

MEMORANDUM OF UNDERSTANDING

**THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION AND
THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY**

Objective

1. This Memorandum of Understanding sets out an agreed basis for policy coordination and information sharing between the Australian Competition and Consumer Commission (ACCC) and the Australian Prudential Regulation Authority (APRA).

Responsibilities

2. The ACCC and APRA both have regard to the enhancement of competition in the financial system. The ACCC has general responsibility for competition under the *Trade Practices Act 1974*. APRA is primarily responsible for prudential regulation, however, under the Australian Prudential Regulation Authority Act 1998 this must be balanced by “competition, contestability and competitive neutrality”.
3. Both the ACCC and APRA have specific responsibilities in relation to acquisitions of companies and assets in the financial system. Under section 50 of the Trade Practices Act 1974, the ACCC has responsibilities where the acquisition may substantially lessen competition in a market. Under the Financial Sector (Transfers of Business) Act 1999 and the Life Insurance Act 1995, APRA has responsibilities where acquisitions involve APRA-regulated bodies. APRA may also encourage acquisitions of assets or companies where an APRA-regulated body is in financial distress or has breached regulatory requirements.

Consistency of Regulatory Policy

4. The ACCC and APRA 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 relevant to competition in the financial system.
5. The ACCC and APRA agree that Australia’s financial system should be competitive, efficient and financially sound.
6. To promote co-operative regulatory decision making, the ACCC and APRA agree that when either organisation is considering a proposal for an acquisition of assets or companies involving regulated financial institutions, they will consult each other. The ACCC may inform APRA that it does not wish to be consulted about proposals involving specified types of financial institutions (eg ones which are too small to impact on competition in particular financial markets).

7. In determining regulatory policy that may affect competition in the financial system, including licensing of regulated financial institutions, the ACCC and APRA will, where appropriate:
- notify the other of broad policy questions being considered, and advise the other of 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 with 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 prime responsibility for the policy; and
 - provide an opportunity to the other for comment on draft determinations, and plans to impose or revise prudential rules or standards.

Information Sharing

8. Where appropriate, the ACCC and APRA will share information relevant to competition, efficiency and financial soundness in the financial system. They may also share information on the prudential soundness of financial institutions. However, the ACCC and APRA acknowledge the conditions under which certain commercially sensitive data are supplied to each by market participants, and the respective confidentiality and secrecy requirements of the Acts under which they operate.
9. The ACCC and APRA will consult with each other about relevant transactions. The ACCC and APRA agree that such consultation will occur in a timely manner in order to ensure that the ACCC and APRA can properly carry out their functions under the Acts.

Co-ordination Meetings and Liaison

10. The ACCC and APRA will hold meetings of senior officials, at least annually, to discuss the coordination of policy on competition, efficiency and financial soundness in the financial system. The meetings will be additional to those called to discuss particular policy initiatives.
11. There will be regular contact between officers of the organisations on routine matters.

A Fels
Chairman
Australian Competition and
Consumer Commission

GJ Thompson
Chief Executive Officer
Australian Prudential Regulation
Authority

30 November 1999

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