



23 November 2020

Susie Black
Director, Merger & Authorisation Review Division
Australian Competition and Consumer Commission
By email 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 our correspondence of 11 September regarding this matter.

As noted in our previous correspondence, 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 in that correspondence.

The correspondence also outlines some issues around compliance with the conditions as they stand. We reiterate these issues below and propose a revised set of variations to address them in [Annexure A](#).

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 do not 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 some of these banks, isolating the subset of accounts held by eligible customers would be very difficult. For these banks, changes would be required to policies, processes, systems and databases to enable collection, storage and reporting of the eligibility data. This is because the data is not required by the banks for any purpose other than this reporting requirement.

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 overdrafts occurring. In our submission, data based on a reasonable subset of ABA member banks that can identify accounts in this category (para 47 compliant) that are held by eligible customers should meet this objective.



Variations sought

Pursuant to paragraph (g) of the authorisation, the ABA now seeks the variations to the reporting conditions set out in Annexure A. This is in lieu of the variations sought in our correspondence of 11 September.

The revised variations seek to deal with the issues outlined above by allocating particular reporting obligations to banks based on their systems capabilities.

Redaction of individual bank names

The revised variations we now seek would by necessity specify names of some of our individual member banks. In our submission, these names should be redacted from the public register, because:

- These conditions and the reasons behind them are complex and could be misinterpreted. For example, naming banks in the condition in b(1)(i)&(ii) could imply that only the named banks are liable to have overdrafts occur on paragraph 47 accounts. This could distort consumer behaviour toward those banks.
- Information about account and customer profiles (ie accounts held by eligible customers), would ordinarily be regarded as commercially sensitive and not appropriate for disclosure.
- Specific information on which particular banks fall into the particular reporting categories should, we submit, remain confidential to the ACCC and ABA.

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





Annexure A

Proposed variations to conditions of authorisation AA1000441 granted to the Australian Banking Association

*Proposed alterations to the original wording of the conditions are in red text.

*Material that is proposed to be redacted from the public register is shaded.

Category A Banks are a sample of large and small banks, which have been selected on the basis of the capability of their current systems and processes to provide the required data, not any other characteristics. These banks are: [REDACTED]

Category B Banks are those banks that offer only accounts which have the special features in paragraph 47 of the Banking Code. These banks are: [REDACTED]

Informal Overdrafts

b(1) 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. in relation to each of the Category A Banks, 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. in relation to each of the Category A Banks, how many times (on average) such accounts have been overdrawn during the period specified below.

b.(2) The ABA must, if requested by the ACCC and subject to the ACCC providing the ABA a six-month notice period prior to the start of any reporting period, by the dates specified in condition 5.8(f) below or other time periods agreed by the ACCC, provide a written report to the ACCC, for publication on the ACCC's public register, containing the information required under b(1)(i) and b(1)(ii), or a similar measure as proxy for the information required under b(1)(i) and b(1)(ii) and agreed by the ACCC, in respect of each Member Bank, or a subset of Member Banks as agreed by the ACCC.

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.

The reports in response to d(i) and (ii) may exclude data from Category B Banks.

For the first reporting period specified in condition 5.8(f) below the ABA must only report in response to d(ii) in respect of all Category A Banks that are not also Category B Banks.

For the fourth reporting period specified in condition 5.8(f) below, the ABA must only report in response to d(ii) in respect of all Category A Banks that are not also Category B Banks, unless the ACCC requests reporting in respect of all Member Banks or a subset of Member Banks, such notice to be provided to the ABA six months prior to the start of the reporting period.



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(1), 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 paragraphs b(2) and 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.