Australian Banking Association

31 October 2019

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

Dear Ms Black,

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

Thank you for your letter of 25 October 2019, in response to our letter of 15 October. This letter responds to issues raised in your letter and in associated discussions between the ABA and the ACCC.

Key points

Interest on informal overdrafts

- We note that a key part of the ABA's Application to the ACCC relates to the authorisation necessary to implement the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, that:
    - without prior express agreement with the customer, banks will not allow informal overdrafts on basic accounts; and
    - banks will not charge dishonour fees on basic accounts.
- In addition, the Application proposed that the charging of overdrawn fees on certain accounts held by eligible customers be prevented, to address concerns of the kind that arose in the Royal Commission hearings.
- In the Draft Determination, the ACCC has proposed that the ABA take an additional measure over and above those recommended by the Royal Commission – preventing the charging of interest on informally overdrawn accounts in the relevant category.
- As we noted in our submission in response to the Draft Determination, Member Banks could comply with a condition to ensure that interest is not charged on accounts provided to eligible customers under paragraph 47 of the Code when those accounts become overdrawn. However, as is the case for any significant regulatory change, banks require a reasonable lead time in which to put *robust* systems in place to ensure compliance with the new requirement.
- The ACCC's proposed condition on the charging of interest represents, in effect, a significant regulatory change additional to those that banks have been preparing for prior to the release of the Draft Determination.
- The time required to implement this change varies between Member Banks in accordance with their respective system capabilities. As we have previously noted, some banks have previously adopted the practice of not charging interest in the relevant circumstances. Other banks are free to adopt this change earlier if they choose to do so. However, others do not have systems in place that could readily prevent the charging of interest in accordance with the ACCC's proposed condition.

- We are reluctant to put in place a staggered approach to implementing the proposed condition dependent on the individual capabilities of each Member bank. It is important that Code obligations provide consistent protections to consumers and our preference is that a timeframe is agreed by which all Member Banks can comply.

- We believe that a commencement date of 1 March 2021, 12 months from the launch of the March 2020 version of the Code is a reasonable transition period and not dissimilar to the kind of period that might be expected to be provided for Government regulatory changes of this nature.
- Unfortunately, manually refunding interest in the interim is not a workable solution. Adopting manual processes to identify relevant transactions and refund interest charged would not only be resource intensive, at a time when the industry is responding to a series of regulatory reforms, but it would be unreliable and prone to human error. This would be an unsatisfactory experience for consumers, who are entitled to expect compliance with conditions imposed by the ACCC and would place an increased regulatory risk on subscribers. There is consequently a high degree of reluctance to proceed with changes to the Code which are conditional upon a manual solution.

Responding to the consumer group submission

- In order to address issues raised by the Consumer Action Law Centre, Financial Counselling Australia, and the Financial Rights Legal Centre (the 'consumer group submission'), as well as the ACCC, and to generally make the intent of the proposed changes clearer, we include below proposed changes to paragraphs 44B and 47, and the definition of 'eligible customer' in Chapter 16 of the Code.

Reporting requirements

- We agree to the ACCC's proposed condition on Basic Bank Accounts (BBAs) except that the reporting condition should, in our submission, be limited to BBAs and not extend to the offering of other low or no fee accounts. This will demonstrate the continued provision of BBAs by banks which is our understanding of the ACCC's object in this regard.

Proactive identification of eligible customers

- The ACCC's proposed conditions on proactive identification of eligible customers should, in our submission, be qualified by reference to eligibility as defined in Chapter 16 of the Code.
    - Banks that offer only one type of transaction account should be exempt from this reporting condition, as there is no utility in having them report on the number of customers who have opened such an account.

Charging interest on informal overdrafts for basic, low or no fee accounts offered to eligible customers

Implementation dates

We note the Commission's concerns regarding the amount of time proposed by the ABA for banks to implement the proposed conditions on the charging of interest on informal overdrafts, and that that 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

We begin by making some general observations:

1. The Commission's questions that address whether periods required for implementation apply to banks equally could be taken to imply that Code obligations could be applied differently to Member Banks according to their individual circumstances.

   In our view, this would be an unacceptable result. The Code process is a regulatory one - at this stage, primarily self-regulatory in nature, but regulatory, nevertheless. A fundamental tenet of regulation is that it be applied equally. Applying the Code obligations in a way that discriminated between members would be a breach of this principle and set an undesirable precedent. This is especially so having regard to the fact that the Government is currently preparing a new regime under which Code obligations may be given the effect of law, in response to a recommendation of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

   As we have noted previously, system capability varies among individual banks and some would require longer than others to implement changes to prevent the charging of, or refund of, interest on the relevant class of account. Large organisations are likely to have greater capacity to design and implement changes more quickly than smaller and less-resourced institutions, however some larger organisations may also have more numerous and complex systems. However, all Member Banks (except those that don't currently charge interest) would require significant time to implement for reasons expanded on below.

2. An implementation date of 1 March 2021 makes sense for at least two reasons.

   a. Firstly, it provides an appropriate lead time for *all* Code subscribing banks in which to comply (see below for more detail on why the time is required). A period of 12 months to transition to the new requirement would, in our submission, be the kind of period allowed if this measure were being implemented in legislation, so allowing something similar in the case of the Code is not unreasonable.

   b. Secondly, the ABA is planning for another version of the Code to be released on 1 March 2021. Aligning this change with that date would reduce the risk of customer confusion if a separate version of the Code were required to be released in the meantime, reflecting the change.

Why implementing this condition requires time and systems changes

Preventing the charging of interest

Generally speaking, bank processes and systems are designed to maximise improvements in efficiency and to be as automated as the circumstances allow – in part to reduce the considerable risks that arise if individual staff knowledge and skill is relied upon to ensure that regulatory obligations, and promises to customers, are complied with in a wide variety of situations which arise with great variation in frequency. For these reasons, centralised control over changes to important systems such as mandatory interest rate charges can be restricted and is not generally open to manual intervention by a broad range of staff.

Further, rates of interest charged on accounts for various reasons are generally set according to the type of account and associated conditions. Systems allow for these rates to be changed but in the usual course, the system would allow only for this change to be at the level of the account type, so that the new rate, or zero rate, would need to apply to all accounts of that type – not just accounts held by 'eligible customers' under the Code.

System changes could be made to the relevant type of account, but changes of this nature are not easily implemented. They 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).

Bank resources are in many cases involved in ongoing remediation work. Any changes designed to implement the Commission's proposed conditions on the charging of interest would need to be first designed, and then placed in a batch of changes which would then be prioritised having regard to other batches of changes already committed to.

In our submission of 15 October, we gave an example which we think worth reiterating here:

> "...one major bank has indicated its relevant BBAs operate on two Core Banking Platforms. The ACCC's proposed condition to change or remove debit interest on BBAs (as defined in Chapter 16 of the March 2020 Banking Code), would require this major bank to undergo significant assessment and testing of these systems to ensure the required changes are implemented correctly. Rigorous testing is required to ensure that no unforeseen impacts occur, including to any downstream processes or outputs – for example, there would need to be significant regression testing on customer statements.
>
> Given the complexity of these systems, changes of this nature have a long delivery lead time and further implementation timing is linked to quarterly enterprise releases. The majority of upcoming releases are already locked in and full due to implementation of existing regulatory changes across a range of regulatory change projects. For this major bank it would be unfeasible and challenging to de-prioritise current planned releases in relation to other regulatory changes, in favour of the ACCC's proposed condition. In this major bank's experience, typically the required changes to core banking systems would have a 9 to 12-month lead time."

Refunding interest

None of the Member Banks have automated systems in place to identify and refund interest charged to customers in the relevant circumstances. As we noted in our submission of 15 October, refunding the interest charges on these accounts would require significant additional resources and lead-time to put in place as it would require manual processes and reporting. Unfortunately, manually refunding interest in the interim is not a workable solution.

Adopting manual processes to identify relevant transactions and refund interest charged would not only be resource intensive, at a time when the industry is responding to a series of regulatory reforms, but it would be unreliable and prone to human error. This would be an unsatisfactory experience for consumers, who are entitled to expect compliance with conditions imposed by the ACCC, and would place an increased regulatory risk on subscribers. There is consequently a high degree of reluctance to proceed with changes to the Code which are conditional upon a manual interim solution.

Having regard to the above, and recalling that the figures we provided to the Commission previously have indicated that interest charged in the relevant circumstances is minimal compared to the overdraw fees that were the focus of the Royal Commission's examination of the issue, in our submission, the regulatory and associated cost burden on Member Banks of addressing this issue without allowing appropriate time to implement the requisite systems changes would outweigh any benefit to customers during that period.

Clarifying choice of debit cards

We note that the ACCC has asked, in line with suggestions in the consumer group submission, whether it can be made clearer that the customer may choose whether a debit card issued to them is an eftpos or scheme debit card. Member banks are happy to clarify this, noting that customers may choose between eftpos or scheme debit but not necessarily between type of scheme debit – MasterCard or

Visa for example, as banks may not offer all available scheme debit cards. The change we propose is to subparagraph 44B(e) as follows:

> Access to your choice of a debit card (such as eftpos), or a scheme debit card offered by us (such as Visa Debit or Mastercard Debit) at no extra cost

Clarifying eligibility and the application of the obligations in paragraph 47 of the Code

We note that the ACCC, as well as the consumer group submission, have raised issues around the clarity of certain aspects of the obligations towards eligible customers and the availability of basic accounts or, low or no fee accounts. On reflection, Member Banks agree that these obligations could be more clearly set out in the Code.

As we explained in our submissions of 15 October, the intention behind our proposed amendments to the Code in this regard is to ensure that eligible customers have access to an account that has the conditions that accord with the recommendations of the Royal Commission, namely, that they have:

- No informal overdrafts;
- No overdrawn fees; and
- No dishonour fees.

It is *not* our intention to mandate that eligible customers have this kind of account or to prohibit customers from choosing other accounts that do not have these features if they better suit their needs.

We also note the requests from stakeholders that we make clear that banks can offer both basic accounts and accounts with the features listed above to customers even when they are not 'eligible customers' if they so choose, and that basic accounts, or low or no fee accounts may have a greater range of features.

In order to put these matters beyond doubt, we now propose to make the following changes to the previously proposed version of paragraph 47 and the definition of eligible customer:

> **Special ~~conditions~~ features for basic, low or no-fee accounts for eligible customers**
>
> 47. If you are an eligible customer and you ask for a basic account, or a low or no fee account, ~~and we offer one,~~ we will ~~provide~~ offer you one of these accounts that has the special features listed in this paragraph and, if we offer basic accounts, will also have the features listed in paragraph 44B. ~~one to you. If we do not offer a basic account, we will offer you an alternative low, or no fee account. Any basic, low fee or no fee account we offer to you because you are an eligible customer,~~ The special features are ~~will have~~:
>
> a) No informal overdrafts (except where it is impossible or reasonably impractical for us to prevent your account from being overdrawn)
>
> b) No dishonour fees; and
>
> c) No overdrawn fees
>
> You are not obliged to accept our offer of an account with the special features. You may request (or we may offer you) other accounts (including other basic, low fee or no fee accounts) which do not have some or all the special features, or may have additional features.
>
> We may also offer accounts with some or all of the special features, (and / or the features in paragraph 44B), to individuals who are not eligible customers under this Chapter.
>
> For the purposes of this Chapter:

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'eligible customer' means an individual that is not a business who ~~at least~~ holds a current a government concession card listed in paragraph 44~~, although we may offer broader criteria~~.

Basic bank accounts

We note the ACCC's proposal on Basic Bank Accounts (BBAs) as outlined in your letter of 25 October, and that 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.

We have only one residual point to make under this head. The proposal that the ABA should report on "details of other low or no fee accounts that member banks have continued to offer" is, it seems to us, irrelevant to the BBA proposal. As we understand it, the ACCC's concern here was that Member Banks might be incentivised to cease offering BBAs and instead offer other low or no fee accounts. While we see how a requirement to report on the number of banks that continue to offer BBAs addresses this concern, we do not see how the provision of information about the offer of low or no fee accounts does.

Proactive Identification of eligible customers

We note the ACCC's proposed conditions as set out in the letter of 25 October and have no objections to these except that they should, in our submission, be qualified by reference to eligibility as defined in Chapter 16 of the Code. As we've noted, some banks will have unlimited eligibility for BBAs. In our submission, these banks should not be required to report on customers contacted, or accounts opened, by reference to broader eligibility criteria but rather the obligation should attach to eligibility as defined in Chapter 16.

Also, we have at least one member that offers only one type of transaction account (which will comply with paragraph 47). Banks such as this should be exempt from this reporting condition, as there is no utility in having them report on the number of customers who have opened their one type of account.

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

Yours sincerely

Jerome Davidson
Policy Director