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Ms Christine Cupitt  
Executive Director, Policy Australian Banking Association

By email: [Christine.Cupitt@ausbanking.org.au](mailto:Christine.Cupitt@ausbanking.org.au)

Dear Ms Cupitt

**Australian Banking Association (ABA) application for authorisation  
AA1000441— further request for information**

We refer to your submission dated 15 October 2019 in response to the ACCC's Draft Determination and proposed conditions of authorisation. The purpose of this letter is to:

- seek clarification from the ABA regarding its above submission
- provide feedback on the ABA's submissions on the prevention and refunding of interest on informal overdrafts
- indicate which of the ABA's requests for amendments to the proposed conditions may be acceptable based on the information currently available to the Commission, and
- outline the Commission's proposed approach to the conditions in the final determination.

**Interest charged on informal overdrafts**

*Implementation dates*

We note the ABA's submission that implementing systems to prevent or limit interest charges arising from informal overdrafts on basic bank accounts (**BBAs**) or low or no fee accounts held by eligible customers, or to refund the fees charged, would require substantial changes to their systems, and involve significant lead times. Accordingly, the ABA has requested that the proposed condition regarding preventing or refunding interest charges on informal overdrafts take effect from 1 March 2021.

The Commission has concerns regarding the amount of time required for the proposed implementation. Based on the information currently available to the Commission, it is not clear why such a significant time period is needed to allow member banks to implement the necessary system changes. The Commission requests detailed information on:

- what specific changes to systems would be required and why one year is needed to implement them, and whether this would apply to all member banks
- whether members banks are likely already to have mechanisms in place to refund interest, and
- whether a shorter time frame for implementation of the changes may be possible for some customers or classes of customers (e.g. new customers)

- whether a shorter time frame for implementation of the changes may be possible for some member banks

#### *Refund of interest prior to implementation of changes*

The Commission is also concerned about the ABA's proposal to not refund interest prior to 1 March 2021. Based on the information currently available to the Commission, it is not clear why interest cannot be refunded prior to the condition's implementation, and requires:

- detailed information clarifying why it would not be possible to refund interest prior to 1 March 2021, and
- whether the refund could be applied to different classes of customers (e.g. new customers) earlier.

#### *Period for the refund of interest*

We note the ABA's submission that it would be preferable to allow banks a three month period to refund any interest charged, rather than at the end of the month in which the interest was charged, as some banks may need to rely on manual processing. We accept the ABA's submission that this may be the case for smaller banks.

Therefore, the ACCC is proposing to impose a condition that would require:

- member banks who use manual processes for identifying interest charges on accounts to refund the interest within three months, and
- member banks who have automated systems for refunding interest charges on accounts to refund the interest each month.

#### *Reporting on informal overdrafts*

We note the ABA's submission that compliance with this condition (including reporting on the types of transactions which cause overdrafts) would place an unnecessary burden on member banks, as banks vary in their capacity to deal with the requested data points, and none have automated systems to process the data points.

We also note the ABA's submission that there is limited scope to reduce the number of these types of informal overdrafts, as they are informal overdrafts that are "reasonably impossible or impractical" to prevent.

The ACCC considers it is important for it to be able to assess the extent of the exceptions to full implementation of the Royal Commission's recommendations- i.e., how often overdrafts will continue to occur without the customer's express agreement. Based on the information currently available to the Commission, it considers that a reporting condition on the following points will enable it to sufficiently make this assessment:

- the percentage of the total number of basic banking product accounts which have been overdrawn during the reporting period without the account holder's express agreement, and
- how many times (on average) these accounts have become overdrawn.

#### **Basic Bank Accounts**

We note the ABA's concerns that a condition requiring the continued provision of BBAs would mandate the offer of a highly specific commercial product, and result in unequal treatment for Code subscribers. The ACCC also notes the ABA's submission that, "Member Banks put forward the BBA proposal in good faith for the benefit of the public and those that currently offer BBAs have no intention of ceasing to offer these products."

However, the Commission considers the continued availability of BBAs as necessary for the authorisation to achieve the claimed public benefits.

Therefore, the ACCC is proposing to impose a condition requiring the ABA to provide the ACCC annually with a report for publication on the ACCC's public register, detailing:

- the names of member banks that have started, continued and ceased to offer BBAs, and
- details of other low and no fee accounts that member banks have continued to offer.

The ACCC notes that any decrease in the number of banks offering BBAs may amount to a material change in circumstances which could prompt a review of the authorisation by the ACCC.

### **Proactive identification of eligible customers**

We note the ABA's submission objects to having an obligation in the Code requiring proactive identification of customers, and mandating data analysis for the identification of customers.

The Commission considers it appropriate that conditions are imposed which place obligations on member banks both to proactively identify potentially eligible customers, and report on these activities, in order to ensure the claimed benefits arise. However, the information currently available to the Commission suggests that this obligation may not need to be contained in the Code, and that the use of data analysis may not need to be mandated.

Therefore, the ACCC is proposing to impose a condition requiring member banks to take steps to proactively identify potentially eligible customers, and requiring the ABA to report on:

- Actions taken by member banks to identify and contact existing customers potentially eligible for BBAs, and
- How many BBAs were opened (including by existing customers).

The ACCC is proposing not to require this condition to be contained in the Code, or to require the use of data analysis.

Please provide a response by **COB 31 October 2019**. This letter will be placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Hannah Ransom on (02) 6243 1255 or Susie Black on (02) 6243 1055.

Yours sincerely



Susie Black  
Director  
Adjudication