



## ABA Competition Law Policy and Protocol

### Introduction

The Australian Banking Association limited (**ABA**) is a Company Limited by Guarantee registered under the Corporations Act 2001.

Membership of the ABA is open to authorised deposit taking institutions allowed to be identified as a “bank” under section 66 of the Banking Act 1959.

The ABA’s mission is to support our member banks to build a strong, prudentially stable and trusted banking system, to grow the Australian economy and build the financial well-being of all Australians.

The ABA advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. The ABA promotes and encourages policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

Recognising that ABA is an industry association of member banks that operate in the same industry and will often be competitors, the ABA has prepared this Policy and Protocol to assist the ABA and ABA members in understanding and complying with their obligations under the Competition and Consumer Act 2010 (**CCA**).

It is intended that the Policy and Protocol provide guidance in relation to all ABA activities, including:

- Meetings of the ABA Council;
- Strategy Committee meetings;
- Meetings organised for specific delegated committees or working groups;
- Meetings with Government, regulators and other third-party stakeholders;
- Implementation of the Banking Code; and
- Any other formal or informal meetings or discussions involving the ABA and its member banks (whether involving ongoing initiatives or ad-hoc discussions)

(together, **ABA Activities**).

### Policy statement

It is the policy and objective of the ABA and its Council, and each of its member banks, to observe and strictly comply with all applicable provisions of the CCA with respect to the conduct of the ABA Activities or any other applicable instruments, such as authorisations granted by the Australian Competition and Consumer Commission. The ABA will not support, or knowingly be party to, any agreement, understanding or practice that may contravene the CCA and/or other applicable instruments.

The ABA will be vigilant and proactive in its efforts to ensure compliance and will make sure that its member banks, officers and employees are aware of the relevance of the CCA to their functions, activities, and obligations in pursuing the ABA’s objectives and requirements. Member banks should raise any compliance concerns during meetings and discussions, in which case discussions will be stopped until legal advice is obtained.

It is important to avoid not only contraventions of the CCA, but also conduct that could create the appearance of a contravention. For these reasons, the Protocols in this document take a conservative approach. Should the ABA consider it appropriate in particular circumstances to depart from the Protocols, the ABA will seek independent legal advice, including where appropriate, advice in relation to the processes available for engagement with the ACCC. In all instances, this Policy will apply unless there is written notification that a departure has been deemed appropriate.



The CCA is broad, complex, and subject to periodical review, legislative amendments, and evolving interpretations. The consequences of any contravention are serious. All representatives of the ABA and its member banks should follow the Protocols in this document and take any other necessary steps to ensure ongoing compliance with the CCA's provisions and/or other applicable instruments.

## Protocol for ABA Activities

### No agreements or other forms of cooperation

The ABA, its Council, member banks, officers and employees will not engage in the following conduct:

- Reach agreement, arrangement or develop an understanding, expressly or impliedly, in relation to the prices they will charge for their competitive products or services or pay for the products or services that they receive.
- Reach agreement, arrangement or develop an understanding, expressly or impliedly, that restricts member banks' freedom to make independent decisions in relation to each member bank's prices, capacity, product or service offering, areas of supply, or tender responses.
- Reach agreement, arrangement or develop an understanding, expressly or impliedly, not to deal (or only deal) with certain customers, suppliers, distributors, or other third parties.
- Engage in or facilitate any form of cooperation or coordination (whether between some or all member banks with one another or between some or all member banks and third parties) that could be seen to have the purpose or effect of substantially lessening competition.

### Discussions and exchanging information

The ABA, its Council, member banks, officers and employees will not engage in the following conduct:

- Discuss prices or price-related terms offered or imposed by individual member banks in relation to particular products and services (including interest rates, discounts, allowances, charges, rebates, credits and fees), or paid by individual member banks in relation to particular products or services.
- Discuss individual member banks' strategies or plans in relation to the persons or classes of persons a member bank will supply, the products or services a member bank will supply, the geographical areas in which a member bank will supply, or a member bank's response to a tender.
- Discuss the terms on which individual member banks will provide products or services to particular customers or classes of customers (for example, eligibility criteria for credit applications) or acquire products or services from particular suppliers or classes of suppliers.
- Discuss any other competitively sensitive information of individual member banks, including, potentially, matters such as terms and conditions, product eligibility criteria, customer segments to be serviced, location or hours of business.
- Discuss matters relating to individual suppliers, customers or other third parties that might result in member banks refusing to deal with them.
- Discuss, provide information, or respond to queries that would signal the intention of a member bank in relation to their products or services or the terms of a product or service.
- Misuse ABA forums to share information that may amount to deceptive and misleading conduct, or false or misleading representations, or otherwise engage in misleading or deceptive conduct in their capacity as ABA members.



Member banks can:

- Discuss, provide or receive information that is publicly available about their products, services or strategies eg types of products and services, design features of those products and services, current interest rates being offered or charged, including any changes that have been made/announced.
- Discuss at a general level the challenges, impediments or developments that may be present with existing products and services and offer some general views about similar issues for proposed products or services, provided that member banks do not state their intention to, or intention not to, supply or offer a product or service.

Member banks should report any concerns arising from discussions to the relevant Executive Director of Policy.

## Development of industry proposals

As part of the scope of ABA Activities, the ABA and its member banks may discuss and consider a number of potential proposals and initiatives important to the banking industry, including to address questions of conduct, governance, consumer protection, accessibility of banking products and services, technology, data and innovation, regulation, and risk management. These potential proposals and initiatives may be considered as part of responding to independent reports or reviews and responding to Government, regulator or other stakeholder reviews, initiatives, or requests (**Proposals**).

In the context of discussing issues relevant to any Proposals, it may be necessary or desirable to discuss or share information in relation to a broad range of issues relating to banking. In discussing these issues, the following protocols apply:

- The ABA and member banks may discuss any particular challenges or issues facing the industry that require a Proposal to be developed or challenges or benefits that arise from a Proposal, provided that no competitively sensitive information is discussed or shared.
- In progressing the Proposals, the ABA and member banks may identify specific projects, the implementation of which may require some level of cooperation of its member banks and discuss the potential design and development of a Proposal.
- Member banks may discuss and formulate an implementation plan for any such project. However, to the extent that the implementation plan would require member banks to agree or coordinate:
  - the prices or terms on which each or any of them would provide products and services to customers or acquire them from suppliers (or agree not to do so);
  - which customers, products or services or geographic locations each or any of them will supply (or not supply); or
  - responses to tenders or requests for pricing,

such discussion will not constitute a decision by the ABA or a contract, arrangement or understanding between the member banks, and member banks will not base their conduct on the discussion, unless and until legal advice is received and considered, any required regulatory approvals have been obtained, and each of the ultimate parties to the implementation plan and the ABA is satisfied that the implementation plan will comply with all applicable laws.

- One way in which the Proposals may be progressed is through the development of industry guidelines to provide direction to member banks (e.g., for the purpose of improving conduct and competence, governance and transparency, and accessibility of banking products and services). These guidelines will be voluntary, and will not constitute a contract, arrangement or understanding between all or any of the member banks. In any case, guidelines will not relate to the prices or terms on which member banks would provide products and services to customers



(or agree not to do so). The aim of any guidelines would be to promote trust and confidence in banks and banking groups and improve outcomes for bank customers.

- As part of the work involved in the Proposal, the ABA and its member banks might disclose or communicate Confidential Information to each other (but only if such disclosure or communication has been approved by the ABA and is required for the purpose of considering, evaluating and progressing the Proposals or other proper functions of the ABA (**Purpose**)). Where possible, that information will be communicated to the ABA directly, but if approval has been granted, member banks should only circulate Confidential Information within their organisations to the extent it is reasonably necessary to do so for the Purpose. Confidential Information should not be used other than for the Purpose.

**Confidential Information** means information provided by the ABA or any of its member banks in relation to their operations which is confidential to their organisation and includes but is not limited to information that is or may be competitively sensitive. The sort of information that is likely to be Confidential Information includes but is not limited to information relating to fees, charges, costs, transaction volumes and commercial strategies. Information that is in the public domain is not Confidential Information.

## Communications on behalf of the ABA

ABA staff and member banks will only speak on behalf of the ABA if authorised to do so and in accordance with the ABA's Constitution. Persons so authorised should read and observe the following requirements.

- Do not represent that the view of the ABA reflects the views of each member bank or a majority of member banks unless that is the case.
- Do not represent or create the impression that:
  - member banks have reached an agreement, or have a common view, or have a common plan of action unless this has been confirmed to be the case and has been approved following legal advice, or
  - any action or conduct has arisen as a result of a concerted practice which may contravene the CCA.
- Do not represent that particular laws, regulations, codes, reports or Government or regulator initiatives will affect the banking industry in a certain way where this view is not based on fact or on other reasonable grounds.
- Do not express any matter as a fact where there is no reasonable ground for doing so.
- Do not make promises or predictions that are not based on reasonable grounds.
- Do not make statements that may lead others to believe what is false or untrue.

## Supporting documents

The implementation and operation of the Policy and Protocol is supported by the ABA Competition Law Procedures (February 2022)

Other supporting documents may be developed as required over time.

Prepared by Gilbert + Tobin. Last updated February 2022.