



15 November 2019

Susie Black
Director, Adjudication
Australian Competition and Consumer Commission
By email: Susie.black@acc.gov.au

Dear Ms Black,

Australian Banking Association (ABA) application for authorisation AA1000441— supplementary submission on draft determination

We refer to previous correspondence and to the ACCC's draft final determination. We wish to supplement our previous submissions by adding the points outlined below.

Reporting on informal overdrafts

We note that the ACCC is proposing to include conditions on reporting of data relating to informal overdrafts. We suggest that, in order to closely define the kind of situation intended to be captured, that the condition tie this obligation directly to accounts subject to the special features in paragraph 47 of the Code. The conditions could read, for example:

- “the percentage of the total number of accounts subject to the special features in paragraph 47 of the Code 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”.

Further, we note that the term ‘informal overdraft’ is defined in the Code to mean “credit we provide when (without your express agreement) we permit you to overdraw your account”. The point at which an informal overdraft arises is generally determined by banks in accordance with longstanding commercial practice. Usually an account would be treated as having gone into informal overdraft where it remains overdrawn after the bank's batch payment and dishonour processing completes. So, for example, a circumstance in which a direct debit on an account with insufficient funds to cover it is processed close in time but prior to the processing of the deposit of a customer's salary into their account (adding the necessary funds), would not normally be treated as having incurred an informal overdraft (and hence ordinarily not have resulted in any fee or charge). That is the basis on which banks would likely apply the proposed reporting condition.

Reporting periods

We refer to previous submissions we made in relation to the timing of the reporting requirements for informal overdrafts and ‘proactive identification’ obligations. We would like to add a submission on the time period in respect of which the relevant data should be collected.

Our submission is that the reporting period (i.e. data collection period) should commence from 1 September 2020. This would allow banks some time to put systems in place to collect the requisite data and ensure that the associated reports are accurate and complete.

These reporting requirements need to be operationalised by making relevant adjustments to banks' systems, processes, practices and training. Given the very short window between now and the planned commencement of the Code (which includes the Christmas holiday period), it is appropriate that a later time be set for the commencement of the obligation to collect data.



Australian Banking Association

As we have submitted in relation to other matters that require substantial changes to bank operations, these changes require appropriate lead-time. For example, systems changes require designing, implementing and testing and are usually done in batches which are scheduled and prioritised months in advance. At present, most banks have batches of systems changes already prioritised to deal with multiple regulatory changes to which the industry is currently subject (for example, changes to implement requirements around product design and distribution obligations).

These issues around priorities mean that some banks could not even commence to put systems in place for data collection, let alone complete the process, prior to 1 March 2020.

Please do not hesitate to contact us regarding any further queries or clarification of the above points.

Yours sincerely



Jerome Davidson
Policy Director

