

Memorandum of Understanding

Australian Competition and Consumer Commission (ACCC) and Reserve Bank of Australia (RBA)

Objective

1. This Memorandum of Understanding (MOU) sets out an agreed basis for coordination, information sharing and liaison between the Australian Competition and Consumer Commission (ACCC) and the Reserve Bank of Australia (RBA).
2. The ACCC and the RBA do not intend this MOU to create any enforceable rights or legally binding obligations on them, and nothing in this MOU affects the exercise of the legislative functions or responsibilities of the ACCC or the RBA.

Responsibilities

3. The ACCC is an independent Commonwealth statutory authority responsible for enforcing consumer protection and fair trading laws and for promoting competition in the marketplace. The ACCC is also responsible for the National Anti-Scam Centre, the Consumer Data Right and Digital ID, and has general responsibility for competition under the *Competition and Consumer Act 2010*, which encompasses competition issues in relation to financial services.
4. The RBA is Australia's central bank and derives its functions and powers from the *Reserve Bank Act 1959*. Its broad objective is to promote the economic prosperity and welfare of the Australian people. It does this by, amongst other things, setting the cash rate target to meet an agreed medium-term inflation target, working to maintain a strong financial system and efficient payments system, and issuing the nation's banknotes. It also provides certain banking services as required to the Australian Government and its agencies, and to a number of overseas central banks and official institutions. Additionally, it manages Australia's gold and foreign exchange reserves.
5. The RBA's Payments System Board (PSB) has a mandate to contribute to promoting the efficiency of the payments system and promoting competition in the market for payment services, consistent with the overall stability of the financial system. The PSB also has a duty to ensure within the limits of its powers that the powers of the RBA under the *Corporations Act 2001* relating to the infrastructure supporting the clearing and settlement of transactions in financial markets are exercised in a way that in the PSB's opinion will best contribute to the overall stability of the financial system.

Competition and Access in the Payments System

6. The ACCC and the RBA recognise the importance of competition in the payments system and financial services more broadly. The ACCC and the RBA both have legislative responsibilities for access and competition policy in the payments system. Both have a role in arbitration of disputes over access to payments systems (in the case of the RBA, where the relevant payment system has been designated by it), and have a shared interest in other payments-related issues such as surcharging. The ACCC has general responsibility for these issues under the *Competition and Consumer Act 2010*. The RBA has specific responsibilities under the *Payment Systems (Regulation) Act 1998*.
7. To avoid regulatory overlap the legislation provides responsibilities as follows:
 - the ACCC is responsible for ensuring that payment system arrangements comply with the competition and access provisions of the *Competition and Consumer Act 2010*, in the absence of specific RBA initiatives (see below). Under its adjudication role, the ACCC may grant immunity from court action for certain anti-competitive practices, if it is satisfied such practices are in the public interest. It may also accept undertakings in respect of third-party access to essential facilities, and it has a role in arbitration for access disputes relating to cash equity clearing and settlement services; and
 - the RBA may, under the *Payment Systems (Regulation) Act 1998*, designate a payment system as being subject to the RBA's powers. Following any appropriate consultation, the RBA may then impose an access regime on the participants and/or determine standards for participants in that system if it considers that doing so is in the public interest. Where the RBA has taken such initiatives, participants in that system will not be at risk under the *Competition and Consumer Act 2010* by complying with the RBA's access regime or by complying with aspects of particular standards.
8. The effect is that the ACCC retains responsibility for competition and access in a payment system, except to the extent that the RBA imposes an access regime or sets standards in relation to it; RBA designation does not, by itself, remove a payment system from the ACCC's coverage. This MOU applies to current and any further functions conferred on the ACCC and RBA through legislative reforms to the *Payment Systems (Regulation) Act 1998*.

Consistency of Regulatory Policy

9. The ACCC and the RBA are both obliged to conduct their regulatory responsibilities in the public interest. In doing so, they recognise the importance of mutual consultation across a wide range of issues including those relevant to competition in the payments system.
10. The ACCC and the RBA agree on the desirability of their respective policies on access to the payments system being consistent. However, they also recognise that segments of the system have differing characteristics in terms of providers, users, transaction types and values, as well as the risks they pose to the payments system and financial system stability. These characteristics may justify substantial differences in access conditions.
11. To promote consistency in regulatory policy, the ACCC and the RBA agree that when either organisation is determining policy with respect to competition in the payments system, including access, or when the RBA is considering designating a payment system, each will, where appropriate:

- notify the other of policy issues being considered, and advise the approach it proposes to take to seeking information and formulating policy, and the date by which it anticipates a policy decision will be reached;
- provide the other the opportunity for private discussions on the proposed policy, prior to any public consultation period. Discussions will be on the basis of material prepared by the organisation with responsibility for the policy; and
- provide opportunity to the other for comment on draft determinations, plans to authorise or impose access rules and plans to set relevant standards, prior to their release for public comment.

Information Sharing

12. The ACCC and the RBA acknowledge the benefits of sharing information that will assist each organisation in performing its functions and exercising its powers.
13. Where appropriate, the ACCC and the RBA will share information relevant to efficiency and competition in the payments system and competition in financial services more broadly.
14. The ACCC and the RBA acknowledge the confidentiality requirements of the laws under which they each operate, and that commercially sensitive data may be supplied to them by market participants subject to confidentiality conditions.
15. Where there is a legal constraint on the sharing of information, such as where the consent of a third party is required, the organisation that holds the information will, where appropriate, make reasonable efforts to overcome these constraints so that the information can be shared with the other organisation in a manner that is permitted by legislation.
16. Each organisation may specify confidentiality conditions for information shared with the other.

Coordination Meetings and Liaison

17. The ACCC and the RBA acknowledge the benefits of coordination, liaison and sharing perspectives and expertise relevant to competition in financial services.
18. The Chair of the ACCC and the Governor of the RBA will meet at least every twelve months to discuss relevant issues, including competition in financial services and the operation of the payments system.
19. The ACCC and the RBA will hold meetings of senior officials at least every twelve months to discuss relevant issues, including the coordination of policy on access, competition and efficiency in the payments system and competition in financial services. The meetings will be additional to those called (as required) to discuss particular policy or other initiatives.
20. There will be regular contact between officers of the two organisations on routine matters.
21. The ACCC and RBA will consider other opportunities to share perspectives and expertise on relevant issues, including staff secondments and informal visitor arrangements.

Commencement, Review and Termination

- 22. This MOU commences on the date it is signed by both the ACCC and RBA, and remains in force until it is either superseded by a subsequent MOU or it is terminated.
- 23. This MOU will be reviewed every five years, or more frequently if necessary.
- 24. This MOU may be terminated by either party giving the other party 30 days' notice in writing.



Gina Cass-Gottlieb
Chair, Australian Competition and Consumer
Commission



Michele Bullock
Governor, Reserve Bank of Australia
Chair, Payments System Board

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