



**Australian Banking Association –  
Application for authorisation AA1000482  
Interim authorisation decision  
30 March 2020**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted conditional interim authorisation in respect of the application for authorisation AA1000482, lodged by the Australian Banking Association (the **ABA**) on 30 March 2020. The application for authorisation is made in response to the COVID-19 pandemic.
2. The ABA has applied for authorisation on behalf of its Member Banks<sup>1</sup> (including the third party suppliers and/or agents, where relevant) and their subsidiary banks to discuss, agree, and give effect to any arrangement or understanding between them for the benefit of their customers with the broad purpose of providing financial relief and assistance to customers in any sector of the economy or segment, and supporting government initiatives. The ABA will notify the ACCC of all financial relief programs or other arrangements arising from the proposed conduct, prior to it being implemented, or otherwise given effect to. The ABA propose that interim and final authorisation, be subject to a condition where the coordination involves third party suppliers and/or agents. The application for authorisation was made in response to the COVID-19 outbreak.
3. The ACCC has granted interim authorisation for the conduct described at paragraph 8 below, subject to the conditions described at paragraph 26.
4. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

**Related authorisation application**

5. On 19 March 2020, the ABA lodged an application for authorisation, and requested urgent interim authorisation, to implement a small business relief package to support small business customers adversely impacted by the COVID-19 pandemic. The ACCC granted interim authorisation on 20 March 2020 see the [ACCC's Public Register](#) for more information on this application.
6. The ABA submits that the uptake of the small business relief package will reach a significant percentage of Member Bank's small business loan portfolio. However, Member Banks continue to receive a large volume of requests for relief from customers that are not covered by that program which is why the ABA lodged a second application for authorisation.

**The application for authorisation**

7. The ABA and Member Banks anticipate that there will be a continued and increasing need to take urgent industry-wide action to minimise the broad, varied and rapidly

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<sup>1</sup> See Annexure 1

evolving impact of COVID-19 and the Government legislated shutdowns to protect public health, on their retail and business customers.

8. The ABA, on behalf of the Member Banks (including their third party suppliers and/or agents, where relevant), seek authorisation to discuss (including to share information), agree, and give effect to, any contract, arrangement or understanding between them (and third-party suppliers and/or agents) to benefit their customers that has the purpose of:
- deferring or varying loan facilities for customers in any sector of the economy or any customer segment impacted by COVID-19;
  - supporting Government initiatives to provide emergency fiscal stimulus and cost relief for individuals and businesses; or
  - ensuring continued high levels of customer service and access to banking services across the broadest possible range of times and locations.

(the **Proposed Conduct**).

9. The ABA propose that the Proposed Conduct:
- is subject to the proposed condition in paragraphs 14 – 15 below: and
  - includes the notification requirements set out in paragraphs 16 - 19 below.
10. The ABA is seeking authorisation for twelve months from the ACCC's grant of final authorisation.
11. The ABA submits that authorisation of the Proposed Conduct will permit Member Banks to discuss and work together during the period of the authorisation to:
- discuss and share information regarding:
    - the uptake by customers of the authorised small business relief package and any other hardship or financial relief programs operated by individual Member Banks;
    - the incidence of customer financial difficulties;
    - which customers, classes of customers or sectors would benefit most from further financial relief programs; and
    - the short term availability of staff and suppliers and ability of Member Banks (including their agents and/or suppliers, where relevant), to operate in particular locations at particular times during the COVID-19 crisis;
  - reach agreement:
    - between Member Banks as to further financial relief programs; and
    - between Member Banks, and their agents and/or suppliers where relevant, as to logistics for service delivery and banking service accessibility;to be implemented by Member Banks, and their agents and/or suppliers as relevant;
  - implement, or otherwise give effect to, those agreements; and
  - engage with financial services regulators to ensure continued compliance with regulatory requirements and the protection of the Australian financial system.
12. The ABA submits that it may be necessary for Member Banks' suppliers and agents to be included in the Proposed Conduct to allow for the highest levels of customer service and access to banking services, particularly in regional areas. To the extent that it is

anticipated any agreement, arrangement or understanding reached between: two or more Member Banks and a supplier(s) or agent(s) that compete with Member Banks; or with two or more suppliers or agents that compete with each other, the proposed condition will apply.

13. In support of the application for authorisation and request for interim authorisation, the ABA advises that:

- the Proposed Conduct will not involve any contract, arrangement, understanding or determination between Member Banks of any element of prices for any service or product for which Member Banks compete;
- the Proposed Conduct is intended to be temporary, and is not intended to endure beyond the current COVID-19 crisis, or, where it relates to financial relief programs, beyond the impact of the crisis (at longest up to the end of the period of the authorisation);
- where any financial relief program involves a deferral of a loan, Member Banks will not apply or require a payment of the capitalised interest in a lump sum at the end of the deferral period;
- the Proposed Conduct is not mandatory for any Member Bank. Member Banks may choose to participate in any financial relief program arising from the Proposed Conduct and may elect to opt in or out at any point during the period of the authorisation;
- any customer of a Member Bank that is entitled to relief under a Member Bank's existing hardship programs, or the authorised small business relief package, retains that entitlement, in addition to any entitlement arising from the Proposed Conduct
- the terms of any financial relief program that arises in the context of the Proposed Conduct are intended to provide for the minimum level of relief to be offered to customers by the Member Banks who elect to implement it. Some Member Banks may independently elect to implement more extensive relief measures; and
- in addition to being subject to ACCC authorisation, the impact of any financial relief will be subject to consideration by APRA and ASIC.

#### *Condition*

14. The ABA proposes that interim (and final authorisation) be granted subject to a condition where the Proposed Conduct involves:

- an agreement, arrangement or understanding between two or more Member Banks and one or more supplier(s) or agent(s); and
- the supplier or agent competes with Member Banks in relation to any relevant products or services, or where two or more suppliers or agents party to the agreement, arrangement or understanding compete with each other in relation to any relevant products or services,

**(Proposed Supplier Conduct).**

15. The ABA also proposes that discussions between two or more Member Banks and supplier(s) and or agent(s) within the Proposed Conduct that fall short of a contract, arrangement or understanding are not subject to this condition.

#### *Notification requirements*

16. The ABA undertakes, on behalf of its Member Banks, to notify the ACCC of any financial relief program or other arrangement arising from the Proposed Conduct (Particular Conduct), prior to the Particular Conduct being implemented, or otherwise given effect to.

17. The ABA will provide the notification to the ACCC as soon as practical after Member Banks have reached agreement on the terms of the Particular Conduct, but not less than 24 hours before the Particular Conduct is implemented, or otherwise given effect to.
18. The notification to the ACCC will include at a minimum:
  - a description of the Particular Conduct, including a description of the customer group/s relevant to the Particular Conduct;
  - the Member Banks which, at the time of the notification, have agreed to implement the Particular Conduct; and
  - when the Particular Conduct is intended to be implemented.
19. The ACCC will publish a non-confidential version of the notification on the Public Register.
20. The ACCC has made the notification requirement a condition of authorisation.

### **The authorisation process**

21. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (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 proposed conduct results in a net public benefit.

### **Interim authorisation**

22. The ACCC may, where it considers it appropriate, grant an interim authorisation which allows parties to engage in proposed conduct while the ACCC is considering the substantive application.
23. The ABA requests urgent interim authorisation in light of the rapidly deteriorating global and Australian economic context caused by the COVID-19 pandemic, resulting in loss of employment, reduction in supply and demand for goods and services, significant deterioration in cash flow, increases in debt, and tightening of credit. The ABA submits that interim authorisation is urgently required to enable Member Banks (and where relevant their suppliers and/or agents) to develop, agree, and give effect to, further relief packages for customers and/or arrangements to enable the provision of high levels of customer service and accessibility, as required.

### **Consultation**

24. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation in light of the urgent need for the banks to commence discussions and implement financial relief packages in the context of the unprecedented circumstances impacting the economy and the compelling nature of the public benefits likely to result from the request for interim authorisation.
25. The ACCC will conduct a public consultation process on the substantive application for authorisation in the coming days and details on how to make a submission will be available on the [ACCC's authorisations public register](#).

## **Granting of conditional interim authorisation**

26. For Proposed Supplier Conduct and Particular Conduct, interim authorisation is granted subject to the following conditions:

### *(1) Proposed Supplier Conduct condition*

- the ABA (on behalf of Member Banks) must seek the approval of the ACCC by sending an email to [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au), identifying the supplier(s) and/or agent(s) that will be party to the Proposed Supplier Conduct, detailing the Proposed Supplier Conduct and the reasons for the Proposed Supplier Conduct;
- if the ACCC approves the Proposed Supplier Conduct, the supplier(s) and/or agents(s) will receive the protection of the interim in relation to the Proposed Supplier Conduct, subject to any conditions imposed by the ACCC, from the time that the ABA is notified of the ACCC's decision;
- when considering the Proposed Supplier Conduct, the ACCC may in its absolute discretion, refuse to approve the Proposed Supplier Conduct or impose conditions which restrict the type or extent of the Proposed Supplier Conduct;
- unless the ACCC approves the Proposed Supplier Conduct, the supplier(s) and/or agent(s) will not have the protection of the interim authorisation in relation to the Proposed Supplier Conduct.

Discussions between two or Member Banks and a supplier and/or agent that do not amount to a contract, arrangement or understanding will not require ACCC approval.

### *(2) Particular Conduct condition*

- The ABA must (on behalf of Member Banks) notify the ACCC of any financial relief program or other arrangement arising from the Proposed Conduct (Particular Conduct), prior to the Particular Conduct being implemented, or otherwise given effect to.
- The ABA must provide notification to the ACCC as soon as practical after Member Banks have reached agreement on the terms of the Particular Conduct, but not less than 24 hours before the Particular Conduct is implemented, or otherwise given effect to.

The notification to the ACCC must include at a minimum:

- a description of the Particular Conduct, including a description of the customer group/s relevant to the Particular Conduct;
- the Member Banks which, at the time of the notification, have agreed to implement the Particular Conduct; and
- when the Particular Conduct is intended to be implemented.

## **Reasons for decision**

27. In granting interim authorisation, the ACCC recognises the urgency of the request for interim authorisation in light of the COVID-19 pandemic, and the importance for Member Banks to be able to quickly respond and make available financial relief packages to impacted customers.

28. The ACCC notes that Member Banks are individually implementing their existing hardship programs, including the small business relief package. However, the ACCC recognises that the Member Banks will need to be in a position to urgently and, at short notice, implement additional measures as the crisis unfolds to both proactively meet customers' increasing need for financial relief, and to support initiatives that the Australian Government may announce in future.

29. The ACCC considers that:

- It is unlikely that interim authorisation will materially alter the competitive dynamics in a market, and markets will be able to return to substantially their current state once the circumstances subside. In particular:
  - The Proposed Conduct is a temporary measure and is linked to the purpose of responding to the COVID-19 pandemic by providing financial relief and assistance to customers in any sector of the economy or segment, and supporting government initiatives.
  - The interim authorisation is subject to a condition requiring the ABA to notify the ACCC of any financial relief package or other arrangements engaged in. This provides some transparency in relation to the conduct covered by the interim authorisation and if major concerns are identified, the ACCC is able to revoke the authorisation, or request amendments to the conduct. The ACCC will place the ABA's notification on the public register as soon as practicable after the public announcement by the ABA or Member Banks.
  - The interim authorisation is subject to a condition of authorisation, which requires ACCC approval before any supplier and/or agent of the Member Banks receives the protection of the interim authorisation. This means the ACCC will be able to consider the competitive impacts of any supplier and/or agent's inclusion, and refuse their inclusion if the ACCC considers that the likely public detriments from the supplier and/or agent's inclusion would outweigh any likely public benefits.
  - All Member Banks are able to participate in the Proposed Conduct.
  - The Proposed Conduct is not mandatory for any Member Bank. Member Banks may choose to participate in any financial relief program arising from the Proposed Conduct and may elect to opt in or out at any point during the period of the authorisation.
- There are likely to be significant public benefits in the current unprecedented circumstances, including:
  - Enabling the Member Banks to urgently assist customers experiencing financial difficulties by providing relief until the COVID-19 pandemic and its impacts subside. Any financial relief package offered under the Proposed Conduct will operate as a minimum requirement for Member Banks that decide to implement it, providing certainty of minimum terms. Member Banks may independently offer relief that extend beyond the scope of any agreed financial relief program.
  - Facilitating a consistent and extensive industry wide communications plan to be run by the ABA and Member Banks which will provide customers with a better understanding of the financial relief packages as they are available and how they can be accessed. The ABA advise that Member Banks will communicate and market all financial relief programs to customers and take steps to ensure that any financial relief programs are as straightforward and accessible to customers as possible.
  - Facilitating access to banking for customers who require access to a physical branch for their banking, in the event that Member Banks experience staff shortages or are required to implement further social distancing measures due to COVID-19. The ability to coordinate in relation to the logistics of maintaining the ability for customers across Member Banks (and their agents and/or suppliers, where relevant) is likely to facilitate

access to banking more efficiently and effectively than if Member Banks were implementing measures individually.

- Assisting individuals and businesses to continue to meet their financial obligations.

### **Reconsideration of interim authorisation**

30. The ACCC may review a decision on interim authorisation at any time, including in response to feedback raised following interim authorisation. 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.

**Current ABA Member Banks with a retail banking presence in Australia**

- AMP Bank Limited
- Australia and New Zealand Banking Group Limited
- Arab Bank Australia Limited
- Bank Australia
- Bank of China
- Bank of Queensland Limited
- Bank of Sydney
- Bendigo and Adelaide Bank Limited
- Citigroup Pty Ltd
- Commonwealth Bank of Australia
- HSBC Bank Australia Limited
- ING Bank (Australia) Limited
- Macquarie Bank Limited
- ME Bank
- MyState Bank
- National Australia Bank Limited
- Rural Bank Limited
- Rabobank Australia Limited
- Suncorp Bank
- Westpac Banking Corporation