointed by APCA members (currently eight directors are appointed by APCA members).

Background

Payments, clearing and settlement

11. In Australia, banks, building societies, credit unions, some card organisations and some major retailers provide a means for individuals and businesses to make payments to each other and thus transfer financial assets of value. The institutional infrastructure within which such transactions occur and which give effect to the transactions is referred to as the payment system. A payment system carries payment messages (in the form of payment instruments such as cheque, credit card etc) via delivery mechanisms, which result in the transfer of funds from one party's account to another's.
12. Where the parties to transactions within a payment system maintain accounts with different payment organisations, a payments clearing and settling process is required between the payment organisations. Clearing and settling allows payment organisations to reflect the changes in their customers' accounts and for value to pass between the payment organisations to reflect the net effect of the transactions upon the value of financial assets held by each payment organisation.
13. Clearing involves the cross-institutional exchange of individual payment messages for the purpose of obtaining settlement. Settlement is the exchange of value between institutions.
14. Settlement in Australia is achieved through transfers of Exchange Settlement Account balances held with the RBA. For transactions currently encompassed by CECS—and prospectively, the IAC—settlement is deferred, taking place on the morning of the next business day. Deferred settlement systems carry an inherent risk of an institution paying away and then not receiving due settlement. The IAC Regulations and Code Set include processes to deal with situations where an institution fails to settle. An application has been made to the RBA for approval of the IAC netting and settlement arrangements and failure-to-settle rules under the *Payment Systems and Netting Act 1998*.

The Consumer Electronic Clearing System (CECS) and Issuers and Acquirers Community (IAC)

15. CECS is a payments clearing and settlement system established and managed by APCA to set minimum standards to protect and facilitate the conduct and settlement of exchanges of consumer electronic payment messages resulting from ATM transactions. Members of CECS include financial institutions, an ATM deployer, a credit card issuer and two large retailers.
16. Indirectly, the regulations for CECS also influence payments clearing and settlement in the EFTPOS system. The EFTPOS system is managed by Eftpos Payments Australia Limited which prescribes that certain parts of the CECS regulations also apply to EFTPOS terminals and transactions. Currently, Australia has more than 31,000 ATMs and 854,000 EFTPOS terminals.²
17. Financial institutions and other businesses may participate directly in the clearing and settlement of consumer electronic transactions by becoming members of CECS. Currently, there are fifteen members of CECS, referred to as CECS Framework Participants. Alternatively, rather than becoming a CECS member, participants in the ATM and EFTPOS payment systems may indirectly participate by entering into an agreement with a CECS member to clear and settle transactions on their behalf. Most, particularly

² APCA website (www.apca.com.au), June 2015.

smaller, financial institutions in Australia engage a CECS member to clear and settle transactions on their behalf rather than becoming a CECS member and clearing and settling these transactions directly.

18. The CECS framework was established in 2000 and relevant provisions of the framework have been authorised by the ACCC since 2000.
19. As noted, the IAC will replace the existing CECS framework. APCA submits that, once established, the IAC will take over the framework for developing, implementing and operating effective standards, policies and procedures for Australian card payments currently managed by CECS. APCA submits that the framework will be largely the same as that currently operated by CECS, and in particular those aspects regarding certification, suspension and termination for which ACCC authorisation and reauthorisation has been previously sought.
20. The management of clearing currently within CECS and prospectively within the IAC primarily involves setting minimum interchange procedures and standards to protect and enhance the security, integrity and efficiency of exchanges of EFTPOS and ATM messages. The standards include specifications for equipment, cards (excluding pre-paid and stored value cards) communication links and message formats.
21. Like CECS, the IAC will cover security and operational standards for ATM and EFTPOS terminals, devices and interchanges. It will not purport to regulate operation of commercial aspects of card payment systems or the conditions of participation in them.
22. As is the case under CECS, no IAC standards, policies or procedures impose any obligation on IAC Framework Participants to establish ATM or EFTPOS interchange links or engage with each other in EFTPOS interchange. However, Volume 6 of the IAC Code Set does establish a standalone set of procedures and requirements for the domestic ATM system, and does require connected participants to comply with standard interchange terms (subject to bilateral variation) which APCA submits are designed to promote universality and minimise requirements for bilateral interchange agreements.
23. The IAC minimum standards and requirements will initially apply only to the consumer electronic payment instructions currently falling within the scope of CECS, that is payment instructions generated within ATM or EFTPOS networks. However, it is intended that in time this scope extend to cover all Australian card payments to provide a consistent set of card payments messages standards and requirements. The IAC will also have a broader policy focus than CECS in order to facilitate industry focus on card payment issues generally and to provide an extensible framework for industry self-regulation of new card payments products and technology.
24. Broadly, any institution which acquires card payment transactions, or which issues cards used in card payment transactions or which as a merchant, directly switches transactions to issuers is eligible to join the IAC as an IA Participant. At the time of commencement of the IAC, existing CECS framework participants will be deemed to be admitted as framework participants in the IAC (in the same capacity). A full list of prospective IAC members as at 1 July 2015 (i.e. existing CECS members) is at **Attachment A**.
25. In addition, to promote broader card payments industry stakeholder participation the membership base under the IAC has been broadened from that under CECS to include industry stakeholders in two new membership categories:
 - Operator Members – operators or administrators of Approved Card Payment Systems, and

- Affiliates – organisations that play a significant role in providing goods, services or support to the card payments industry.
26. According to APCA, by providing a membership right for eligible Operator Members and Affiliates the IAC will encourage more direct engagement and participation by card payment industry stakeholders than under the current CECS Advisory Council model.
27. The day-to-day operations of the IAC will be managed by the Issuers and Acquirers Forum (IAF), consisting of the following persons:
- one director nominated by the Board of APCA (must be an independent director)
 - a nominee of each IA Participant which has at least 2% Cards Market Share
 - a person nominated by the RBA, if no representative of the RBA has been nominated under any other provision, and
 - three persons elected in a ballot by all IA Participants which are not otherwise entitled to nominate or elect a member of the management committee.

The certification, termination and suspension provisions

28. APCA has sought authorisation for particular provisions within the IAC Regulations and Code Set, in particular clauses 4.1(c), 5.1(b), 6.3, 6.4, 6.5 and 6.7 of the IAC Regulations, clause 3.1, 3.4, Annexure A and Annexure B of Volume 1 of the IAC Code Set and clause 3.5 of Volume 5 of the IAC Code Set:
- IAC Regulations
 - Clause 4.1(c), Eligibility for Membership – requirement to comply with Certification Requirements: provides that in order to be an IAC Framework Participant a person must be able to comply with any applicable laws, the constitution of APCA, the IAC Regulations and IAC Code Set. Prospective IA Participants must be able to comply with the Certification Requirements (subject to clause 4.2 which gives the IAF the ability to allow a prospective IA Participant that is unable to comply with the Certification Requirements to become a member in certain circumstances).
 - Clause 5.1(b), Compliance with Certification Requirements: provides that IAC Framework Participants must comply with any applicable laws and the IAC Regulations; pay all applicable fees, costs, charges, expenses and fines; and supply the IAF or APCA with all the information requested from time to time. In addition, IA Participants must comply with the Core Codes, including any Certification Requirements (if applicable), and the Elective Codes to which it has subscribed.
 - Clause 6.3, IAC Membership – Suspension: permits the IAF to suspend a member for a number of reasons including, if requested by any relevant prudential supervisor; by agreement of the member; if the member no longer satisfies all applicable requirements for membership; for insolvency (other than insolvency events that result in automatic termination); for breaches of membership obligations (if the member fails to rectify or adequately explain the breach within 30 days of a request from the Secretary of IAF); if the member's membership of an approved card payment system is suspended or terminated; if the approved card payment system of which the Framework Participant is a member has its approval withdrawn and they are not a member of any other approved card payment system; or if the member acts in a manner contrary to the interests of the IAC.

- Clause 6.4, Effect of Suspension: provides for the consequences of a suspension of IAC membership. Suspended members that are IA Participants are not entitled to exchange ATM Transactions with any other IA Participant. Suspended members are also not entitled to vote at any IAC meeting (unless approved by the IAF) or to have their nominee to the IAF vote at meetings of the IAF (but may continue to attend and participate in such meetings). The IAF can in its discretion remove any certification granted to the member the subject of the suspension.
- Clause 6.5, Termination: establishes the circumstances and processes by which a member of IAC may cease to be a member. In particular, the APCA Board may terminate a membership of the IAC if a suspension event has occurred and not been remedied, the IAF has recommended terminating the membership, the Board has consulted with any relevant prudential supervisor and the member has had an opportunity to make submissions to the Board regarding the termination. The APCA Board is not required to give any reasons for such a decision. Membership can also be terminated where a member resigns, becomes insolvent, is wound up, dissolved or otherwise ceases to exist.
- Clause 6.7, Financial Claims Scheme – Suspension: provides for automatic suspension of IAC membership for any member which is subject to a declaration made by the Minister under section 16AD of the *Banking Act 1959*. This provision relates to claims made under the Financial Claims Scheme, designed to protect depositors of authorised deposit-taking institutions (banks, building societies and credit unions) and policyholders of general insurance companies from some potential losses due to the failure of these institutions.³
- Volume 1 of the IAC Code Set
 - Clause 3.1 – Compliance with applicable requirements for Framework Participants: provides that, by completing the relevant checklists, an applicant or Framework Participant confirms, for the benefit of all Framework Participants and APCA, that when it operates in the IAC with other Framework Participants it meets the applicable requirements in force at that time.
 - Clause 3.4 – Certification of Prospective Framework Participant: provides that each applicant must arrange for Certification as part of their membership application, including completing the relevant New Framework Participant Certification Checklist (Annexure B) and the relevant Annual Security Audit (Annexure A).
 - Annexure A – Annual Security Audit Checklist: presents mandatory requirements for acquirers and issuers relating to general procedures and controls associated with the management of PINs and the associated cryptographic practices.
 - Annexure B – New Framework Participant Certification: requires IAC applicants to warrant that they satisfy the relevant requirements.
- Volume 5 of the IAC Code Set
 - Clause 3.5 – Suspension for Failure to Settle Event: provides for the automatic suspension of IAC membership, and of further exchanges of settlement items between the defaulter and other IA Participants pursuant to the IAC Regulations and/or Code Set, if a member fails to settle.

³ <http://www.apra.gov.au/crossindustry/fcs/Pages/default.aspx>

29. Although the certification, termination and suspension provisions for which authorisation is sought are in many respects the same or very similar to equivalent clauses in the existing CECS regulations there are a number of differences between the two:

- unlike the CECS Regulations, under the IAC Regulations suspended IA Participants are not entitled to exchange ATM transactions (if a participant in the ATM system) with other IA Participants (this is similar to the Australian Paper Clearing System (APCS) Regulations under which suspended members are not entitled to participate in the APCS)
- the IAF can suspend an IAC Framework Participant's membership if the member acts in a manner contrary to the interests of the IAC, and
- members are required to complete the Annual Security Audit Checklist.

30. While not a clause for which authorisation is sought, clause 6.2 of the Regulations provides the IAC with greater enforcement powers than under the existing CECS regulations. Specifically, this clause provides the IAC with a new power to impose fines on IA participants in certain circumstances. APCA submits that this power will give the IAF the power to deal with non-compliance without having to resort to suspension or termination.

Submissions received by the ACCC

31. The ACCC sought submissions from interested parties potentially affected by these applications, including current members of CECS, the Business Council of Australia, Choice, Australian payment system participants and regulators. Prior to the draft determination, submissions in support of the application were received from the Commonwealth Bank of Australia (CBA) and the Australian Securities and Investments Commission (ASIC).

32. Following the release of the draft determination a further submission was received from Australia and New Zealand Banking Group Limited in support of the application.

33. Copies of public submissions may be obtained from the ACCC's website www.accc.gov.au/authorisationsregister.

ACCC assessment

34. The ACCC's evaluation of the certification, suspension and termination provisions is in accordance with the relevant net public benefit tests⁴ contained in the *Competition and Consumer Act 2010* (the CCA).

35. In its evaluation of the applications the ACCC has taken into account:

- the application and submissions received from APCA and interested parties
- the information available to the ACCC from consideration of previous matters relating to CECS⁵
- the likely future without the conduct for which authorisation is sought.⁶ In particular, the ACCC considers that absent authorisation IAC members could continue to

⁴ Subsections 90(6), 90(7), 90(5A) and 90(5B).

⁵ See previous applications for authorisation of the CECS arrangements A91434 & A91435 (2014), A91153 & A91154 (2009), A30228 & A30229 (2004) and A30176 & A30177 (2000).

collectively set minimum standards to protect and facilitate the conduct and settlement of exchange of consumer electronic messages resulting from EFTPOS and ATM transactions, but without the suspension and termination provisions or certification requirements that provide for the exclusion of organisations that do not meet the technical, operations and security requirements. However, as discussed at paragraph 38, the effectiveness of these standards is to some extent dependent on the ability to self-enforce compliance, including through the suspension and termination provisions, and

- the relevant areas of competition likely to be affected by the applications. APCA seeks authorisation for provisions of the IAC Regulations and Code Set concerning certification requirements to participate in the IAC and provisions for termination and suspension. On this basis the ACCC has confined its assessment of the applications to the clearing and settlement of consumer electronic payments.

Public benefit

36. APCA submits that the benefits likely to result from the proposed certification, suspension and termination provisions are analogous to those realised by the CECS certification, suspension and termination provisions.
37. Specifically, APCA submits that the IAC certification, suspension and termination provisions will result in a benefit to the public by contributing to the IAC Framework's integrity and efficacy, with the framework contributing towards protecting and enhancing the security, efficiency and integrity of card payments clearance and settlement, and reducing risk within the payments system. APCA contends that these benefits can only be realised if members act in accordance with the IAC Regulations and Code Set and that the suspension and termination provisions provide last resort safeguards to ensure this. APCA argues that without the certification requirements and sanctions, the efficacy and integrity of the IAC would be diminished and the confidence of members of the IAC would be reduced. At the extreme, APCA contends that this could compromise the industry's ability to centrally coordinate standards for clearing and settlement of ATM and EFTPOS transactions.
38. ASIC submits that the IAC suspension and termination provisions will promote the efficient operation of the relevant clearing systems and enhance their security and integrity and that without these provisions the confidence of users of these systems would likely be diminished. The CBA similarly submits that the existing CECS authorisations have proven beneficial through the preservation of security, efficiency and integrity of CECS processes and there is no reason why this would change under the new IAC framework. The CBA further submits that the relevant provisions are likely to provide a valuable framework for clarity and certainty on reasonable and clearly understood terms, which it sees as key aspects of promoting the confidence of participants and the public in general.
39. ASIC also submits that the collective setting of the rules governing CECS reduces transaction costs as these requirements would otherwise be negotiated bilaterally.
40. The ACCC considers that the certification, suspension and termination provisions are likely to result in public benefits through the protection of the security, efficiency and integrity of the IAC and thus the ATM and EFTPOS based consumer electronics payments system. In particular, the ACCC accepts that without the ability of IAC members to self-enforce compliance with the standards established by the IAC (through the ability to set minimum requirements for entry and fine participants and/or suspend or terminate

⁶ For more discussion see paragraphs 5.16-5.23 of the ACCC's authorisation Guide.

membership for non-compliance) the operational efficiency of the IAC could be undermined. At the extreme, this could compromise the industry's ability to centrally coordinate the clearing and settlement of EFTPOS and ATM transactions, resulting in a return to the situation that prevailed prior to the introduction of CECS in 2000, whereby clearing and settlement arrangements were subject to bilateral negotiation between individual organisations.

41. The ACCC also considers that, to the extent that the collective setting of clearing and settlement requirements for ATM and EFTPOS transactions results in lower transactions costs than bilateral negotiation of these requirements, such transaction cost savings are likely to constitute a public benefit.

Public detriment

42. APCA submits that the certification, suspension and termination provisions and the IAC framework are unlikely to lead to significant public detriment, in particular because:
- nothing in the IAC Regulations or Code Set restricts IAC members in competing for the business of end users of payment services of the type contemplated by the IAC, and
 - the existence of the IAC does not preclude institutions from establishing other clearing arrangements outside the scope of the IAC regulatory infrastructure.
43. APCA states that if set at an inappropriate level, minimum mandatory standards and procedures could potentially stifle innovation by network participants by potentially raising barriers to entry to the ATM and EFTPOS networks. However, APCA submits that its minimum standards, at the level at which they are currently set, do not increase barriers to entry.
44. APCA notes that the IAC Regulations and Code Set also allow IA Participants to bilaterally agree to divergent standards from those established by the IAC, provided that the integrity, security and efficiency of the IAC overall is not diminished. APCA submits that the remaining requirements applied to IAC members are a reflection of the practical requirements of providing value as an authorised deposit taking institution under the *Banking Act 1959* (card issuers) or clearing transactions (acquirers and merchant principals).
45. ASIC notes that the increased compliance powers of the IAC relative to those under the CECS framework, i.e. the ability to fine participants, may reduce the likelihood of exclusion from the IAC by suspension or termination. ASIC also submits that there are a number of checks and balances in place to mitigate any potential anti-competitive misuse of the relevant provisions in the IAC Regulations.
46. The ACCC notes that refusal of certification or termination of IAC membership does not preclude the financial institution from participating in the EFTPOS or ATM system. Currently, most, particularly small, financial institutions do not process their own transactions. Rather, these financial institutions enter into agreements with a CECS member to process their transactions in CECS and clear and settle transactions on their behalf. The same will apply under the new IAC framework.
47. Similarly, an organisation excluded from the IAC would be likely to continue to have its ATM and EFTPOS transaction cleared and settled through the IAC. However, the organisation would not be able to directly clear and settle its transactions. Rather, the organisation would need to enter into an agreement with an existing IAC member to do so on its behalf.

48. Further, the ACCC notes that exclusion from the IAC system would not preclude an institution from establishing other direct clearing and settling arrangements outside the IAC arrangements. However, the institution would likely need to negotiate bilateral agreements with other participants outside of the IAC arrangements to do so. While procedures and standards for ATM and EFTPOS interchange were subject to bilateral negotiations between financial institutions prior to CECS being introduced, given that members now operate under the CECS system (soon to be the IAC framework), it would likely be significantly more difficult for institutions excluded from the IAC to negotiate such agreements outside of the IAC 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 IAC.
49. Therefore, the ACCC considers that exclusion from the IAC would have an adverse effect on the financial institution concerned and potentially could make it very difficult for the institution to directly clear and settle consumer electronic payment instructions. Absent appropriate checks and balances on the use of the suspension and termination provisions this has the potential to result in anti-competitive detriment.
50. However, the ACCC considers that the certification, suspension and termination provisions do not place unreasonable requirements on members and that there are adequate checks and balances on the manner in which they are employed including:
- if a member is subject to prudential supervision, the prudential supervisor must be consulted prior to termination of IAC membership
 - the representation of the RBA on the APCA Board (responsible for membership termination decisions) and the right for the RBA to be represented on the IAF⁷ (responsible for certification of members and membership suspension decisions)
 - the suspension and termination provisions can only be invoked in limited circumstances, namely:
 - for suspension - if requested by any relevant prudential supervisor; by agreement with the member; if the member no longer satisfies the membership requirements; for certain insolvency events; for breach of obligations without satisfactory explanation or rectification; if the member's membership of an approved card payment system is suspended or terminated or the approved card payment system of which they are member has its approval withdrawn and they are not a member of any other approved card payment system; if the member concerned acts in a manner contrary to the interests of the IAC; or for failure to settle
 - for termination - on resignation of the member, the member becoming insolvent, being wound-up or ceasing to be engaged in interchange activities, or if the member has been suspended and the event leading to suspension has not been remedied by the member, and
 - the ability of the IAF to impose fines for non-compliance with fundamental requirements under the IAC Regulations or Code Set provides an alternative to suspension and termination of membership in appropriate cases.
51. The ACCC also considers that even if used, to the extent that suspension or termination may adversely affect the IAC member concerned, given the number of competing service

⁷ The RBA has previously, but does not currently, exercise this right in relation to the CECS Management Committee.

providers this may not significantly affect competition for the clearing and settlement of consumer electronic payments more generally.

Balance of public benefit and detriment

52. For the reasons outlined in this determination the ACCC is satisfied that the likely benefit to the public would outweigh the detriment to the public including the detriment constituted by any lessening of competition that would be likely to result from the certification, suspension and termination provisions in the IAC Regulations and Code Set. Accordingly, the ACCC is satisfied that the relevant net public benefit tests are met.

Length of authorisation

53. APCA is seeking authorisation for five years.

54. Given the ACCC's conclusion on the balance of public benefits and public detriments, the ACCC grants authorisation for five years.

Determination

The application

55. On 1 May 2015, the Australian Payments Clearing Association (APCA) lodged applications for authorisation A91497 and A91498. Application A91497 was made using Form A Schedule 1, of the Competition and Consumer Regulations 2010. Application A91498 was made using Form B Schedule 1, of the Competition and Consumer Regulations 2010. The applications were made under subsections 88(1) and (1A) of the CCA, for authorisation of the following provisions:

- contained in its proposed IAC Regulations:
 - 4.1(c) – Eligibility for Membership – requirement to comply with Certification Requirements
 - 5.1(b) – Compliance with Certification Requirements
 - 6.3 – IAC Membership – Suspension
 - 6.4 – Effect of Suspension
 - 6.5 – Termination, and
 - 6.7 – Financial Claims Scheme - Suspension, and
- contained in its proposed IAC Code Set:
 - Volume 1, clause 3.1 – Compliance with applicable requirements for Framework Participants
 - Volume 1, clause 3.4 – Certification of Prospective Framework Participant
 - Volume 1, Annexure A – Annual Security Audit Checklist
 - Volume 1, Annexure B – New Framework Participant Certification, and
 - Volume 5, clause 3.5 – Suspension for Failure to Settle Event.

56. The applications were made as the proposed provisions may contain a cartel provision or may have the purpose or effect of substantially lessening competition or be an exclusionary provision within the meaning of section 45 of the CCA.

The net public benefit test

57. For the reasons outlined in this determination, the ACCC considers, pursuant to subsections 90(6), 90(7), 90(5A) and 90(5B) of the CCA, that in all the circumstances the proposed certification, suspension and termination provisions for which authorisation is sought are 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.

Conduct to which the ACCC grants authorisation

58. The ACCC grants authorisation to APCA's certification, suspension and termination provisions in the IAC Regulations and Code Set listed in paragraph 55 for five years. The authorisations are in respect of the certification, suspension and termination provisions as they stand at the time authorisation is granted. Any changes to the certification, suspension and termination provisions during the term of the authorisations would not be covered by the authorisations.

Date authorisation comes into effect

59. This determination is made on 28 August 2015. If no application for review of the determination is made to the Australian Competition Tribunal (the Tribunal), it will come into force on 22 September 2015.

Attachment A – Prospective members of IAC (based on operation of transitional provisions effective from 1 July 2015)

<u>Name of Institution</u>	<u>Address</u>	<u>Business</u>
<i>Australia and New Zealand Banking Group Limited</i>	<i>ANZ Centre, Level 9, 833 Collins Street Docklands, VIC 3008</i>	<i>Financial Institution – IAC Issuer and Acquirer</i>
<i>Australian Settlements Limited</i>	<i>ASL House, 6 Geills Court, Deakin ACT 2607</i>	<i>Financial Institution – IAC Issuer and Acquirer</i>
<i>Bank of Queensland Limited</i>	<i>Level 17, BOQ Centre, 259 Queen Street, Brisbane QLD 4000</i>	<i>Financial Institution – IAC Issuer and Acquirer</i>
<i>Bendigo and Adelaide Bank Limited</i>	<i>The Bendigo Centre, Bendigo VIC 3550</i>	<i>Financial Institution – IAC Issuer and Acquirer</i>
<i>Cashcard Australia Limited</i>	<i>Level 11, 168 Walker Street, North Sydney NSW 2060</i>	<i>Independent ATM Deployer and Managed Service Provider – IAC Acquirer</i>
<i>Citigroup Pty Limited</i>	<i>GPO Box 40, Sydney NSW 2001</i>	<i>Financial Institution – IAC Issuer and Acquirer</i>
<i>Coles Group Limited</i>	<i>Level 5, Module 1, 800 Toorak Rd, Tooronga VIC 3146</i>	<i>Merchant/Retailer – IAC Self-Acquirer</i>
<i>Commonwealth Bank of Australia</i>	<i>Level 6, 201 Sussex Street, Sydney NSW 2000</i>	<i>Financial Institution – IAC Issuer and Acquirer</i>
<i>Cuscal Limited</i>	<i>Level 1, Margaret Street, Sydney NSW 2000</i>	<i>Financial Institution – IAC Issuer and Acquirer</i>
<i>Indue Limited</i>	<i>Level 3, 601 Coronation Drive, Toowong QLD 4066</i>	<i>Financial Institution – IAC Issuer and Acquirer</i>
<i>MoneySwitch Limited</i>	<i>125 York street, Sydney NSW 2000</i>	<i>Specialist Credit Card Institution – IAC Acquirer</i>
<i>National Australia Bank Limited</i>	<i>Level 3 (UB 3350), 800 Bourke Street, Docklands VIC 3008</i>	<i>Financial Institution – IAC Issuer and Acquirer</i>
<i>Suncorp-Metway Limited</i>	<i>Level 18, Suncorp Centre, 36 Wickham Terrace, Brisbane QLD 4000</i>	<i>Financial Institution – IAC Issuer and Acquirer</i>
<i>Westpac Banking Corporation</i>	<i>Level 20, 275 Kent Street, Sydney NSW 2000</i>	<i>Financial Institution – IAC Issuer and Acquirer</i>
<i>Woolworths Limited</i>	<i>1 Woolworths Way, Bella Vista NSW 2153</i>	<i>Merchant/Retailer – IAC Self-Acquirer</i>

Any other organisation which satisfies the eligibility criteria for membership of the IAC as an IAC member as defined in the Regulations for the IAC.