

Friday 4 August 2023

By email: [exemptions@acc.gov.au](mailto:exemptions@acc.gov.au)

Tony Hilton  
Director, Competition Exemptions  
Australian Competition and Consumer Commission

Dear Mr Hilton,

**Re: Australian Banking Association application for authorisation AA1000645**

Thank you for the opportunity to comment on the application by the Australian Banking Association (ABA) to seek authorisation for protection from cartel conduct and anti-competition laws to explore and develop initiatives to prevent, detect, disrupt and respond to scams (**Application**).

Consumer Action, Financial Rights and CHOICE are calling on the banking industry to do more to prevent scams, as increasing losses are having a devastating impact on individuals and the Australian economy. There is a clear need for industry wide collaboration to improve scam detection, prevention and treatment of victims. To date, we have been deeply disappointed by the efforts of the banking industry to take meaningful steps toward these goals.

The banking industry has failed to collectively invest in initiatives which would assist customers affected by scams. Sending and receiving banks whose systems are used by scammers have consistently failed to communicate effectively with each other in a timely manner, which has perpetuated the harm caused by scam victims. Furthermore, the failure of banks to adopt simple and common-sense Confirmation of Payee technology is further indicative of laggard industry practices.

We recommend that the ACCC approve the Application if it considers relevant anti-competition laws may prevent the banking industry from taking steps to prevent scams, or improve outcomes for victims of scams. If this is the case, we agree that the public benefit of this exemption would outweigh the public detriment. However, we strongly support the ACCC retaining the conditions imposed on the interim authorisation for the final decision, and also encourage the ACCC to explore the matters below further.

Consumer groups strongly support the Federal Government's commitment to establish a mandatory code of conduct for bank scams. While greater coordination between banks is important, it is clear from the banking sector's lacklustre efforts to date that any coordinated action by the industry is unlikely to result in adequate protection for consumers for scams. We firmly believe that adequate consumer protection can only be achieved



through mandatory obligations implemented by the government. The ACCC should be clear in its final determination that any authorisation arising from this application is not a substitute for a mandatory and enforceable code of conduct.

### **Competitive impacts upon customer owned banks**

The authorisation may risk causing public detriment or lessen competition if the proposed conduct gave ABA members a significant competitive advantage over other non-member banks. We urge the ACCC to consider imposing a condition on any authorisation requiring the ABA to inform the Customer Owned Banking Association (**COBA**) of any major opportunities, risks or outputs it identifies out of the proposed conduct that could impact the ability of banks to detect and prevent scams.

This requirement to inform COBA of key outcomes would help ensure that other banks are not left in the dark. We suggest the ACCC also consider imposing a condition (if possible) that the ABA offer to include COBA members in initiatives that arise from conduct under the authorisation.

A condition requiring the ABA to keep COBA informed would not only reduce the risk of the conduct lessening competition, it would also make it more likely that the public benefits identified in the ABA's application will be achieved. Scammers are adept at targeting the weakest points in society. If smaller banks and credit unions are left behind in scam prevention, scammers will simply target their efforts at that part of the industry.

### **Sharing technology under the authorisation**

The application does not appear to seek authorisation for the potential sharing of technology or intellectual property between banks to help implement best practice approaches across the industry. The ACCC should consider whether the scope of the proposed conduct is sufficient to deliver the intended public benefit, or can be realistically achieved without possible actions such as sharing technology.

### **Timeline issues**

The ACCC should also consider the Government's concurrent plans to develop enforceable and mandatory standards for industry regarding scams. The Assistant Treasurer has indicated that he hopes to have legislation for an industry code regarding scams early next year.<sup>1</sup> If a specific code for banks developed by the Government, it may make some or all of the ABA's efforts to develop an industry standard obsolete.

We suggest the ACCC reserves a right to reconsider whether the authorisation is still necessary if the Government imposes a banking industry specific scams code while it is still active. As noted above, the ACCC should state in its final determination that any authorisation is not a substitute for, and should not delay, the development of an industry-wide mandatory code of conduct.

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<sup>1</sup> <https://www.abc.net.au/news/2023-08-03/assistant-treasurer-says-australia-facing-a-scams-crisis/102682328>

**Further information**

Please contact Tom Abourizk on [redacted] or at [redacted] if you would like to discuss this matter further.

Yours faithfully,



**Stephanie Tonkin | CEO  
CONSUMER ACTION LAW CENTRE**



**Alan Kirkland | CEO  
CHOICE**



**Karen Cox | CEO  
FINANCIAL RIGHTS LEGAL CENTRE**

