

15 May 2024



BY EMAIL

Anthony Hilton
Director | Competition Exemptions
Australian Competition & Consumer Commission (ACCC)
Level 1 | The Quadrant, 1 William Street Perth

Dear Mr Hilton

Submission to the ACCC – Application for Authorisation AA1000664

Linfox Armaguard Pty Ltd (**Armaguard**) makes this submission in response to the invitation from the ACCC to comment on the application for authorisation from the Australian Banking Association (**ABA**) (**AA1000664** or the **ABA BCP Application**).

The ACCC granted interim authorisation of the ABA BCP Application on 28 March 2024 (**Interim Authorisation Decision**) after considering it for less than 24 hours without the benefit of consultation on the understanding that there was extreme urgency and uncertainty regarding the ongoing supply of cash-in-transit services (**CIT Services**). In fact, there was not. Armaguard continued and continues to provide CIT Services to its customers across Australia as it has done for the last 85 years.

While Armaguard supports the need for robust business continuity planning (**BCP**) processes regarding the ongoing supply of CIT Services by all relevant participants and stakeholders in the cash distribution system, for the reasons set out in this submission it:

- opposes the ACCC granting authorisation of the ABA BCP Application because the public detriment of granting the application outweighs the claimed public benefits which are uncertain;
- submits that Interim Authorisation of the application should be immediately withdrawn; and
- proposes that the RBA BCP workstream be restarted with a clear objective of addressing short-term disruptions to the supply of CIT Services, a working group which includes CIT providers including Armaguard and a transparent process with a clear end milestone.

The need for Business Continuity Planning for interruptions to the supply of CIT Services

Armaguard recognises the critical role that its delivery of CIT Services plays in the economy both with respect to the wholesale distribution of cash and the ongoing access to cash by the public through ATMs, retailers, bank branches and Australia Post.

As the largest provider of CIT Services in Australia, Armaguard will always have an integral role to play in minimising any interruption to the provision of CIT Services regardless of the source of that interruption. Ongoing and efficient access to Armaguard's specialised infrastructure (cash processing centres and armoured vehicles) and skilled personnel is vital to any genuine BCP process with respect to cash distribution. The skill of Armaguard's personnel lies not just in their ability to operate specialised secure cash devices, armoured vehicles and cash processing machinery but also in their knowledge of its customers' security and safety protocols which are often highly customised.

Armaguard has well established and tested BCP arrangements in place, and recognises the need for continually improving those processes to ensure they are robust. It has worked alongside the Australian Government, State Governments and Local Governments as well as major banks and retailers to play its part in ensuring the public's ongoing access to cash when natural disasters have hit communities like the Northern River Floods in NSW and Queensland in 2022 as well as the COVID19 pandemic.

The RBA industry roundtable process and Business Continuity Planning

Armaguard welcomes greater co-ordination between the RBA, the major banks, retailers and Australia Post to better plan for the ongoing short-term supply of CIT Services in the event of disruption. That is what Armaguard understood was the original objective of the BCP process which was to be done as part of the RBA industry roundtable process between the main participants in the cash distribution system.

However, to date, Armaguard has not been allowed to participate in any meetings regarding the RBA led BCP process. Nor has it been asked to provide any information or personnel to assist the process. In fact, Armaguard is not aware that any CIT providers have been included in the planning process. As a result, the RBA BCP Working Group's proposals have been prepared without accessing the knowledge, experience and expertise of the main provider of CIT Services in Australia, and in secret.

The ABA BCP Application provides no concrete information about the matters being discussed, with the only detail of the BCP measures under consideration contained in a confidential annexure to which only the ACCC has access. As a result, the measures proposed are beyond the scrutiny of most customers of CIT Services in Australia as well as the members of the general public who wish to access cash.

The Public Benefits and Detriments of the ABA BCP Application

The exclusion of Armaguard and other CIT Providers from the RBA BCP Working Group and the lack of transparency regarding the output of that group means that there is an inherent weakness in the resulting BCP process. That is a disconnect between what is planned, and any testing of that plan in light of detailed information about the manner in which CIT Services are supplied by Armaguard in accordance with its customers' specific requirements. That disconnect creates a real risk that the proposed BCP process will be less efficient, less safe and more costly than otherwise needs to be the case.

Implementing a parallel BCP process which does not co-ordinate with (or even account for) Armaguard's existing BCP processes and the security protocols and processes of its customers, will undermine the effectiveness of the ABA's proposed BCP process as well as Armaguard's existing and tested BCP processes. Such a lack of co-ordination, and in this case a refusal to co-ordinate with Armaguard, is anathema to best practice BCP. It is also contrary to the notion of a public benefit.

To give a simple yet practical example [REDACTED]

[REDACTED] The same issues apply to other CIT Providers.

One of the claimed public benefits of the ABA BCP Application at pages 10-11 is that it will:

"... support a more effective and equitable distribution of available cash in the supply chain than if the participants were required to act unilaterally and will assist to minimise impacts to customers and businesses in the event of any disruption or suspension of Armaguard's CIT Services. In addition, a more effective and equitable distribution of cash to businesses and consumers in the CIT supply chain will maximise available access to retail cash services by businesses and members of the public in metropolitan and regional areas."

No guidance is provided in the ABA BCP Application as to what is meant in practice by the phrase "*more effective and equitable distribution of available cash*". The objective of this public benefit appears to be allowing

the RBA BCP Working Group participants to co-ordinate in advance as to how they divide up the "available cash" between them rather than providing continuity of CIT Services to Armaguard's customers ([REDACTED]).

A BCP process to address an interruption to Armaguard's services which excludes Armaguard from that process, as the ABA BCP Application does, cannot deliver the public benefits that would come from working with Armaguard and other CIT providers to:

- design a process which increased the volume of available cash for distribution including cash held in secure cash storage devices;
- ensure that there is a safe and secure means of transporting cash across the country using all available vehicles and skilled armed personnel including where possible Armaguard's; and
- ensure that as many customers as possible can continue to be supplied CIT Services in accordance with the specific security and safety protocols agreed with their CIT provider rather than just the RBA BCP Working Group participants.

The exclusion of CIT providers from the planning and implementation of measures regarding the movement and ongoing availability of cash is not only contrary to good BCP practice but also international experience. One of the acknowledged mistakes of the demonetisation of certain banknote denominations in India in 2017 was the exclusion of cash handlers from the process which resulted in widespread disruption across the economy.

Armaguard submits that the sub-optimal approach to designing an effective BCP process contained in the ABA BCP Application means that the public benefits of the proposal are very uncertain. This needs to be weighed up against two very clear public detriments of the ABA BCP Application.

The first public detriment is preventing the design and implementation of a BCP process in conjunction with Armaguard which could deliver all of the public benefits outlined above for very little additional time and cost.

The second public detriment is that the ABA BCP Application allows the largest businesses in the economy which control access to cash namely the major banks, the major supermarkets, Bunnings and Australia Post to discuss how, when and where cash will be processed and transported across the country in the event there is an interruption to Armaguard's supply of CIT Services.

The risk of co-ordination by the participants in the RBA BCP Working Group in a manner which may harm competition in any of the markets in which a number of them compete is currently mitigated by the following conditions imposed by the ACCC in the ACCC Interim Authorisation Decision which require:¹

- any discussions, arrangements or implementation regarding the proposed conduct must occur at, in preparation for, or arise out of a meeting, meetings or communications of either the RBA Cash Sustainability Working Group or the RBA BCP Working Group; and
- an external lawyer with expertise in competition law and approved by the ACCC must attend meetings of the RBA cash Sustainability Working Group and the RBA BCP Working Group.

Armaguard submits the current mitigations are inadequate given that:

- the external lawyer with expertise in competition law only needs to attend meetings of the two RBA Working Groups;
- the Interim Authorisation enables discussions regarding co-ordination related to BCP to take place not just at meetings of the RBA working groups but also in preparation for them and in meetings or communications that arise out of RBA working group meetings;

¹ See page 2 of the Interim Authorisation Decision.

- participants can discuss any matter related to business continuity measures in the event of, or reasonable anticipation of, a disruption to Armaguard's CIT Services which includes not just the distribution of cash but also its availability;²
- the ABA has made clear that the relevant discussions, meetings and communications occur not just in the two RBA working group meetings which the external competition lawyer will attend but also:
 - meetings of the ABA Cash Workout Group – the participants at which are not identified (although it is noted the RBA and the Commonwealth Treasury do not attend); and
 - any discussions among two or more of the Authorised Parties about BCP.

In short, the Interim Authorisation Decision enables representatives of the major competitors in the banking and supermarket sectors to meet in small groups without any representative of a non-commercial party such as the RBA or the Commonwealth Treasury or other safeguard such as an external competition lawyer to discuss the steps that they should take regarding the availability of cash (or any other matters relating to BCP) if they have a "reasonable anticipation" there may be a disruption to Armaguard's supply of CIT Services.

Armaguard submits that there is no publicly available evidence before the ACCC which demonstrates the need for such unconditional coordination in order to design and implement a BCP process which is in the public interest to ensure the ongoing operation of the cash distribution system if there is an interruption to Armaguard's supply of CIT Services.

The ACCC needs to thoroughly test any confidential evidence provided to it in support of the ABA BCP Application. It appears that the ACCC made the Interim Authorisation Decision in less than 24 hours without consultation in reliance on information which was proven by subsequent events to be incorrect. In those circumstances, the ACCC should be slow to either continue the current Interim Authorisation, or grant authorisation without being satisfied on defensible evidence that the public benefits of the proposal outweigh the public detriments of the application, as well as the public benefits that would flow from a more transparent and inclusive BCP process.

The objective of the ABA BCP Application

The readily apparent flaws in the BCP Process the ABA BCP Application seeks to implement raises a question about the actual objective of the planning processes being undertaken by the RBA BCP Working Group. Is the objective of that process to design and implement a BCP process to address short-term interruptions in Armaguard's supply of CIT Services, or is it in fact to establish a long-term alternative means of providing CIT services to that currently provided by Armaguard? If it is the latter, the ABA BCP Application should be withdrawn and a new application made which correctly describes and represents the conduct the ABA and the participants in the RBA BCP Working Group are seeking to engage in and the intended outcome of that conduct.

Armaguard's ongoing supply of CIT Services

Since September 2023, following its merger with Prosegur Australia, Armaguard has provided its customers with CIT Services in accordance with the terms and conditions of the 3 year voluntary enforceable undertaking it gave the ACCC pursuant to s87B of the *Competition and Consumer Act 2010* (Cth). Armaguard's Executive Chairman recently publicly confirmed Armaguard's intention to continue operating for another 3 years if it can agree additional funding with its major customers (See Australian Financial Review article by James Evers, 4 April 2024). Armaguard has subsequently entered into negotiations with a number of those customers regarding that extra funding and is confident that it can obtain the funding it needs to continue operating. Armaguard's approach has the support of Linfox its largest shareholder.

² See [2(a)(i)] of the Interim Authorisation Decision

Conclusion

While Armaguard supports the need for robust BCP regarding the ongoing supply of CIT Services by it and other CIT providers by all relevant participants and stakeholders in the cash distribution system, for the reasons set out in this submission it:

- opposes the ACCC granting authorisation of the ABA BCP Application because the public detriment of granting the application outweigh the claimed public benefits which are negligible;
- submits that Interim Authorisation of the application should be immediately withdrawn; and
- proposes that the RBA BCP workstream be restarted with a clear objective, a working group which includes CIT providers including Armaguard and a transparent process including an end date.

In the event, the ACCC decides to maintain the Interim Authorisation of the ABA BCP Application pending its final decision on the application, it should immediately impose additional conditions on the Interim Authorisation:

- appropriately clarifying and limiting the scope of the conduct that falls within the rubric of business continuity planning in the application;
- ensuring that the conduct covered is limited to appropriate forums such as the RBA BCP Working Group and the RBA Cash Sustainability Working Group;
- ensuring that the external competition counsel control is put in place to cover all forums in which two or more participants who are competitors in any market and/or provide access to cash to end users; and
- ensuring there is a clear audit trail of all discussions and interactions and that an appropriate competition protocol governs all discussions.

Please let us know if you would like to further discuss any aspect of this submission with Armaguard.

Yours faithfully



Mick Cronin
Chief Executive Officer
Armaguard