



11 September 2020

Susie Black  
Director, Merger & Authorisation Review Division  
Australian Competition and Consumer Commission  
By email [Susie.black@acc.gov.au](mailto:Susie.black@acc.gov.au)

Dear Susie

## Application for authorisation lodged by the Australian Banking Association in respect of certain amendments to the 2019 Banking Code Authorisation number: AA1000441 – Reporting conditions

We refer to the ACCC's Final Determination in relation to the abovementioned application, and in particular, to the reporting requirements placed on the Australian Banking Association (ABA) as a condition of the authorisation. These conditions are set out below.

### Reporting conditions

#### *Informal overdrafts*

- b. The ABA must provide a written report to the ACCC by the dates specified in condition 5.8(f) below, for publication on the ACCC's public register, providing the following information:
- i. for each Member Bank, the percentage of the total number of accounts, held by eligible customers and subject to the special features in paragraph 47 of the Banking Code (as outlined in Schedule 1), which have been overdrawn (and which remain overdrawn after the bank's batch payment and dishonour processing completes such that the bank would have, but for the special features in paragraph 47 of the Banking Code, charged a fee and/or interest on the account) during the period specified in condition 5.8(f) below, without the account holder's express agreement, and
  - ii. for each Member Bank, how many times (on average) such accounts have been overdrawn during the period specified below.

#### *Proactive identification of eligible customers, existing and future*

- d. The ABA must provide a written report to the ACCC for publication on the ACCC's public register by the dates specified in, and for the period specified in, condition 5.8(f) below, providing the following information:
- i. actions taken by each of the Member Banks to make existing customers who may be eligible for an account under paragraph 47 of the Banking Code (as outlined in Schedule 1) aware of their potential eligibility and the special features of those accounts in compliance with condition 5.8(c) above, and
  - ii. the number of basic accounts, subject to the special features in paragraph 47 (as outlined in Schedule 1) of the Banking Code, that were opened for eligible customers under paragraph 47 by each of the Member Banks.



## *Basic bank accounts*

e. The ABA must provide a written report to the ACCC by the dates specified in, and for the period specified in, condition 5.8(f) below, for publication on the ACCC's public register, providing the names of Member Banks that have commenced, continued and ceased to offer BBAs.

## *Dates for reporting*

f. The above written reports must be received by the ACCC as follows:

- On or before 31 October 2021 for the period 1 September 2020 to 31 August 2021 (inclusive), in relation to information outlined at paragraphs b, d and e above,
- On or before 31 October 2022 for the period 1 September 2021 to 31 August 2022 (inclusive), in relation to information outlined at paragraph e above,
- On or before 31 October 2023 for the period 1 September 2022 to 31 August 2023 (inclusive), in relation to information outlined at paragraph e above,
- On or before 31 October 2024 for the period 1 September 2021 to 31 August 2024 (inclusive), in relation to information outlined at paragraph d above, and
- On or before 31 October 2024 for the period 1 September 2023 to 31 August 2024 (inclusive), in relation to information outlined at paragraph e above.

## Alterations

We note further that the authorisation makes provision for alterations to the reporting conditions:

### *Alterations to reporting conditions*

g. The reporting conditions set out at conditions 5.8 (b), (d), (e) and (f) above may be subject to exemptions or variations where requested by the ABA in writing and approved by the ACCC in writing and published on the public register.

## Issues

### **Obligations to report on proactive identification of eligible customers (paragraph d(i)&(ii))**

For some banks, all retail transaction account offerings are paragraph 47 compliant. This raises the question of whether data around total number of accounts held by eligible customers is relevant. Also, it is unclear whether such banks taking action to advise existing customers of eligibility for a paragraph 47 account is meaningful. It would appear redundant as the bank would not have any customers who don't enjoy the benefit of those features.

### **Obligation to report on accounts held by eligible customers (paragraphs b and d)**

Some banks have accounts which have the paragraph 47 features which are offered to a broader range of customers than 'eligible customers' as defined under the Code. For such banks, requesting customers to provide their GCC status or eligibility would result in:

- *Poor customer experience* – customer confusion and frustration at being asked to provide data for which the only purpose is to enable regulatory reporting with no additional benefits or features offered or available to the customer; and
- *Increased cost and inefficiency* – for these banks, changes would be required to policies, processes, systems and databases to enable collection, storage and reporting of the eligibility data. The data is not required by the banks for any purpose other than regulatory reporting.

It seems to us that the intention of the ACCC in imposing this condition was to obtain data necessary to make a general assessment as to the incidence of overdrafts on accounts that nominally do not allow informal overdrafts. That is – instances in which it is impossible or impractical to prevent informal



overdraws occurring. In our submission, data based on all accounts in this category (para 47 compliant) should meet this objective.

### Exemptions sought

Pursuant to paragraph (g) of the authorisation as referred to above, the ABA now seeks alteration of the reporting conditions by making the following exemptions or variations:

1. For the obligations in paragraphs (d)(i)&(ii), we seek an exemption as follows:

*ABA reports under in paragraphs d(i)&(ii) may exclude data from Member Banks where all of the relevant bank's retail transaction accounts comply with the special requirements in paragraph 47 of the Banking Code.*

2. For the obligations in paragraphs (b)&(d), we seek a variation to the effect that:

*Where a reporting obligation requires the ABA to report on numbers of accounts held by eligible customers, for banks that do not restrict eligibility for accounts with the special features in paragraph 47 of the Code to 'eligible customers' as defined in the Code, the ABA reports may use the total numbers of such accounts of those banks as a proxy, when reporting under paragraphs b and d.*

If you require any further information in relation to the above request, we would be happy to discuss.

Yours sincerely



Jerome Davidson  
Director, Legal Affairs