

Statement of Reasons



The Association of Superannuation Funds of Australia – applications for authorisation A91548 & A91549 Interim authorisation decision 07 September 2016

Decision

The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of the applications for authorisation lodged by the Association of Superannuation Funds of Australia (ASFA) on behalf of the Gateway Network Governance Body (GNGB) and current and future Gateway Operators who become signatories to the Memorandum of Understanding (MoU) for participants in the Superannuation Transaction Network (STN).

Interim authorisation is granted for the Gateway Operators and the GNGB to make and give effect to the provisions of clauses 2, 4 and 5(c) of the MoU. These clauses deal with applications by and acceptance of parties as member Gateway Operators by the GNGB.

Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The formal agreement and commitment to the MoU by the participants in the STN is conditional on the ACCC granting final authorisation. If final authorisation is not granted, the MoU provides the parties agree that the MoU will be terminated and the parties will revert to the existing arrangements for stewardship of the STN.

The application for authorisation

The ASFA, on behalf of the GNGB and current and future Gateway Operators who become signatories to the MoU for participants in the STN, seeks authorisation to make and give effect to provisions of the MoU concerning the stewardship arrangements for the STN.

Specifically, authorisation is sought to make and give effect to the following clauses in the MoU:

- the application and effect of the MoU – clause 2;
- acceptance by GNGB of Applicant parties as Gateway Operators – clause 4;
- the role of GNGB concerning access and entry and exit of Gateway Operators to or from the MoU – clause 5(c);
- fees payable by the Gateway Operators – clause 6.1 and 12;
- rights to use the STN to exchange messages – clause 6.2;
- dispute resolution – clause 10; and

- remedies for non-compliance by Gateway Operators with STN procedures, including probation and termination – clause 11.

The Applicants seek authorisation for 5 years.

The STN consists of a series of gateways, which are network entry and/or exit points, operated by 'Gateway Operators' for, or on behalf of, employers and superannuation funds, for the purpose of routing, switching and packaging the data comprised in rollover messages or contributions passing between employers and funds.

The ATO has interim stewardship of the STN. The applications for authorisation have been lodged in the context of the development and handover of stewardship to an industry sponsored body, i.e., GNGB.

This is consistent with the intent at the time that the ATO assumed the interim stewardship role that the ATO would provide governance while working with industry stakeholders to establish a self-regulated industry funded governance body to provide governance on a permanent basis. The ATO has advised that it supports the handover of stewardship of the STN to the GNGB.

Interim authorisation is only sought for clauses 2, 4 and 5(c) of the MoU. Interim authorisation is sought for these clauses to allow the GNGB to undertake the necessary work in preparation for the handover of governance for the STN pending a final decision from the ACCC about the application for authorisation.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

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

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

Consultation

On 3 August 2016, the ACCC invited submissions from interested parties in order to consider the request for interim authorisation. Six submissions were received.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

In granting interim authorisation, the ACCC considers that:

- the competitive dynamic is unlikely to be permanently altered under interim authorisation given the formal agreement and commitment to the MoU by the parties is conditional on the ACCC granting final authorisation with the parties to revert to the current arrangements if final authorisation is not granted
- the conduct appears likely to result in some public benefit and limited public detriment, and
- there is benefit in granting interim authorisation as it will facilitate the transfer of stewardship responsibilities for the STN from the ATO to the GNGB sooner than would otherwise be the case. This will assist in the realisation of the public benefits likely to result from the transfer of the stewardship arrangements and is in accordance with the intention that once an industry funded governance body was established, it would assume the governance role from the ATO.

Reconsideration of interim authorisation

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