



Australian Banking Association Ltd
Application for authorisation AA1000645
Interim authorisation decision
3 August 2023

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation with conditions in respect of the application for authorisation AA1000645, lodged by the Australian Banking Association (**ABA**) on 10 July 2023.
2. The ACCC grants interim authorisation to the ABA and Member Banks¹ (collectively, the Authorised Parties) for the Authorised Conduct (as defined in paragraph 21), with the conditions set out at paragraph 22.
3. In summary, interim authorisation is granted to enable ABA members to explore and develop initiatives for inclusion in a banking industry standard to prevent, detect, disrupt and respond to scams affecting individual and small business customers.
4. The ACCC grants interim authorisation in relation to Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**) and section 45 of the Act.
5. Interim authorisation commences immediately and remains in place until it is revoked, the application for authorisation is withdrawn, or the date the ACCC's final determination comes into effect.

The application for authorisation and interim authorisation

6. The ABA is an association of 20 member banks in Australia. The ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.
7. The ABA and Member Banks acknowledge the detriment caused by scams on a daily basis, and the importance of finding robust and meaningful solutions. The ABA notes that Member Banks are already individually implementing prevention, detection and disruption initiatives to combat scams and recover losses. The ABA submits that allowing collaboration between the Member Banks to develop an industry standard will ensure there will be a robust, effective and fit for purpose mechanism in place to:
 - enable efficient exchange of information and coordination of processes to prevent and detect scams and protect consumers from scams and identity misuse;
 - articulate the roles and responsibilities of each participant in the Industry Standard and the consequences for non-compliance with their obligations; and
 - improve the ability of customers to report and recover losses from the responsible entity in a timely manner and for the responsible entity to assist the customer to address their losses.
8. On 10 July 2023, the ABA applied for authorisation for Member Banks to explore and develop initiatives for inclusion in a banking industry standard to prevent, detect, disrupt

¹ Member Banks are listed in Annexure 1.

and respond to scams affecting individual and small business customers and in principle agree to a standard reflecting those initiatives. The ABA seeks authorisation for 12 months from the date on which authorisation is granted.

9. The ABA also requested urgent interim authorisation while the ACCC considers the substantive application.
10. The ABA notes that the Federal Government has recently announced that a legislated cross-industry Code will be introduced for banks, telcos, social media platforms and others in the near term. The ABA submits that Member Banks have also been encouraged by government to develop the industry standard because a robust and well considered banking industry standard can form the building blocks of the legislated cross-industry code.
11. The ABA submits that to the extent Member Banks are not able to engage in effective, multilateral discussions now, this would impede the development of the industry standard and could potentially delay the development of a legislated cross-industry code.
12. The ABA seeks authorisation for Member Banks to explore and develop initiatives for inclusion in a banking industry standard to prevent, disrupt and respond to scams affecting individual and small business customers (**Industry Standard**). The ABA anticipates that development of the Industry Standard will require:
 - discussions and exchange of information between the ABA and Member Banks regarding matters directly necessary for purposes of developing the Industry Standard, including:
 - the scope and provisions of the Industry Standard such as how Member Banks can ensure that there is an effective operational framework for protecting consumers against increasingly sophisticated scams that pose a high risk to their financial wellbeing;
 - the role(s) of Member Banks in identifying, reporting, disrupting and responding to scams in coordination with other sectors, regulators, government, law enforcement or other relevant stakeholders;
 - the role(s) of suppliers of services who have a key role to play in scam disruption in relation to the Industry Standard including financial services providers, payment platforms and service providers, digital platforms and telecommunications providers;
 - scam activity, including the volume of scam activity, victims, types of scams carried out and how they are carried out;
 - the nature and extent of financial, reputational and other impacts of scams on individuals and small businesses (including customers of the Applicants);
 - existing measures deployed by Applicants to prevent, disrupt and respond to scams and the effectiveness of those measures;
 - identification of potential scam perpetrators and actions that may be taken to monitor and raise awareness of their activities;
 - potential industry measures to prevent, detect, disrupt and respond to scams - for example, preventing or delaying payments to specific high-risk businesses, accounts or destinations associated with scam activity;
 - the impact of current and potential measures on the Member Banks' businesses;
 - options for the adoption of a payee verification solution or solutions, and the potential providers of that solution - to ensure that consumers are more aware

of who they are making transfers to, and to reduce the number of scams that rely on the payer not knowing who they are paying come to fruition;

- information required to prepare a separate application to the ACCC for authorisation of the Industry Standard and respond to any queries that the ACCC may have;
- responses and submissions to any consultation undertaken by government related to scams; and
- an agreement in principle between the Applicants on the form and content of the Industry Standard, subject to a separate ACCC authorisation.

(the **Proposed Conduct**).

13. The application does not cover implementation of the Industry Standard and the ABA has indicated it will seek a further authorisation for implementation of a standard at the appropriate time.

The authorisation process

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

15. The ACCC may specify conditions in an authorisation. The legal protection provided by an authorisation does not apply if any conditions are not complied with.

Interim authorisation

16. Section 91 of the Act allows the ACCC, where it considers it appropriate to do so, to grant interim authorisation. This allows the parties to engage in conduct while the ACCC is considering the substantive application for authorisation.

17. The ABA has requested urgent interim authorisation to enable its members to engage in the Proposed Conduct as soon as possible while the ACCC considers the substantive application for authorisation.

18. The ABA and Member Banks seek urgent interim authorisation in order to commence work on an Industry Standard that would have a meaningful impact on the prevention, detection and disruption of scams as soon as possible. They seek urgent interim authorisation to commence meaningful engagement (which they indicated they have not been able to do given potential competition law risks).

Consultation

19. The ACCC is conducting a public consultation process on the substantive application for authorisation and will further examine the public benefits and detriments likely to result from the Proposed Conduct during the process of assessing the application for authorisation.

20. Further information in relation to the application for authorisation and details regarding how to make a submission will be available on the [ACCC's authorisations public register](#).

The Authorised Conduct

21. The ACCC grants interim authorisation with conditions for the Authorised Parties to:

- (a) engage in discussions and exchange information solely for the purpose of developing a banking industry standard in relation to the prevention of, disruption to, and response to, scams that will or may affect individual and small business customers (**Industry Standard**); and
- (b) reach in principle agreement on the form and content of the Industry Standard (the entering and giving effect to which will be subject to a separate application for ACCC authorisation).

(**Authorised Conduct**).

Granting of conditional interim authorisation

22. Interim authorisation is granted with the following conditions:

Condition 1 – Reporting requirements: 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:

- topics discussed at meetings involving the ABA and Member Banks
- whether any discussions sought to limit the range of issues that any proposed industry initiatives would address, such as the circumstances in which customers would be reimbursed or entitled to remedies
- consultation with individual and small business consumer groups, including the views expressed during the consultation.

The ABA will provide each report on or before the last day of each month and the first such report will be provided on or before 31 August 2023.

Where possible, 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 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.

23. The ACCC may authorise a Committee or Division of the ACCC, a member of the ACCC or a member of the ACCC staff to exercise a decision making function under the conditions of this interim authorisation on its behalf.

Reasons for decision

24. In deciding to grant interim authorisation, the ACCC has taken into account:

- that the proliferation of scams is causing significant detriment to consumers and businesses alike, and the banking sector has a key role in combating scams and recovering losses
- that the Authorised Conduct is limited to discussions and the exchange of information solely for the purpose of developing the Industry Standard and in principle agreement on its form and content, ie the Authorised Conduct is narrower than the conduct for which authorisation is sought, and there is likely to be minimal if any risk of competitive detriment from the Authorised Conduct

- the limited scope of information authorised to be shared
- the reporting and transparency conditions imposed on the Authorised Parties ensures that the ACCC has oversight of progress of discussions, and manages the risk of Authorised Parties coordinating on anything beyond scam prevention and consumer redress
- the limited period for which authorisation is sought for the proposed conduct, being 12 months from the date on which authorisation is granted
- that the information sharing and collaboration between Member Banks may result in a better or more effective industry standard than what may be achieved absent interim authorisation
- the ACCC will consider any impacts of the conduct on competition and its effectiveness in delivering claimed benefits as part of its assessment of the substantive application, and can vary or revoke interim authorisation at any time.
- the ABA is not seeking authorisation for implementation of the Industry Standard. The ABA has indicated it will seek a further authorisation for implementation of an industry standard at the appropriate time.

Reconsideration of interim authorisation

25. The ACCC may review a decision on interim authorisation at any time.

26. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.

Current ABA Member Banks

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