



Our ref: AA1000640

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16 August 2023

By email

Dear Michael

Re: Commonwealth Bank of Australia and Ors application for authorisation AA1000640 – Request for further information

I refer to the abovementioned application for authorisation lodged with the Australian Competition and Consumer Commission (the **ACCC**) on 17 April 2023 by the Commonwealth Bank of Australia, Westpac Banking Corporation, Australia and New Zealand Banking Group Limited, National Australia Bank Limited and Macquarie Bank Limited (the **Applicants**).

Thank you for providing the Applicants' response to the initial questions set out in our letter dated 19 July 2023. To assist with its assessment of this application, the ACCC is seeking further information. Please see below for our further questions relating to the application for authorisation:

1. We note the Applicants have sought authorisation to make and give effect to the agreements and arrangements as described at paragraph 4.4 of the application, including:
 - 4.4(a) to establish the Program by agreement between the Applicants in the form of the UJV Agreement as appears in Schedule 1, and
 - 4.4(b) to invite lenders to join the Program voluntarily on the terms of the proposed AAP Lender Deed as appears at Schedule 3 of the UJV Agreement'.
 - a. The document listed as Schedule 1 to the application for authorisation, identified in the application as the *unincorporated joint venture (UJV) Agreement* is, at it appears in schedule 1 to the application for authorisation, titled *Joint Venture Deed – In respect to the Aggregator Assurance Program*. For the avoidance of doubt, please confirm that this document is the agreement referred to in the description of the Proposed Conduct at paragraph 4.4(a) of the application for authorisation?
 - b. With respect to the proposed conduct described in paragraphs 4.4(a) and 4.4(b), our understanding is that the Applicants are seeking authorisation only to make and give effect to agreements and arrangements in the form of and/or on the terms currently set out in the UJV Agreement (including schedules and attachments to the UJV Agreement) and AAP Lender Deed submitted with the application for authorisation. Could you please confirm that this is the Applicants' intention?
 - c. Do the Applicants anticipate that any clauses of the UJV Agreement or AAP Lender Deed may change or be amended in the future, and if so, do the Applicants anticipate that authorisation would be sought at that time to make and give effect to

agreements or arrangements in the form of and/or on the terms set out in any amended versions of these documents?

2. We note that the Applicants have also sought authorisation to make and give effect to the agreements and arrangements described at paragraph 4.4 of the application, including:

4.4 (d) to invite aggregators to consent to Assurance Reviews being conducted under the **Program terms'** *[emphasis added]*, and

4.4 (g) for the Operating Committee to have the power to determine the rules governing the Program and how assurance reports from completed Assurance Reviews may be used.

- a. Could you please clarify what the 'Program terms' are and/or to the extent that have not yet been developed, provide details of the intended process for doing so?
- b. If there are any documents currently in existence, in draft or final form, that it is intended will form part of the Program terms that have not be provided to the ACCC, please provide copies.

More generally, we note the figure at paragraph 6.3 of the application identifies agreements which form part of the program structure, including the Aggregator Agreement, ASP Standing Offer Agreement, ASP Engagement Letter and RFP. Paragraph 6.4 of the application also refers to an ASP Agreement.

- c. Do the Applicants intend that the making and/or giving of effect to these agreements and arrangements form part of the Proposed Conduct for which authorisation is sought?
- d. If any of these agreements, in draft or final form, are available that have not been provided to the ACCC, please provide copies?

We note that the Proposed Conduct described in paragraphs 4.4(d) and 4.4(g) appears to provide the Applicants, being 5 major mortgage lenders, with significant discretion in setting the Program terms and in determining the rules governing a Program that is also intended to operate for the benefit of other mortgage lenders who the Applicants compete with. Similarly, to the extent that the Applicants intend that the making and/or giving of effect to other agreements such as those identified in paragraphs 6.3 and 6.4 as noted above is Proposed Conduct for which authorisation is sought, this similarly appears to provide the Applicants with significant discretion about how the agreements governing the structure of the Program will be determined.

- e. Please provide further details about the Applicants' views regarding how the Applicants having this discretion may impact to realisation of potential benefits and detriments of the Program for mortgage lenders more broadly and the broader realisation of the potential public benefits and public detriments of the Program.

Next steps

We would appreciate if you could provide a response to the above by **23 August 2023**. If you have any concerns with this timeframe or questions on the information requested, please let us know.

Upon receipt of your response to the above queries, we intend to progress the draft determination and interim authorisation decision as soon as possible. Following the issuing of a draft determination, we consider that an extension to the statutory timeframe may be necessary to provide time for further consultation with market participants, and to provide the Applicants with sufficient time to respond to the draft determination and any information the ACCC receives from interested parties, prior to the ACCC preparing a final determination. Should the ACCC consider an extension to the statutory timeframe to be necessary, we will raise this with you following release of the draft determination.

This letter, and your response, will be placed on the ACCC's public register subject to any request for exclusion. Please see the ACCC's publication [Guidelines for excluding information from the public register](#).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G Jones', with a long horizontal flourish extending to the right.

Gavin Jones
Director
Competition Exemptions