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20 October 2023

Mr Gavin Jones
Director Competition Exemptions
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

via **webportal**

Dear Mr Jones

Commonwealth Bank of Australia and Ors application for authorisation AA1000640 – interested party consultation – draft determination - further submission by Australian Finance Group Ltd ACN 066 385 822

Australian Finance Group Ltd (**AFG**) was founded in 1994, listed on the Australian Securities Exchange in 2015, and has grown to become one of Australia's largest mortgage broking aggregators. Approximately 3,700 finance brokers (of which approximately 1,900 are credit representatives of AFG) arrange residential mortgages, personal and asset finance loans, commercial finance, and other loan products through AFG's technology platform and relationships with lenders. AFG also operates a white label and securitised lending division through AFG Home Loans Pty Ltd and AFG Securities Pty Ltd.

Thank you for the opportunity to respond to the Australian Competition & Consumer Commission's (**ACCC**) draft determination on the Commonwealth Bank of Australia and Ors application for authorisation AA1000640 (the **Draft Determination**) issued on 18 September 2023. Terms used in this submission have the same meaning as in the Draft Determination unless specified otherwise.

General comments on Draft Determination

AFG is disappointed that the ACCC proposes to deny authorisation in relation of the Application to establish the proposed Aggregator Assurance Program (**Program**). AFG reiterates its support for the Program as we believe it will drive efficiencies for aggregators and allow AFG to be more competitive for the services we offer to our brokers, which will ultimately lead to better outcomes for consumers.

AFG provides the following submissions in relation to particular aspects of the Draft Determination set out below.

Design of the Program

The ACCC outlined its concerns in relation to the design of the Program and key decisions being made by only the Applicants, notwithstanding that the Program would be open to all lenders.

AFG believes that a position can be reached whereby agreement on the scope of the assurance reviews is facilitated by an industry body, such as the Mortgage and Finance Association of Australia, whose membership includes large lenders, smaller lenders and non-banks, aggregators and brokers.

This would allow a consistent and fair approach to the scope of the reviews, taking into account a wide range of requirements and would not prioritise the needs and requirements of the Applicants.

As we previously submitted[1], the sharing of costs of the Program between participating lenders should be scaled depending on the size of the lender. AFG recognises that a complex tiered cost structure may be cost prohibitive and therefore we propose that two levels of fees would be adequate i.e. large lenders over a minimum revenue size contributing a larger amount of the fees with smaller lenders and non-bank lenders contributing a lower amount.

The ACCC has also raised concerns about homogenous assurance reviews being undertaken partly due to the proposed appointment of a single assurance service provider. There are obvious benefits to the Program to engage a single assurance service provider (including economies of scale and consistent application of the scope of the reviews). However, to alleviate the ACCC's concerns a competitive tender process could be undertaken with a panel of assurance service providers appointed which rotated the appointment every 2 years. This would allow 'fresh eyes' on the reviews to mitigate the ACCC's concern that a single service provider would produce homogenous reviews focusing on only one perspective which may lead to an increased risk of inappropriate lending practices, whilst allowing the tenderers to submit competitively priced bids and the efficiencies gained from undertaking the reviews over several years.

We reiterate our initial submissions that the Program should be designed so that aggregators have the ability to individually negotiate the relevant assurance review agreement with the participant lenders. Each aggregator has a separate and bespoke commercial agreement with lenders which contains specific rights and obligations. AFG submits that any obligations on aggregators in the aggregator agreement under the Program should align, and be no more onerous, than the obligations on that aggregator under their existing commercial agreement with the lender. The Program should not be a vehicle for additional obligations to be placed on aggregators outside of their negotiated position with each of the lenders.

In addition, we submit that given the different sizes, compliance frameworks and negotiated positions of the different aggregators in the market, a one-size-fits-all approach to the assurance review agreement between the participant lenders and aggregators would not allow those aggregators, such as AFG with the highest standards of compliance and governance to take advantage of its competitive position. The competitive nature of the aggregator channel should be maintained and encouraged as this ultimately leads to greater competition and choice for consumers for home loans and other finance products.

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[1] Australian Finance Group Ltd submission, 22 May 2023, p.2-3;

Standard of assurance reviews

The ACCC has raised concerns about the standard of the assurance reviews and that the Program may lead to a lower benchmark for reviews.

AFG submits that its experience over the past 20 plus years with lender assurance reviews does not validate this concern. AFG has experienced a broad range and level of assurance reviews from lenders. From extremely in-depth reviews involving external consultants auditing all aspects of AFG's relevant business over several months, to very low touch one page self-declaration confirmations. We expect the scope of the Program as proposed by the Applicants to be on the more detailed side of this scale. If smaller lenders can have access to the more fulsome detailed reviews, this will allow them to tailor their compliance responses and areas of concentration to improve lending practices.

In addition, given the number and scale of the current assurance reviews conducted, aggregator internal resources are extremely stretched. It is not possible to respond to all requests for assurance reviews in the time frames desired by lenders. Therefore, delays are inevitable and this may cause issues that are required to be resolved to be extended. We submit that a single review proposed by the Program would alleviate these time and resourcing issues and would lead to a higher benchmark standard of review rather than a lower benchmark.

In addition, consistent assurance standards will ensure that all aggregators are reviewed on the same basis and that best practice across all industry participants can be encouraged by lender partners.

Public benefits

As noted in AFG's initial ACCC submission on the Program, the efficiencies and savings for aggregators will be material. In 2022, AFG estimates that at least 500 employee hours have been spent on substantive assurance reviews. On a conservative estimate, this is equal to a cost to the business of between $100,000 and $150,000 a year. This involves internal participants from a wide range of business functions including risk and compliance, legal, IT, information security, analytics, broker services and partnerships. If there was one review conducted under the Program, we estimate that the cost to AFG would be approximately 10% of the current costs.

If these internal resources are reallocated, AFG will be able to spend additional time training and auditing its own brokers so they can continue to provide an excellent service to their customers. There is a clear public benefit in this reallocation of expenses.

The ACCC questioned in the Draft Determination whether the Program will lead to increased compliance standards. AFG prides itself on its market leading adherence to compliance standards for its brokers, including its credit representatives. AFG welcomes the opportunity with the Program to increase the compliance standards across the industry to meet AFG's current standards. There is no evidence that the Program would default to the lowest common denominator. In contrast, AFG expects that high performing aggregators and market participants will lift the compliance standards in the industry by shining a light on those practices and allowing participant lenders to benchmark all industry participants against this higher standard.

As noted earlier, AFG supports a redesign of the Program to define a more transparent scope based on clearly defined compliance outcomes such as broker best interests duty, responsible lending practices, and avoiding conflicts of interest and conflicted remuneration.

Please do not hesitate to contact AFG if you require any further detail about the matters raised in this submission or if AFG can provide any further assistance.

Yours sincerely

Australian Finance Group Ltd