Finance Brokers Association of Australia Limited
(07) 3847 8119 | fbaa.com.au
Level 1, 1 Miles Platting Road, Eight Mile Plains QLD 4113
PO Box 4792, Eight Mile Plains QLD 4113
ABN: 22 094 784 040

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Via email: consultation@afca.org.au

01 June 2023

Re: Application for authorisation of the Aggregator Assurance Program

The FBAA appreciates the opportunity to make a submission in respect of this application.

We do not oppose the creation of the AAP in principle. It has potential to create some powerful dynamics in the marketplace for lenders and aggregators and we want to see full and informed consideration of the potential risks of the establishment of the AAP as part of ACCC's consideration. The institutions promoting this program are already among the largest and most influential institutions in Australia.

We recognise that there is a significant cost in terms of time, resources and dollars incurred by aggregators and lenders as a result of lenders undertaking regular reviews of the risk and compliance arrangements of aggregators.

What is important with a proposal of this nature is to consider whether the program is motivated to create a superior outcome for all involved, including end users and consumers, or whether it is motivated by a goal to improve profitability. It is also important to consider the potential for mischief or misuse of the Project rules or information collected under the Project.

We are mindful to ensure there is a full examination of the risks of how such permission from the ACCC could be exploited in future to give a group of powerful organisations complete authority to exchange market-sensitive information or dictate how businesses must operate in the future to be able to continue to act as an aggregator or significant broker group. Without the endorsement of Australia's largest lenders, no aggregator or large brokerage could continue to operate.

The truth of cost savings

Paragraph 2.9 of the Application asserts there are a range of core "public" benefits of the Program including cost savings, efficiencies and consistency. We agree these are likely benefits but it is a stretch to define these as "public benefits". They are financial benefits for the participants. It is difficult to see how any of the savings or efficiencies recognised through this Project will flow through as lower costs or better experiences for consumers. Banks are not known for passing on cost reductions to their customers and this Project will be no different.

We note that Paragraph 3.1(f) of the Deed indicates there is no intention to make surplus profit or gain from the Project, yet 3.1(f) is subject to paragraph 3.2 that confers upon each Party a right to

receive any net profit of the Project Business. These two elements appear to conflict. While the Project may not start out as a money-making venture, financial institution behaviour is such that if there is an opportunity to monetise or turn a profit on anything, it typically occurs.

Perhaps consideration should be given to amending the Deed to make it so that no profit or surplus can ever be distributed to members. This would address the risk of having decisions impacted by motivations of profit and remove any incentive to *accidentally* generate a profit from the operation of the AAP. We can see no reason why the Project Deed needs to retain a clause allowing the Parties to share in the profits.

Risk of lenders and aggregators being required to sign up

There is a material risk that it may become obligatory in future for all lenders, large brokerages and aggregators to sign up to the AAP, merely because not being signed up is too costly or inconvenient. For example, lenders could begin to only accept reviews undertaken under the AAP or reviews conducted at an equivalent standard of the AAP. Lenders could impose additional burdens on non-signatories causing them to incur high costs or respond to resource-intensive requests, such that they are penalised for not being part of the AAP. Such actions would have the effect of mandating entities to utilise the AAP because the cost of replicating the AAP with an external provider would likely be prohibitive. Under the AAP, costs are borne by the lender Parties rather than the aggregators.

It is reasonable to anticipate that the conditions surrounding the participation and non-participation in the AAP could be manipulated to effectively force all parties to sign up. This may not of itself be a poor outcome, but we ask ACCC to give consideration to the risk of this happening, consider whether there are adequate protections built into the proposed model, consider the likely consequences if it comes to pass and what the response might be.

Impact on the service provider market

The creation of the Program is likely to stifle opportunity for competition amongst businesses that undertake assurance reviews. The Program will use one review firm/body for all reviews for the purpose of efficiency and consistency. We recognise this is likely to produce cost savings to parties but it will forever change the landscape of regulatory compliance services. One can imagine it would be extremely difficult for a competitor to dislodge an incumbent.

We question whether the Program should contain a requirement to change the external assurance firm at set periods (for example every 3 or 5 years or to restrict any one firm for acting for more than 5 in every 7 years) if a change has not happened sooner through the annual tender process. This could follow Corporations Act provisions that require listed entities to change their auditor.

Such a provision might also address another potential risk which is “capture”. Capture occurs where the relationship between two or more parties becomes interdependent. This can result in a loss of independence.

The risk of capture here is that the preferred services provider will entrench itself as the clear choice for the role of independent assurance firm because it has the relationship, processes, procedures, staff and experience to undertake these reviews *en-masse*. Having done it for one or more years it

becomes the obvious favourite for renewal because it has more experience than any of the potential successors. Naturally the independent assurance firm will want to retain the AAP appointment. Project parties could begin to give suggestions to the assurance firm around what they would like to find or what they should not concern themselves with. Project parties could steer the assurance firm towards conclusions that suit the agenda of the Project parties.

We ask the ACCC to consider whether such a risk is likely, what adverse consequences there may be of such a risk manifesting and whether the Deed contains adequate measures to mitigate this risk.

Information sharing

The last matter that requires some consideration is any risk presented by information sharing between Project parties.

We note the Deed imposes strict requirements of confidentiality and imposes restrictions on the use and sharing of any confidential information. In theory, the independent assurance firm would be prevented from sharing information about findings relating to another review.

We know in practice that such matters are difficult to police and large institutions have a history of sharing information whether it be official or unofficial. One only needs to look at the current concerns circling around PWC to know that even the largest firms are prone to failings. How would such an event impact the AAP and how might ACCC respond?

We know from experience that bank behaviour around passing on interest rate rises or around the adoption of other common business practices indicate that all large financial institutions move in close connection with each other. A recent example is the use of cashback incentives. One major lender begins to offer cashback incentives to consumers and the others shortly follow. One removes the cashback incentive and others shortly follow. Most cashback incentive amounts are of a similar value. Some of this behaviour may be put down to copycat behaviour - other institutions observe what a competitor is doing and begin to follow suit. Other behaviour is undoubtedly more structured and comes about as a result of information sharing between entities.

This is quite probably a function of few large players operating in a relatively small and captive market. As with other potential risks we have flagged, we cannot definitively say they are negative or that they are likely. We would like to see full consideration of them and ensure the final rules of any AAP program adequately reflect the risks and impose material consequences for breaches.

Thank you for the opportunity to make a submission.

Yours faithfully

Peter J White AM MAICD
Managing Director

Life Member – FBAA
Life Member – Order of Australia Association
Advisory Board Member – Small Business Association of Australia (SBAA)
Chairman of the Global Board of Governors – International Mortgage Brokers Federation (IMBF)