



# Draft Determination

Application for authorisation AA1000654

lodged by

Australian Banking Association Ltd

in respect of

development and evaluation of industry responses to support the viability of wholesale cash distribution and access to retail cash services

Authorisation number: AA1000654

20 March 2024

Commissioners: Keogh  
Carver  
Lowe

## Summary

The Australian Competition and Consumer Commission (ACCC) proposes to grant authorisation with conditions to enable the Australian Banking Association Ltd (ABA), its member banks and other relevant industry participants to engage in discussions and exchange information for the purpose of developing and evaluating industry responses to support the viability of wholesale cash distribution and access to retail cash services.

The authorisation application follows concerns expressed by the major supplier of cash-in-transit services in Australia, Linfox Armaguard Pty Ltd (Armaguard), that the industry is not sustainable in its current form. Cash-in-transit services involve providing cash transport, management and processing services. These services are provided to banks, retailers and independent ATM operators and are crucial to maintaining access to cash for businesses and the community.

This application for authorisation relates only to discussions and reaching in-principle agreements about any industry responses to support ongoing access to cash. The ABA has advised that before adopting and implementing any agreed industry responses, it would seek a separate ACCC authorisation for the proposed way forward, if required.

The ABA originally sought authorisation until 30 June 2024. However, due to the complexity of the issues associated with the cash-in-transit industry, and to allow a short period of additional time for the discussions to continue the ABA has sought to vary the term for which authorisation is sought until 31 October 2024.

The ACCC proposes to grant authorisation with conditions until 31 October 2024.

The ACCC considers that the Proposed Conduct is likely to result in a public benefit through supporting the development of solutions to address concerns about the ongoing sustainability of cash-in-transit services, and thereby supporting ongoing supply of cash to banks, retailers and the community.

In particular, the ACCC considers that information sharing between industry participants will provide a more complete picture about the concerns about sustainability of cash-in-transit services. The ACCC also considers that collaborative action is likely to better support ongoing provision of sustainable cash-in-transit services for the broad range of larger and small businesses across all areas of Australia that require these services.

The ACCC considers that, with the proposed conditions set out in this draft determination, the Proposed Conduct is unlikely to result in any material public detriment. The Proposed Conduct is limited to discussions and exploring solutions for the purpose of, and reasonably necessary for, developing and evaluating potential urgent responses to support the sustainability of cash-in-transit services. In addition, the proposed conduct is subject to oversight through the participation of the Reserve Bank of Australia (the Reserve Bank) and Commonwealth Treasury (Treasury) in the discussion.

To mitigate the potential for public detriment, the ACCC is proposing conditions of authorisation that require the ABA to provide regular reports to the ACCC about discussions undertaken and any agreements reached and to have a lawyer with competition law experience, approved by the ACCC, present at all meetings.

The ACCC is satisfied that, with the proposed conditions, the Proposed Conduct would be likely to result in a public benefit and this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

In reaching this view, the ACCC is particularly cognisant of the importance of maintaining access to cash in regional and remote areas, many of which do not have access to cash banking services and rely on other means of access.

In this respect, the ACCC understands that a focus of discussions to date under the interim authorisation granted by the ACCC in December has been on short-term assistance for Armaguard and involvement in these discussions has largely reflected the stakeholders that may be involved in providing that assistance. The ACCC expects that as more substantive discussions about consideration and development of longer-term solutions to the challenges to the sustainability of the cash-in-transit industry progress, other non-bank stakeholders will be increasingly involved.

Implementation of industry responses or solutions to sustain cash-in-transit services will, if required, be the subject of a separate application for authorisation. Maintaining access to cash in regional and remote communities will be a key consideration for the ACCC in assessing the public benefits and public detriments likely to result from any proposed industry responses or solutions.

The ACCC granted interim authorisation, with the same conditions, on 6 December 2023. This allows industry participants to engage in discussions and develop responses to support sustainable cash-in-transit services while the ACCC is considering the substantive application.

The ACCC invites submissions in relation to this draft determination, by 10 April 2024, before making its final decision.

## 1. Application for authorisation

- 1.1. On 30 November 2023, the Australian Banking Association Ltd (**ABA**) lodged an application for authorisation AA1000654 with the Australian Competition and Consumer Commission (**ACCC**). The ABA is seeking authorisation on behalf of itself, its Member Banks<sup>1</sup> and the following parties named or referred to in the Application, to the extent that they are relevant persons or classes of persons:
  - (a) Linfox Armaguard Pty Ltd (**Armaguard**)
  - (b) the Reserve Bank of Australia (the **Reserve Bank**)
  - (c) the Commonwealth Treasury (**Treasury**)
  - (d) Australia Post
  - (e) suppliers of cash-in-transit services
  - (f) non-Member Banks, and
  - (g) retailers, supermarkets and other businesses who distribute and utilise cash in their businesses.
- 1.2. The ABA seeks authorisation until 31 October 2024.
- 1.3. This application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides businesses with protection from legal action under the competition provisions in Part IV of the Act in respect of the specified conduct. The ACCC has a discretion to grant authorisation but must not do so unless it is satisfied in all the circumstances that the conduct would or is likely to result in benefit to the public that would outweigh any likely public detriment (ss 90(7) and 90(8) of the Act (the **authorisation test**)).
- 1.4. The ABA also requested interim authorisation to enable it to engage in the Proposed Conduct while the ACCC is considering the substantive application. On 6 December 2023, the ACCC granted interim authorisation with conditions in accordance with

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<sup>1</sup> The current ABA Members Banks are listed in Annexure 1.

subsection 91(2) of the Act.<sup>2</sup> This is discussed in further detail at paragraphs 1.15 to 1.18 below.

## Applicant

1.5. The ABA is an association of 20 member banks in Australia. The ABA states that it provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

## Proposed Conduct

1.6. The ABA is seeking authorisation on behalf of itself, its Member Banks<sup>3</sup> and the other persons or classes of persons listed at paragraph 1.1 to:

- (a) engage in discussions and exchange information that is for the purposes of, and reasonably necessary for, developing and evaluating potential industry responses to:
  - (i) the viability of wholesale cash distribution in Australia; and/or
  - (ii) securing continued access by banks, retailers, other businesses and/or members of the public to retail cash services in one or more metropolitan and/or regional non-metropolitan locations; and
- (b) reach in-principle agreement on the form and content of any urgent industry responses to be pursued, the implementation of which would be the subject of a separate application for ACCC authorisation, as required.

1.7. The ABA submits that the Proposed Conduct will involve multilateral discussions and the exchange of information between either:

- (a) the ABA and its Member Banks, or
- (b) the ABA, Member Banks and one or more of the other persons or classes of persons listed at paragraph 1.1 including in relation to:
  - (i) actions to be taken by the Federal Government, the Reserve Bank and others to ensure the ongoing availability of cash to Australians in metropolitan and regional areas
  - (ii) modelling of anticipated customer cash usage so that Member Banks can form an understanding of projected short and long-term demand for cash services in metropolitan and regional locations
  - (iii) information about Armaguard's business so that Member Banks can form an understanding of the financial arrangements underpinning Armaguard's cash-in-transit services that are core to the immediate and longer-term sustainability of its cash services
  - (iv) Armaguard's current service delivery arrangements for core cash-in-transit services, including economics of supply, logistical efficiency, the terms of Member Banks' cash-in-transit contracts with Armaguard and potential options to support the sustainability of metropolitan and regional cash services
  - (v) short-term business continuity planning for cash-in-transit services, including for disruption of existing cash-in-transit services providers

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<sup>2</sup> See the ACCC's interim authorisation decision of 6 December 2023 on the ACCC's [public register](#).

<sup>3</sup> The current ABA Members Banks are listed in Annexure 1.

- (vi) wholesale cash policy changes to support the sustainability of cash services including the terms of Banknote Distribution Agreements (Bank Distribution Agreements)
  - (vii) costs of cash products and retail service distribution and measures to increase the sustainability of cash products and retail service distribution
  - (viii) discussions with other key industry participants including Australia Post, other major cash handlers and other suppliers of cash-in-transit services
  - (ix) responses and submissions to any consultation or inquiry undertaken by governments relating to cash services; and
  - (x) information required to prepare a separate application to the ACCC for authorisation of measures to implement the Banking Industry Proposal on Cash Sustainability.
- 1.8. The ABA defines the conduct described at paragraphs 1.6 and 1.7 collectively as the **Proposed Conduct**.
- 1.9. The ABA states that the Proposed Conduct is intended to facilitate the urgent exploration and evaluation of banking industry responses to the current challenges in the cash supply chain. It does not involve entering into contracts, arrangements or understandings regarding non-cash services provided by the ABA or the Member Banks, such as home loans, credit cards, savings accounts or other forms of financing.
- 1.10. The application does not extend to the implementation of any industry responses or solutions which result from the Proposed Conduct. The ABA submits that it will seek a further authorisation for the implementation of any industry responses (if required).
- 1.11. In the application, the ABA was originally seeking authorisation for the Proposed Conduct until 30 June 2024. On 1 March 2024, the ABA wrote to the ACCC seeking to vary the term for which authorisation is sought until 31 October 2024 due to the significant complexity of the issues associated with the cash-in-transit industry.
- 1.12. The ABA submits that this timeframe, with the variation, will still result in substantial public benefits and no material public detriment, as outlined in the Application. The ABA submits that the term of authorisation sought is still short (less than 12 months), and the ABA considers that this duration is no more than is reasonably necessary to allow the ABA, its Member Banks and the other parties listed at paragraph 1.1 to explore and evaluate urgent industry responses to the viability of wholesale cash distribution and/or continued access to retail cash services. This is discussed in further detail at paragraphs 4.49 to 4.53.
- 1.13. In its application, the ABA sets out that it undertakes for the duration of any interim and/or final authorisations that are in place to:
- (a) provide the ACCC with a report each month (or such other period as the ACCC may approve) about the discussions and industry responses considered at any meetings in the previous period that involved conduct enabled by the authorisation, and
  - (b) have an external lawyer with competition law experience, engaged by the ABA and approved by the ACCC, in attendance at all meetings.

## Interim authorisation

- 1.14. The ABA requested urgent interim authorisation to enable itself, its Member Banks<sup>4</sup> and the other parties listed at paragraph 1.1 to engage in the Proposed Conduct while the ACCC considers the substantive application.
- 1.15. On 6 December 2023, the ACCC granted interim authorisation with conditions in accordance with subsection 91(2) of the Act.<sup>5</sup> 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.
- 1.16. The ACCC granted interim authorisation with 2 conditions:<sup>6</sup>

**Condition 1 – Reporting requirement:** The ABA will provide each month (or such other period as the ACCC may approve) a report to the ACCC setting out material activities, discussions, developments and/or decisions in the previous period that involved conduct enabled by this interim authorisation, including:

- a list of the attendees, and the topics discussed at each meeting involving the ABA and the Member Banks [or the ABA, the Member Banks and one or more of the other Authorised Parties], and
- potential urgent industry responses considered.

Each report will specifically set out:

- consultation with stakeholders who are not Authorised Parties, including the views expressed during the consultation, and
- activities, discussions, developments and/or decisions to support the availability of cash in regional and remote areas.

The ABA will provide each report on or before the 15th day of each month and the first such report will be provided on or before 15 January 2024.

A non-confidential version of each report will be provided for publication on the ACCC's authorisations public register.

**Condition 2 – Presence of competition lawyer:** Where the Authorised Conduct involves a meeting of or discussions between the ABA and the Member Banks or the ABA, the Member Banks and one or more of the other Authorised Parties, an external lawyer with expertise in competition law, engaged by the ABA and approved by the ACCC, must attend the meetings with instructions to immediately advise the attendees if, during the course of the meeting, they develop concerns that there is conduct occurring that is outside the scope the interim authorisation and risks of breaching the Act.

- 1.17. In relation to the first condition, the ABA provided the ACCC with monthly reports on 15 January 2024, 15 February 2024 and 15 March 2024. These reports are summarised at paragraphs 2.21 to 2.24 and public versions of the reports have been

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<sup>4</sup> The current ABA Member Banks are listed in Annexure 1.

<sup>5</sup> The ACCC's decision of 3 August 2023 can be found on the public register <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australian-banking-association-ltd-cash-in-transit-initiatives>

<sup>6</sup> See paragraph 44 of the ACCC's interim authorisation decision of 6 December 2023 on the ACCC's [public register](#).

published on the ACCC's public register.<sup>7</sup> Confidential versions of these reports, which included more specific details about material activities, discussions and developments were also provided to the ACCC.

- 1.18. In relation to the second condition, since interim authorisation was granted on 6 December 2023, the ACCC has approved a number of lawyers nominated by the ABA to act in this capacity.

## 2. Background

### Cash-in-transit Industry<sup>8</sup>

- 2.1. The cash distribution system manages the movement of banknotes and coins between the Reserve Bank and Major Banks and onto business and consumers.
- 2.2. The wholesale issuance of banknotes from the Reserve Bank into circulation is managed through Bank Distribution Agreements, a series of agreements that any organisation may enter into if prepared to comply with the relevant contractual requirements.
- 2.3. Currently, the 4 Major Banks have bilateral Bank Distribution Agreements with the Reserve Bank.<sup>9</sup> Only Bank Distribution Agreement participants can purchase bank notes directly from the Reserve Bank. However, they, along with other banks, retailers and business who are not party to a Bank Distribution Agreement, can also purchase surplus bank notes from a Bank Distribution Agreement participant.
- 2.4. The distribution of banknotes is carried out by cash-in-transit service providers who are engaged by Bank Distribution Agreement participants to transport, process and store banknotes on their behalf. A cash-in-transit service provider must be specifically nominated by a Bank Distribution Agreement participant and approved by the Reserve Bank to collect banknotes from the Reserve Bank directly.
- 2.5. Streamcorp Armoured Pty Ltd (**Streamcorp**), Brink's Australia Pty Ltd (**Brink's**) and Armaguard are the 3 wholesale cash-in-transit service providers currently approved by the Reserve Bank. Streamcorp provides armoured and unarmoured cash-in-transit services in Perth and Melbourne but does not have a national presence. Brink's no longer supplies cash-in-transit services in Australia but has retained its status as an approved supplier.
- 2.6. Armaguard currently accounts for over 90% of approved wholesale cash-in-transit services provided nationally.
- 2.7. Cash-in-transit service providers operating at the wholesale level are generally required to move significant volumes of banknotes and do so using armoured vehicles and specialised security guards. They generally also offer ancillary cash management services including cash quality sorting and banknote refilling for ATMs and ticket machines.

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<sup>7</sup> The public versions of the ABA Reports can be found on the ACCC's public register <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australian-banking-association-ltd-cash-in-transit-initiatives>

<sup>8</sup> The information in this section is primarily taken from the section 2.1 of the Applicant's submission in support of its Application for authorisation <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australian-banking-association-ltd-cash-in-transit-initiatives>

<sup>9</sup> The Major Banks who have Bank Distribution Agreements with the RBA are Australia and New Zealand Banking Group (ANZ), Commonwealth Bank of Australia (CBA), National Australia Bank (NAB) and Westpac Banking Corporation (Westpac).

- 2.8. Armaguard also provides retail cash distribution services. At this level, cash-in-transit service providers move cash to publicly available locations such as bank branches, ATMs, retailers and supermarkets. While there are a large number of smaller cash-in-transit companies operating in Australia that are not part of the wholesale arrangements but support retail cash distribution, Armaguard's share of retail cash distribution services is estimated to be above 85%.

### **Decline in cash usage in Australia**

- 2.9. The use of cash as a form of payment in Australia has been declining due to the uptake of electronic payment methods, a trend which was accelerated by the COVID-19 pandemic. The Reserve Bank's Consumer Payments Survey conducted in late 2022 showed that only 13% of payments were made using cash, and that this share had halved over the 3 years prior.
- 2.10. However, cash remains an important means of payment for some consumers. The Reserve Bank's 2019 Consumer Payments Survey reported that around 15% of people used cash for 80% or more of their in-person transactions. These high cash users are more likely to be older (aged 65 and above), have lower household income, live in regional areas; and/or have limited internet access. The majority of these high cash users indicated that they would suffer a major inconvenience or genuine hardship if they could no longer withdraw cash or if retailers stopped accepting cash.
- 2.11. Cash is also used as a store of wealth and in emergency situations such as natural disasters where consumers may be unable to access electronic payment methods.

### **ACCC's merger authorisation decision**

- 2.12. Prior to 2023, there were 2 major suppliers of cash-in-transit services in Australia that offered national coverage – Armaguard and Prosegur. On 13 June 2023, the ACCC granted authorisation to Armaguard and Prosegur in respect of the proposed merger of their respective cash-in-transit and device monitoring and maintenance and ATM businesses. The ACCC granted authorisation on the condition that the merged entity (hereafter referred to in this draft determination as Armaguard) give, and comply with, an undertaking to the ACCC under section 87B of the Act (the **Undertaking**).
- 2.13. In making this decision, the ACCC noted that the cash-in-transit industry is in structural decline due to the decreasing use of cash as a payment method. The ACCC formed the view that if the proposed merger did not proceed it was highly probable that either Armaguard or Prosegur would cease to supply cash-in-transit services in Australia within the short term.
- 2.14. The ACCC considered that either Armaguard or Prosegur ceasing to supply cash-in-transit services would be likely to significantly disrupt the supply of cash-in-transit services and may affect the availability of cash-in-transit services and customers' access to cash.
- 2.15. The ACCC was not satisfied that the proposed merger would not substantially lessen competition. However, the ACCC was satisfied that, provided Armaguard complied with the undertaking, the proposed merger was likely to result in a public benefit that would outweigh the likely public detriment. In particular, the ACCC considered that the most significant public benefit likely to arise from the merger was the avoidance of disorderly disruption to the supply of cash-in-transit services and the flow-on effects for access to cash for the community if Armaguard or Prosegur ceased to supply cash-in-transit services in Australia within the short term.
- 2.16. The undertaking is effective for 3 years from the merger completion date. It requires the combined Armaguard-Prosegur to continue offering cash-in-transit services to all locations that are currently serviced. The undertaking also limits its ability to reduce



service levels and raise prices for existing customers and sets minimum terms and pricing constraints for new customers.

- 2.17. The ACCC also considered that the commitments in the undertaking may avoid the need for government to consider an urgent response to assist in maintaining access to cash, allowing adequate time for consideration of any policy or broader regulatory response in the longer term.

### **Recent developments**

- 2.18. At the time the current application for authorisation was lodged with the ACCC in late November 2023, the ABA submitted that the Reserve Bank scheduled an industry roundtable meeting at the end of October 2023 in order to discuss the ongoing viability of wholesale banknote distribution in Australia. Attending the roundtable were industry participants, the Reserve Bank, the ABA, the 4 Major Banks and Treasury. Notwithstanding the merger, Armaguard expressed the view that the industry is unsustainable in its current form. Armaguard also advised that, as the sole distributor of wholesale cash, it has insufficient self-generating funds to reinvest in the future sustainability of the wholesale cash distribution network on an ongoing basis.
- 2.19. In the application for authorisation, the ABA submits that based on these developments, there is a serious concern that any suspension or disruption in the supply of cash-in-transit services could reduce the availability of cash to the Major Banks at a distribution level, and other participants in the retail cash distribution chain such as other commercial banks, Australia Post, major retailers and ATM services providers. This in turn could reduce the availability of cash to consumers and businesses across Australia.
- 2.20. Since interim authorisation was granted on 6 December 2023, the ACCC understands from the ABA that discussions between stakeholders to support the ongoing sustainability of cash-in-transit services have been ongoing. Three reports, as required by one of the conditions of the interim authorisation, have been provided to the ACCC to date, on 15 January 2024, 15 February 2024 and 15 March 2024, as summarised below.

### **ABA reporting from 6 December 2023 to 14 March 2024**

- 2.21. Between 6 December 2023 and 14 March 2024, 44 meetings were held. These discussions occurred at or arose out of meetings facilitated by the Reserve Bank. The Reserve Bank has established 3 workstreams:
- (a) Short-term initiatives to respond to acute issues within the cash distribution system (supported by a forensic accountant engaged by the Reserve Bank);
  - (b) Business continuity planning (specifically in relation to the continued provision of cash-in-transit services by Armaguard); and
  - (c) Longer-term initiatives to ensure the ongoing sustainability of the wholesale cash distribution network and access to retail cash services in Australia.
- 2.22. The following topics were discussed:
- (a) the decline in the use of cash as a payment method in Australia and relevant developments, the impact that this has had on the viability of wholesale cash distribution in Australia, including on the cash-in-transit industry and the urgent need for an industry response
  - (b) the current financial position of Armaguard and the possible ways in which Member Banks and other parties as listed in paragraph 1.1 could provide immediate assistance to Armaguard

- (c) supporting the availability of cash in regional and remote areas, specifically in relation to business continuity planning
- (d) potential industry-led long-term solution to the issues facing wholesale and retail cash distribution in Australia, including the possibility of the establishment of a new model for cash distribution including preliminary exploration of models in other jurisdictions
- (e) resourcing of work stream of long-term solutions including modelling and analysis of potential solutions
- (f) business continuity planning in the event of suspension of cash-in-transit services, and
- (g) a potential further authorisation application for the implementation of potential short-term relief.

2.23. The ACCC understands that, based on these discussions, the parties reached in-principle agreements in relation to:

- (a) the Major Banks providing some non-financial assistance to Armaguard
- (b) a group consisting of Major Banks, Australia Post and major retailers providing temporary financial assistance to Armaguard while longer-term options can be assessed
- (c) the need for business continuity planning in case of the insolvency of Armaguard including the need to involve other parties as listed in paragraph 1.1 (such as Australia Post and supermarkets) and the formation, purpose and aims of a working group facilitated by the Reserve Bank and comprising Major Banks, the Reserve Bank and Treasury, and
- (d) the need for a longer-term solution, including the need to involve other parties as listed in paragraph 1.1 (such as Australia Post and supermarkets) and the formation of a working group.

2.24. The ACCC understands that between 16 February to 14 March 2024, the ABA and its Members consulted with stakeholders not considered Authorised Parties under the interim authorisation and that the Reserve Bank and ABA each also engaged with Australia Post and 3 other major retailing groups (who are Authorised Parties).

### 3. Consultation

- 3.1. The ACCC invited submissions from a range of potentially interested parties including major industry associations, consumer groups, and relevant federal government and relevant regulatory bodies. Public versions of the submissions have been published on the ACCC's public register.
- 3.2. The ACCC received 9 public submissions from interested parties in relation to the application.

#### *The Reserve Bank*

- 3.3. The **Reserve Bank** made a submission supporting the application for authorisation. The Reserve Bank submits that it places high priority on the community continuing to have access to cash. The Reserve Bank submits that the proposed coordination is in the public interest as it will enable the formulation of effective and cooperative industry responses to the significant challenges facing the cash-in-transit industry.

### *Cash-in-transit providers*

- 3.4. **Armaguard** submits that it supports the need for Reserve Bank-led discussions on the future of the wholesale cash industry. It supports the application for authorisation, subject to the need to ensure that appropriate controls are in place regarding the disclosure and use of commercially sensitive confidential information.
- 3.5. **Authentic Security** submits that the cash-in-transit industry is not sustainable in its current form. Authentic Security submits that the industry needs to mitigate the risk that has resulted from the recent Armaguard-Prosegur merger and the unhealthy reliance on one cash-in-transit operator to support wholesale case distribution. Authentic Security supports the application for authorisation and seeks participation in the discussions that are the subject of the Proposed Conduct. Authentic Security submits that support should be provided to it, to facilitate its growth, whereby it offers a viable alternative to Armaguard in as many geographical areas across Australia as possible.
- 3.6. **SecureCash** provided a submission containing information about developments since the ACCC's decision to grant authorisation (with conditions) to the proposed merger between Armaguard and Prosegur. SecureCash submits that existing cash-in-transit providers are able to cover work left by companies that are unable to provide those services.

### *ATM-related businesses*

- 3.7. **Diebold Nixdorf** supports the interim authorisation granted in relation to the application, noting an awareness of declining cash usage trends in other markets and the distinct geographic challenges facing Australian cash-in-transit providers. It considers itself a key part of the cash eco-system, providing hardware, software and services solutions to banking and retail clients which enable customers to deposit and withdraw cash (at ATMs, cash recycling devices, self-checkout and point of sale devices). Diebold Nixdorf submits that ATMs capable of true cash recycling could be used to redistribute cash deposited by customers (e.g. small/medium businesses) to be returned into circulation and available for consumers to withdraw. It considers that this could reduce the frequency and costs of cash-in-transit providers replenishing cash at ATM locations.
- 3.8. **NCR Atleos** submits it is not opposed to the Proposed Conduct. NCR Atleos notes that it is an authorised party covered by the interim authorisation but submits that it has been advised that discussions are currently focused on wholesale cash distribution and processing arrangements, and the participants are limited to key stakeholders in these aspects of the cash system. NCR Atleos submits that, accordingly, it has not participated in these discussions at the time of lodging its submission.
- 3.9. **Next Payments** supports the application for authorisation and the interim authorisation granted. It submits that cash-in-transit services play an important role in the maintenance of ATMs and cash recyclers. It submits that it actively supports self-cashed ATMs which recycle cash between in-house safes, ATMs and cash registers. Next Payments considers it faces fierce competition from atmX, Armaguard's fully owned subsidiary. It also raised concerns in its submission regarding competition in cash-in-transit services including upwards price pressure and a lack of business opportunities for market participants going forward. Next Payments recommends that the Reserve Bank take control of the cash pool as is the case in New Zealand.

### *Retailers*

- 3.10. **Wesfarmers** supports the application for authorisation, noting that continuity in access to cash is critical to its business. Wesfarmers notes it has a strong customer demographic who make purchases using cash and supports the authorisation

including retailers, supermarkets and other businesses who distribute and utilise cash in their business.

*Other*

- 3.11. **Australia Post** supports the application for authorisation. It submits that cash availability and supply are vital to Australia Post and the communities it serves, both as a retail outlet and in its provision of basic banking services through Bank@Post. Australia Post submits that it relies on Armaguard to provide cash collection, supply and processing services for the majority of its network.

## 4. ACCC assessment

- 4.1. The ACCC's assessment of the Proposed Conduct is conducted in accordance with the relevant authorisation test contained in the Act.
- 4.2. The ABA have sought authorisation for the Proposed Conduct that would or might constitute:
- (a) cartel conduct (Division 1 of Part IV), in that it may involve contracts, arrangements or understandings containing provisions which have the purpose or effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price or a discount, allowance, rebate or credit in relation to goods or services supplied, acquired or likely to be supplied or acquired by the parties, or have the purpose of preventing, restricting or limiting the acquisition or supply or likely acquisition or supply of goods or services by the parties within the meaning of sections 45AD(2), 45AD(3), 45AF, 45AG, 45AJ, and 45AK of the Act;
  - (b) conduct, contracts, arrangements or understandings, concerted practices, exclusive dealing and other conduct that have the purpose, effect or likely effect of substantially lessening competition within the meaning of sections 45(1), 46 and 47 of the Act.
- 4.3. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result.

## Relevant areas of Competition

- 4.4. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.5. Having regard to the nature of the Proposed Conduct, the ACCC considers that the relevant areas of competition likely to be affected by the Proposed Conduct are:
- the supply of wholesale cash-in-transit services to the 4 Major Banks, who are the only customers that require these services because they are the only institutions that have wholesale arrangements with the Reserve Bank through the Bank Distribution Agreements, and
  - the supply of retail cash-in-transit services which banks, along with Major Banks, retailers and other businesses acquire.
- 4.6. Cash-in-transit services are a necessary input into the supply of retail banking services and, for businesses that accept cash payment, the supply of retail goods and services more broadly. Accordingly, the ACCC considers that the development of proposals about access to cash for banks and retailers may also affect competition in the downstream markets in which they operate.

## Future with and without the Proposed Conduct

- 4.7. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 4.8. The ABA submits that in the future without the Proposed Conduct, the ABA and its Member Banks would be unable to meaningfully and effectively discuss and develop industry responses to the challenges facing the cash-in-transit industry without exposing themselves to potential competition law risks, nor would they be able to participate in multilateral discussions with Treasury, the Reserve Bank and other industry stakeholders. Accordingly, in the future without the Proposed Conduct, and given the scale of the challenges facing Australia's cash distribution system and the timeframes in which solutions must be progressed, this could impede the development of effective industry responses.
- 4.9. The ACCC considers that in the future with the Proposed Conduct, the participating parties will be able to share information, explore options and reach in-principle agreement about solutions to support the ongoing sustainability of the cash-in-transit industry.
- 4.10. In the future without the Proposed Conduct, the ACCC also considers that the banks, and other industry stakeholders, would likely continue to have some level of discussions with and supported by the Reserve Bank and Treasury. However, these discussions would not be likely to be as extensive, and the exchange of pertinent information between parties would be more limited due to the risk of breaching competition laws that exchanging commercial and competitively sensitive information would be likely to raise. The parties to the Proposed Conduct would also be more limited in the types of collective responses they could consider which may also raise competition law risks.
- 4.11. In the future without the Proposed Conduct, each party would be more likely to separately consider how best to support the suitability of cash-in-transit. The focus of such separate considerations would more likely be on how the party can support the sustainability of cash-in-transit services to their business, as opposed to the holistic sustainability of the cash-in-transit industry and more broadly, maintaining public access to cash.
- 4.12. The ACCC also notes that the largest acquirers of cash-in-transit services (i.e. the Major Banks) acquire both wholesale and retail cash-in-transit services. Therefore, any support offered separately by each of these major customers is likely to focus on servicing their needs, which are quite different to the types of cash-in-transit services required by other businesses (the vast majority of businesses that only require retail cash-in-transit services). Smaller acquirers of cash-in-transit services, each acting individually, would be less likely to be able to advocate as effectively for, or provide support for the ongoing sustainability of cash-in-transit services of the nature that they require.

## Public benefits

- 4.13. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*... we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as*

*one of its principal elements ... the achievement of the economic goals of efficiency and progress.*<sup>10</sup>

4.14. The ABA submits that the Proposed Conduct will give rise to substantial public benefits through facilitating the exploration and evaluation of urgent industry responses to the challenges facing the cash-in-transit industry and supporting other policy measures being developed and implemented by the Reserve Bank and Treasury. In particular, the ABA submits that the Proposed Conduct will result in the following significant public benefits:

- *Effective evaluation of the challenges facing the cash-in-transit industry:* The Proposed Conduct will enable Member Banks, and in particular the Major Banks, to effectively and efficiently evaluate the scale and nature of the challenges facing Armaguard and the immediate banking industry responses that might be taken (in conjunction with other policy measures).
- *Development of effective urgent industry responses:* By facilitating multilateral discussions among Member Banks and between Member Banks and key stakeholders, the Proposed Conduct will facilitate the development of more effective industry responses to the challenges facing Armaguard.
- *Timely development of urgent industry responses:* Given the scale of the challenges and the time frames in which solutions must be progressed, the ABA submits that urgent action by Government, the Reserve Bank and broader industry is required, and that the Proposed Conduct will facilitate the development of such responses in an expedited time frame.
- *Avoidance of potential disruption to the supply of cash-in-transit services:* The Proposed Conduct will assist in avoiding a potential disruption to the supply of cash-in-transit services and the flow on effects for access to cash for the community. A disruption to cash-in-transit services and access to cash could lead to consequences as follows:
  - a 'run' on cash - the potential that public concern about access to cash could cause a 'run' on cash in some areas, exacerbating supply issues
  - security concerns – for example, that ATMs, businesses and customers could be potentially vulnerable to security threats (such as robberies), and
  - urgent government intervention – for example, a need for government assistance to manage the above impacts, to facilitate the continued supply of cash-in-transit services and access to cash in the short term.

4.15. The ACCC's assessment of the likely public benefits from the Proposed Conduct follows.

4.16. The ACCC recognises that cash is an important form of payment for some Australian consumers. As noted at paragraph 2.10, while cash usage has been steadily declining, in 2019 around 15% of people still used cash for 80% or more of their in-person transactions. These high cash users are likely to be aged 65 or above, have lower household income, live in remote or regional areas and/or have limited internet access. Many more people still use cash on a more limited basis. The ACCC considers that these members of the community would be particularly impacted if their ability to access cash was more limited.

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<sup>10</sup> *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cash-in-transited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

- 4.17. The ACCC also recognises that cash is an important back-up payment method for many Australians, including in times of natural disaster or other outages where electronic payment may not be available.
- 4.18. In this respect, sustainable cash-in-transit services are crucial to supporting access to cash for banks, retailers and the community. The ACCC therefore accepts that the Proposed Conduct is likely to lead to the avoidance of potential disruption to the supply of cash-in-transit services and the flow on effects for access to cash for the community, which constitutes a public benefit.
- 4.19. The ACCC also considers that information sharing and collaboration between the parties to the Proposed Conduct is likely to result in a public benefit in the form of the development of more timely, effective and inclusive industry solutions to support the ongoing provision of cash-in-transit services and thereby maintain access to cash. The ACCC notes that this view is supported by the ABA as well as the interested party submission of the Reserve Bank,. The ACCC has also taken into account the reported progress of discussions by Authorised Parties as summarised in the ABA's Reports dated January, February and March 2024. For example, in February, the Major Banks are reported to have reached an in-principle agreement to provide some non-financial assistance to Armaguard.
- 4.20. In particular, the ACCC considers that information sharing between the parties will provide a more complete picture of the concerns about the sustainability of cash-in-transit services that are sought to be addressed, thereby informing better decision-making about possible solutions. Further, as the efficient provision of cash-in-transit services is largely dependent on operating a cash transport network servicing a range of customers, the most timely and effective solutions to supporting sustainability of cash-in-transit services are likely to be those developed collaboratively across this network of customers.
- 4.21. The ACCC also considers that incentives for cash-in-transit customers to support ongoing provision of sustainable cash-in-transit services for the broad range of larger and small businesses that require these services are likely to be greater through collaborative action. As noted above, acting unilaterally, major acquirers of cash-in-transit services are likely to focus on servicing their own needs and smaller acquirers of cash-in-transit services would be less likely to be able to advocate as effectively for, or provide support for, the ongoing sustainability of cash-in-transit services of the nature that they require.
- 4.22. For these reasons, the ACCC also considers that the Proposed Conduct is likely to result in material public benefits in the form of a more effective evaluation of the challenges facing the sustainability of the cash-in-transit industry and the development of more timely, effective and inclusive industry solutions to these challenges in an expedited timeframe, and in doing so, will reduce the risk of disruption to supply of cash-in-transit services and/or reduced availability of cash in the community in the short term.
- 4.23. In reaching this view, the ACCC is particularly cognisant of the importance of maintaining access to cash in regional and remote areas, many of which do not have access to cash banking services and rely on other means of access.
- 4.24. It is critical to the quantum of any public benefit likely to be realised through the development of industry solutions to maintain access to cash that any industry responses discussed and agreed to ensure ongoing availability of cash across all sectors of the economy. This is particularly the case in rural and remote areas where cash access is more limited, and the impacts of not having ready access to cash would be most pronounced. Such a response could, for example, include arrangements under which non-bank users of cash services in remote and regional Australia have

reliable, cost effective and fair access to those services from other sources such as Australia Post, supermarkets and/or other retailers.

- 4.25. The ACCC notes that many non-bank stakeholders have not been substantively involved in discussions held under the interim authorisation to date. The ACCC understands that a major focus of discussions to date has been on short-term assistance for Armaguard and attendance has largely reflected the stakeholders that may be involved in providing that assistance. In this respect, the ACCC notes that the ABA's most recently monthly report about meetings and discussions held under the interim authorisation between 16 February 2024 and 14 March 2024 states that an in-principle agreement has been reached about a group consisting of Major Banks, Australia Post and major retailers providing temporary financial assistance to Armaguard while longer term options can be assessed. The ACCC expects that as more substantive discussions about consideration and development of longer-term solutions progress, other non-bank stakeholders will be increasingly involved.
- 4.26. Implementation of industry responses or solutions to sustain cash-in-transit services will, if required, be the subject of a separate application for authorisation. Maintaining access to cash in regional and remote community will be a key consideration for the ACCC in assessing the public benefits and public detriments likely to result from any proposed industry responses or solutions.

## Public detriments

- 4.27. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...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.<sup>11</sup>*

- 4.28. The ABA submits that the Proposed Conduct is unlikely to result in any material public detriments given:
- the short term of authorisation sought
  - that the Proposed Conduct is limited to discussions and in-principle agreement about potential industry responses, and does not extend to the implementation of any solutions which would be the subject of a separate ACCC authorisation (if required)
  - the confined nature of the Proposed Conduct, being that:
    - discussions, information sharing, and in-principle agreement can only occur where it has the purpose of, and is reasonably necessary for urgent industry responses
    - the Proposed Conduct does not involve entering into contracts, arrangements or understandings regarding non-cash services provided by the Member Banks
  - that no Member Bank is prevented from engaging in bilateral discussions with Armaguard
  - that the Proposed Conduct is voluntary, and no Member Bank or other industry stakeholder is required to participate in the Proposed Conduct

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<sup>11</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.



- the ABA and its Member Banks proposed that an external competition lawyer attend each meeting of Member Banks held under the authorisation and that monthly reports be submitted to the ACCC regarding progress and discussions to date.
- 4.29. In light of these circumstances, the ABA submits that the potential for detriment is very limited, and that any theoretical detriment is outweighed by the substantial public benefits of facilitating the development of industry responses to the challenges facing the CIT industry.
- 4.30. The ACCC has considered the following public detriments:
- potential for a limited response that does not address whole-of-economy access
  - potential for reduced competition between participants, and
  - potential to facilitate anti-competitive conduct beyond that authorised.

*Potential for a limited response that does not address whole of economy access*

- 4.31. As discussed above, the ACCC considers it crucial that any collaborative industry response to support effective cash-in-transit services is holistic and takes into account supporting the viability of wholesale cash distribution and access to retail cash services across the Australian economy (particularly in remote and regional areas).
- 4.32. The ACCC considers that the development of industry responses that were more narrowly focused, for example on larger metropolitan areas or the needs of the Major Banks and larger retail customers, would not only fail to address supporting ongoing access to cash for more vulnerable members of the community, but would also be likely to exacerbate these concerns. This is because more narrowly focused solutions would be likely to reduce the likelihood of effective solutions to support ongoing access to cash for these members of the community being developed. The ACCC considers that this would constitute a significant public detriment as it would be likely to:
- make access to cash more difficult for these members of the community, particularly in remote and regional areas, and
  - lessen competition in various retail markets, particularly if some retailers were able offer customers the cash payment option, while others were not able to readily access cash to provide this option to their customers.
- 4.33. However, based on the information currently before it, the ACCC considers that this public benefit is likely to be limited due to the following factors:
- discussions and/or in-principle agreements reached in accordance with the Proposed Conduct will involve the participation of the Reserve Bank and Treasury, whose participation will seek to ensure the broader public interest is prioritised in the development of timely and effective industry solutions, and
  - the Proposed Conduct is limited to discussions and the exchange of information to evaluate and develop potential industry responses to the viability of wholesale cash distribution in Australia and securing access to retail cash services, and does not extend to the implementation of any industry responses or solutions which result from the Proposed Conduct. The implementation of any solution(s) would be the subject of a separate application for authorisation, if required. As noted, the ACCC has, and continues to make clear to the ABA, that maintaining access to cash in regional and remote community will be a key consideration for the ACCC in assessing the public benefits and public detriments likely to result from any

proposed industry responses or solutions the subject of future applications for authorisation. The Applicants would be expected to be fully cognisant of this in discussing and developing any collaborative solutions.

- 4.34. Accordingly, the ACCC considers that the Proposed Conduct is not likely to result in a limited industry response that does not address whole of economy access of cash.

*Potential for reduced competition between participants*

- 4.35. As a general proposition, the ACCC considers that any coordination between competitors leads to a reduction in competition in some form, and this constitutes a public detriment. The ACCC also considers that the collaboration and sharing of information between competitors that the banks and other acquirers of cash-in-transit services propose to engage in under the Proposed Conduct has the potential to reduce competition between them. For example, banks and other participants in discussions (such as major retailers) may obtain a degree of visibility in relation to each other operations, particularly in relation their use of and reliance on cash and their utilisation of cash-in-transit services.
- 4.36. However, the ACCC considers that this public detriment would only be likely to arise if the Proposed Conduct increases the likelihood that reduced competition between participants as compared to the likely future without the Proposed Conduct.
- 4.37. The ACCC considers that the provision of cash-in-transit services is an important input into the operation of bank and retail businesses which, to the extent that they are reliant on cash, is necessary to allow them to effectively compete. That is, businesses that need, but do not have efficient access to cash, would be likely to be at a competitive disadvantage in attracting customers to those that do. However, the ACCC does not consider that having greater visibility about how their competitors acquire cash-in-transit services as a result of the Proposed Conduct is likely to materially impact the way in which they do compete with each other in the downstream markets in which they operate. It is the availability of cash-in-transit services (and thereby access to cash), and the terms on which they are supplied, that is most important to supporting competition in downstream markets.
- 4.38. For these reasons, the ACCC considers that the Proposed Conduct is not likely to result in any material public detriment in the form of reduced competition between participants to the Proposed Conduct.
- 4.39. The availability of cash-in-transit services, and the terms on which they are supplied, across all businesses who require these services, will be an important consideration in the ACCC's assessment of any future application for authorisation about collective agreement concerning future supply arrangements.

*Potential to facilitate anti-competitive conduct beyond that authorised*

- 4.40. The ACCC considers that public detriments may arise if contracts, arrangements or understandings create or enhance the potential for coordinated (rather than competitive) conduct on other matters that are beyond the scope of the Proposed Conduct.
- 4.41. The ACCC considers that the discussions between participants, and the sharing of confidential information pursuant to the Proposed Conduct, may give rise to the risk that the parties may discuss and coordinate on other matters, which may affect competition in retail banking or retailing of goods and services more broadly.
- 4.42. The ACCC notes that such conduct would not fall within the scope of the Proposed Conduct and may breach the Act.

- 4.43. However, the ACCC considers that this potential detriment is unlikely to be material because the Proposed Conduct is narrow in scope, and only relates to discussions and the exchanging of information that is for the purpose of, and reasonably necessary for, developing and evaluating potential urgent responses to support the viability of wholesale cash distribution and retail cash services.
- 4.44. The ACCC considers that the likelihood of this public detriment resulting from the Proposed Conduct is further mitigated by the proposed conditions of authorisation set out at paragraph 5.16. Specifically, the ACCC proposes to impose a condition that requires that an external lawyer with competition law expertise attend all meetings and immediately advise the attendees if, during the course of the meeting, they develop concerns that there is conduct occurring that is outside the scope of the authorisation and risks of breaching the Act. In addition, the ACCC proposes to impose a reporting and transparency condition that requires the ABA to provide detailed monthly reports to the ACCC regarding progress and discussions, ensuring oversight of the progress of discussions.
- 4.45. The ACCC considers that these factors manage the risk of participants in discussions pursuant to the Proposed Conduct coordinating on anything beyond an industry response to the viability of wholesale cash distribution, and securing access to retail cash services.

### Balance of public benefit and detriment

- 4.46. The ACCC's assessment of whether it is satisfied that the likely public benefits of the Conduct would outweigh the likely public detriments requires a balancing exercise.<sup>12</sup>
- 4.47. The ACCC considers that the Proposed Conduct is likely to result in material public benefits through supporting the development of more effective solutions to address concerns about the ongoing sustainability of cash-in-transit services, and thereby supporting ongoing supply of cash to banks, retailers and the community. This includes those members of the community who are more heavily reliant on cash, including those in regional and remote areas.
- 4.48. The ACCC considers that, with the proposed conditions at paragraph 5.16, the Proposed Conduct is unlikely to result in any material public detriment. The ACCC considers that:
- the Proposed Conduct is narrow in scope and only relates to discussions, the exchange of information and in-principle agreement for the purpose of, and reasonably necessary for, developing and evaluating potential urgent responses,
  - the Proposed Conduct is subject to oversight through the participation of the Reserve Bank and Treasury as well as monthly reporting to the ACCC regarding progress and discussions, and
  - all meetings or discussions held pursuant to the Proposed Conduct will be attended by an external lawyer with competition law expertise who will advise of any concerns that there is conduct that is outside the scope of the authorisation and risks breaching the Act.
- 4.49. For the reasons outlined in this draft determination, the ACCC is currently satisfied that the Proposed Conduct, with the proposed conditions at paragraph 5.16, would be likely

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<sup>12</sup> *Australian Competition and Consumer Commission v Australian Competition Tribunal* (2017) 254 FCR 341, at [7] (Besanko, Perram and Robertson JJ).

to result in a public benefit and this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

## Length of authorisation

- 4.50. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>13</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.51. On 1 March 2024, the ACCC received a request from the ABA to vary the current application for authorisation. The variation seeks to extend the term for which is authorisation sought from until 30 June 2024 to 31 October 2024.
- 4.52. The ABA considers that the varied length of the term of authorisation is no more than what is reasonably necessary to allow the ABA, its Member Banks and the other persons or classes of person listed at paragraph 1.1 to explore and evaluate urgent industry responses to the viability of wholesale cash distribution and/or continued access to retail cash services.
- 4.53. The ABA notes the significant complexity raised by the issues facing the cash-in-transit industry which have been discussed at meetings held to date in accordance with the interim authorisation. The ABA considers that, in light of this complexity, extension of the term of authorisation sought is necessary to allow additional time for the ABA, its Member Banks and the other persons or classes of person listed at paragraph 1.1 to exchange information and conduct discussions relating to potential industry responses.
- 4.54. Given the nature of the Proposed Conduct, which is limited to the consideration but not implementation of any solutions to support the ongoing viability of cash-in-transit services, the ACCC considers that the proposed length of authorisation sought is appropriate.
- 4.55. The ACCC seeks the views of any interested parties on the proposed length of authorisation.

## 5. Draft determination

### The application

- 5.1. On 30 November 2023, the Australian Banking Association Ltd (**ABA**) lodged application AA1000654 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 5.2. The ABA is seeking authorisation on behalf of itself, its Member Banks<sup>14</sup> and the following parties named or referred to in the Application, to the extent that they are relevant persons or classes of persons:
  - (a) Linfox Armaguard Pty Ltd (**Armaguard**)
  - (b) the Reserve Bank of Australia (the **Reserve Bank**)
  - (c) the Commonwealth Treasury (**Treasury**)
  - (d) Australia Post

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<sup>13</sup> Subsection 91(1) of the Act.

<sup>14</sup> The current ABA Members Banks are listed in Annexure 1.

- (e) suppliers of cash-in-transit services
  - (f) non-Member Banks, and
  - (g) retailers, supermarkets and other businesses who distribute and utilise cash in their businesses.
- 5.3. The ABA, its Members Banks<sup>15</sup> and the other persons and classes of persons listed in paragraph 5.2 are collectively referred to as the **Authorised Parties**. The Authorised Parties are listed in Annexure 1 to this draft determination.
- 5.4. The ABA seeks authorisation on behalf of itself, its Member Banks<sup>16</sup> and the other persons or classes of persons listed at paragraph 5.2 to:
- (a) engage in discussions and exchange information that is for the purposes of, and reasonably necessary for, developing and evaluating potential industry responses to:
    - (i) the viability of wholesale cash distribution in Australia; and/or
    - (ii) securing continued access by banks, retailers, other businesses and/or members of the public to retail cash services in one or more metropolitan and/or regional non-metropolitan locations; and
  - (b) reach in-principle agreement on the form and content of any urgent industry responses to be pursued, the implementation of which would be the subject of a separate application for ACCC authorisation, as required.
- 5.5. The ABA submits that the Proposed Conduct will involve multilateral discussions and the exchange of information between either:
- (a) the ABA and its Member Banks, or
  - (b) the ABA, Member Banks and one or more of the other persons or classes of persons listed at paragraph 1.1 including in relation to:
    - (i) actions to be taken by the Federal Government, the Reserve Bank and others to ensure the ongoing availability of cash to Australians in metropolitan and regional areas
    - (ii) modelling of anticipated customer cash usage so that Member Banks can form an understanding of projected short and long-term demand for cash services in metropolitan and regional locations
    - (iii) information about Armaguard's business so that Member Banks can form an understanding of the financial arrangements underpinning Armaguard's cash-in-transit services that are core to the immediate and longer-term sustainability of its cash services
    - (iv) Armaguard's current service delivery arrangements for core cash-in-transit services, including economics of supply, logistical efficiency, the terms of Member Banks' cash-in-transit contracts with Armaguard and potential options to support the sustainability of metropolitan and regional cash services
    - (v) short-term business continuity planning for cash-in-transit services, including for disruption of existing cash-in-transit services providers

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<sup>15</sup> The current ABA Members Banks are listed in Annexure 1.

<sup>16</sup> The current ABA Members Banks are listed in Annexure 1.

- (vi) wholesale cash policy changes to support the sustainability of cash services including the terms of Banknote Distribution Agreements (Bank Distribution Agreements)
- (vii) costs of cash products and retail service distribution and measures to increase the sustainability of cash products and retail service distribution
- (viii) discussions with other key industry participants including Australia Post, other major cash handlers and other suppliers of cash-in-transit services
- (ix) responses and submissions to any consultation or inquiry undertaken by governments relating to cash services; and
- (x) information required to prepare a separate application to the ACCC for authorisation of measures to implement the Banking Industry Proposal on Cash Sustainability.

5.6. The ABA defines the conduct described at paragraphs 5.4 and 5.5 collectively as the **Proposed Conduct**.

5.7. The Proposed Conduct extends only to the development of initiatives and in principle agreement of potential industry responses to support the ongoing sustainability of cash-in-transit services. Once responses have been developed, the ABA will be required to separately apply for authorisation to cover implementation if required.

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

## The authorisation test

5.9. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.

5.10. The Act permits the ACCC to specify conditions in an authorisation.<sup>17</sup> The ACCC determines the nature, form and scope of any conditions imposed and, while there is no express limit on the types of conditions which may be imposed on the grant of an authorisation, the power to impose conditions is constrained by the subject matter, scope and purposes of the Act.<sup>18</sup>

5.11. The legal protection provided by the authorisation does not apply if any of the conditions are not complied with.<sup>19</sup>

5.12. For the reasons outlined in this draft determination, the ACCC is currently satisfied, in all the circumstances, that the Proposed Conduct, with the proposed conditions at paragraph 5.16, would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.

5.13. Accordingly, the ACCC proposes to grant authorisation with the conditions at paragraph 5.16 to this draft determination.

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<sup>17</sup> Section 88(3) of the Act.

<sup>18</sup> See *Re Medicines Australia Inc* [2007] ACompT 4 at [131].

<sup>19</sup> Section 88(3) of the Act.

## Conduct which the ACCC proposes to authorise

5.14. The ACCC proposes to grant authorisation AA1000654, with the conditions at paragraph 5.16, to the Authorised Parties,<sup>20</sup> for the ABA and the Member Banks or the ABA, the Member Banks and one or more of the other Authorised Parties to:

- (a) engage in discussions and exchange information that is for the purposes of, and reasonably necessary for, developing and evaluating potential urgent responses to:
  - i. the viability of wholesale cash distribution in Australia, and/or
  - ii. securing continued access by banks, retailers, other businesses and/or members of the public to retail cash services in one or more metropolitan and/or regional locations, and
- (b) reach in-principle agreement on the form and content of any urgent industry responses to be pursued, the implementation of which would be the subject of a separate application for authorisation.

(the **Proposed Authorised Conduct**).

5.15. For the avoidance of doubt, the Proposed Authorised Conduct does not include, and authorisation AA1000654 does not extend to, the implementation of any industry responses or solutions which result from the Proposed Authorised Conduct. The ABA will be required to separately apply to the ACCC for authorisation to cover implementation if required.

5.16. The ACCC proposes to grant authorisation AA1000654 with the following conditions:

**Condition 1 – Reporting requirement:** The ABA will provide each month (or such other period as the ACCC may approve) a report to the ACCC setting out material activities, discussions, developments and/or decisions in the previous period that involved conduct enabled by this authorisation, including:

- a list of the attendees, and the topics discussed at each meeting involving the ABA and the Member Banks [or the ABA, the Member Banks and one or more of the other Authorised Parties], and
- potential urgent industry responses considered.

Each report will specifically set out:

- consultation with stakeholders who are not Authorised Parties, including the views expressed during the consultation, and
- activities, discussions, developments and/or decisions to support the availability of cash in regional and remote areas.

The ABA will provide each report on or before the 15<sup>th</sup> day of each month and the first such report will be provided on or before the 15<sup>th</sup> day of the month following the month in which the ACCC's final determination comes into effect in respect of application AA1000654.

A non-confidential version of each report will be provided for publication on the ACCC's authorisations public register.

**Condition 2 – Presence of competition lawyer:** Where the Authorised Conduct involves a meeting of or discussions between the ABA and the Member Banks or the ABA, the Member Banks and one or more of the other Authorised Parties, an external

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<sup>20</sup> The Authorised Parties are listed in Annexure 1.

lawyer with expertise in competition law, engaged by the ABA and approved by the ACCC, must attend the meetings with instructions to immediately advise the attendees if, during the course of the meeting, they develop concerns that there is conduct occurring that is outside the scope of the authorisation and risks of breaching the Act.

5.17. The ACCC proposes to grant authorisation AA1000654, with the conditions at paragraph 5.16, in relation to Division 1 of Part IV of the Act and sections 45, 46 and 47 of the Act until 31 October 2024.

5.18. This draft determination is made on 20 March 2024.

## 6. Next steps

6.1. The ACCC now invites submissions in response to this draft determination, by 10 April 2024. In addition, consistent with section 90A of the Act, the applicant or an interested party may request by 3 April 2024 that the ACCC hold a conference to discuss the draft determination.



## **Annexure 1**

### **The Authorised Parties**

#### ***Applicant***

1. Australian Banking Association Ltd

#### ***Current ABA Member Banks***

2. AMP Bank Limited
3. Australia and New Zealand Banking Group Limited
4. Arab Bank Australia Limited
5. Bank Australia Limited
6. Bank of China (Australia) Limited
7. Bank of Queensland
8. Bank of Sydney Limited
9. Bendigo and Adelaide Bank Limited
10. Citigroup Pty Ltd
11. Commonwealth Bank of Australia
12. HSBC Bank Australia Limited
13. ING Bank (Australia) Limited
14. JPMorgan Chase Bank, N.A, Sydney Branch
15. Macquarie Bank Limited
16. MUFG Bank Limited
17. MyState Bank Limited
18. National Australia Bank Limited
19. Rabobank Australia Limited
20. Suncorp Bank (Suncorp-Metway Limited)
21. Westpac Banking Corporation

#### ***The following parties who are named or referred to as persons or classes of persons in the Application***

22. Linfox Armaguard Pty Ltd
23. the Reserve Bank of Australia
24. the Commonwealth Treasury
25. Australia Post
26. Suppliers of cash-in-transit services
27. Non-Member Banks
28. Retailers, supermarkets and other businesses who distribute and utilise cash in their businesses