

22 May 2023

Naomi Menon
Director
Competition Exemptions,
Australian Competition & Consumer Commission
Lonsdale Street Melbourne VIC

By email: exemptions@acc.gov.au

Application for Authorisation AA1000640 – Commonwealth Bank & Ors (Authorisation) - INTERESTED PARTY CONSULTATION

Background

REA Group is a leading digital property business which operates the nationally recognised and trusted brand Mortgage Choice. Established in 1992, Mortgage Choice has grown to become one of the largest mortgage brokerages in Australia, with a network of over 1,000 brokers across more than 800 small businesses nationwide. REA Group acquired Mortgage Choice in 2021, and as part of the acquisition united the brokerage with Smartline Personal Mortgage Advisers under the Mortgage Choice Brand.

All credit representatives operate under either the Mortgage Choice or Smartline Operations credit license and are not authorised to hold their own Australian Credit Licence or be an authorised credit representative of another licence holder unless for a specified purpose, such as providing asset finance support to consumers through a third party. Mortgage Choice is a branded aggregator in that it provides aggregation services to broker businesses under a single brand.

Our Submission

REA Group appreciates the opportunity to provide feedback to the ACCC on the application for authorisation.

The application for authorisation has been submitted by the Commonwealth Bank Limited (CBA), Westpac Banking Corporation Limited (Westpac), Australia and New Zealand Banking Group Limited (ANZ), National Australia Bank Limited (NAB) and Macquarie Bank Limited (MBL), jointly “the Applicants”.

The Applicants are all lenders on Mortgage Choice’s panel, which includes more than 30 lenders including non-bank lenders, regional banks, mutuals and transitional lenders such as Keystart and Homestart Finance.



REA supports the granting of the authorisation to allow the execution of the UJV Agreement (as that term is defined in the Application) to enable the development of a Joint Assurance Program, subject to the comments set out below.

REA Group agrees that:

- a Joint Assurance Program is likely to result in a lesser burden on aggregators complying with multiple lender assurance programs, which can at times be onerous
- the resources saved by participating in the Joint Assurance Program can be repurposed to provide further training and/or oversight focused on ensuring good consumer outcomes
- the Joint Assurance Program will result in a consistent benchmark for the mortgage broking industry
- an independent third party will remove any potential bias from the relevant lender's perspective

To provide some context of the level of duplication currently experienced by aggregators, we have provided some statistics below. From 1 July 2021 to 31 March 2022:

- a) REA Group was involved in 32 Lender Assurance reviews
- b) Those reviews remained open from 6 days to 218 days
- c) An estimate of the length of time involved for each review ranged from 5 hours to more than 200 hours
- d) The estimated average length of time required to complete each review is 42 hours.

The above is a consideration as to whether or not to add a new lender to our panel of lenders. The move to a Joint Assurance Program will mean that Opt-in Lenders will remove one of the impediments to adding a lender ensuring that we can continue to offer a wide choice of products to help us meet our best interest duty to consumers.

Several factors will be critical to the success of any Joint Assurance Program, namely:

1. The Joint Assurance Program must be performed on an "Opt-In" basis for both lenders and aggregators.
2. The Joint Assurance Program must ensure that the scope and content of the reviews are fit for purpose and reasonable.
3. The quality and seniority of staff engaged by the Assurance Service Provider (ASP) will need to have experience in, or particular knowledge of, the mortgage broking industry rather than just expertise with lenders, as the obligations are different.



4. The Applicants, while also engaging with non-applicant lenders, should consult with aggregators on the scope of the Joint Assurance Program facilitated through an industry association.
5. The Report issued by the ASP should be made available to the aggregator as set out in 4.4(e) at the same time as it is made available to the Opt-in lender; and
6. The ASP must ensure it has robust data segregation and information exchange protocols in place with the consultancy firm tasked with conducting the reviews to ensure that information uncovered and/or reported is not disseminated to other aggregators, to those within the firm or for the benefit of the firm's other clients.

General Comments on the Application

Clause 2.4 & 2.7 – We agree that the multiplication of assurance reviews results in increased cost and disruption across the industry. The resource savings of participating in a Joint Assurance Program would enable additional resources to be focused on delivering good consumer outcomes.

Clause 2.8 – The Program mandates strong adherence to information sharing protocols to ensure that any competition/market sensitive information is not communicated or shared between lenders or aggregators. Participants in the Joint Assurance Program should ensure that their contractual arrangements with aggregators do not require aggregators to provide notification of other Lenders' views or decisions in respect of the aggregator or an individual broker.

Clause 2.14 – The Program is designed under the proposed UJV Agreement and AAP Lender Deed so that each lender will continue to make its own decisions in response to a Review. The Program agreements will prohibit lenders communicating any views or decisions in response to a Review. Again, participants in the Joint Assurance Program should ensure that their contractual arrangements with aggregators do not require aggregators to provide notification of other Lenders' views or decisions in respect of the aggregator or an individual broker.

Clause 6.6 – The Program will also offer AAP Lenders the opportunity to request that the ASP provides a review of a particular aggregator which covers additional or bespoke areas nominated by that lender for reporting to that lender only, and at its own cost. In respect of this:

- a) The additional or bespoke areas should also include the ability for the ASP to perform a targeted review either by requesting a series of applications, or a series of applications from a specific broker(s), to provide a review of those applications or brokers to the Opt-in lender; and

- b) The report which covers the additional or bespoke areas should also be made available to the aggregator by the ASP.

Clause 6.8(g) – The ASP’s responsibilities should include issuing the assurance report to the relevant aggregator rather than just to Opt-in lenders.

Clause 6.13 – The information sharing procedures and Competition Protocol in the AAP Lender Deed includes strict conditions prohibiting any communication or sharing of information between lenders as to their actions or responses to the outcome of a Review about any aggregator. Again, participants in the Joint Assurance Program should ensure that their contractual arrangements with aggregators do not require aggregators to provide notification of other Lenders’ views or decisions in respect of the aggregator or an individual broker.

Clause 6.17 – The scope and content of the proposed Assurance Reviews will be set by the Operating Committee and will be subject to consultation with Opt-in Lenders so lenders have an opportunity to ensure the Assurance Reviews will be fit for their purposes and sufficient to replace their current approach to obtaining assurance. To ensure there is appropriate support by the aggregators and to ensure the Joint Assurance Review is fit for purpose and sufficient, the scope and content should also be subject to consultation with aggregators.

Clause 6.23 – Participants in the Program will be required by the APP Lender Deed not to disclose or identify to other lenders generally, any particular non-complying broker conduct or any “case specific” remedial actions to be taken in response to such conduct. Again, participants in the Joint Assurance Program should ensure that their contractual arrangements with aggregators do not require aggregators to provide notification of other Lenders’ views or decisions in respect of the aggregator or an individual broker.

Clause 7.5(c) & (d) – Again, participants in the Joint Assurance Program should ensure that their contractual arrangements with aggregators do not require aggregators to provide notification of other Lenders’ views or decisions in respect of the aggregator or an individual broker.

Clause 8.1(f) – the Program includes opportunities for non-applicant lenders to have input into the Program design through consultation with the Operating Committee. We again repeat that to ensure that the Joint Assurance Review is fit for purpose and sufficient, the scope and content should also be subject to consultation with aggregators.

Joint Venture Deed

Clause 9 of the Joint Venture Deed should be amended to provide that the Operating Committee should include Aggregator representation.

Clause 11.1(b)(i) should include that the Aggregator Agreement is also in a form agreed to by the aggregator.



Summary

We appreciate the opportunity to be consulted on the requested application and would be happy to answer any further questions the Commission may have.

Should you wish to discuss, please contact me.

Regards,



Anthony Waldron

CEO, Financial Services and Mortgage Choice

