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By email: [REDACTED]

Anthony Hilton
Director - Competition Exemptions
Australian Competition and Consumer Commission

Copies

Dear Mr Hilton

Application by the Australian Banking Association (ABA) to revoke Authorisation AA1000441-2 and substitute Authorisation AA1000683 – Response to interested party submissions

We refer to the submissions made by the Australian Securities & Investments Commission (ASIC), Consumer Action Law Centre (CALC), Australian Financial Complaints Authority (AFCA) and Banking Code Compliance Committee (BCCC) regarding ABA's application for revocation and substitution with respect to the Banking Code of Practice dated 20 November 2024 (the reauthorisation application).¹

ABA's submissions in relation to authorisation conditions in the reauthorisation application

In the reauthorisation application, ABA sought reauthorisation of the Proposed Conduct without the conditions imposed in the 2019 Authorisation on the basis that:

- in relation to the **Informal Overdraft Condition**, there is limited potential for public detriment, or for the public benefits arising from the Proposed Conduct to be undermined by removing the Informal Overdraft Condition, given the limited circumstances where interest might be inadvertently charged. As mentioned in the reauthorisation application, of the 15 member banks that offer basic accounts, six do not have overdraft facilities at all, eight do not charge interest in limited circumstances where it could be overdrawn, and one bank's policy is to refund interest. The ABA submitted that the condition is no longer necessary;
- in relation to the **Eligible Customers Condition**, it is clear from the data that the ABA presented in the reauthorisation application that there has been significant uptake in BBAs during the term of the 2019 Authorisation, with member banks opening more than ~5.28 million BBAs resulting in substantial savings for these customers. This data was not available to the ABA when responding to the various consultations on the Banking Code, including the ASIC consultation concluded in June 2024. Member banks would, in any event, be required to raise awareness about these products under existing obligations of the Banking Code. Accordingly, the ABA submitted that this condition is not required to achieve public benefits; and

¹ Defined terms in this submission have the same meaning as in the reauthorisation application.

- in relation to the **Reporting Conditions**, the ABA submitted that these were no longer warranted in light of the significant public benefits that manifested during the term of the 2019 Authorisation as set out in detail in the reauthorisation application.

ABA's response to interested party submissions in relation to conditions

The ABA considers that the arguments raised in its reauthorisation application in support of the conditions no longer being necessary to achieve the public benefits associated with the Proposed Conduct remain valid. However, the ABA acknowledges the points raised by interested parties in their submissions to the ACCC. To address these points and mitigate any concerns, the ABA and member banks:

- (a) in relation to the **Informal Overdraft Condition**, would not object to reauthorisation being granted subject to the condition as currently set out in paragraph 5.8(a) of the 2019 Authorisation; and
- (b) in relation to the **Eligible Customers Condition**, would not object to reauthorisation being granted subject to the condition as currently set out in paragraph 5.8(c) of the 2019 Authorisation.

Regarding the Reporting Conditions:

The ABA acknowledges the interested party submissions, including from ASIC, and agrees that if the reporting conditions were to be imposed in the context of the Proposed Conduct, the reporting conditions in the 2019 Authorisation could be improved to streamline their operation and effectiveness. The ABA has suggested some proposed improvements on page three below.

However, the ABA highlights the following points in response to ASIC's and other interested party's suggestions for varied reporting conditions:

- (a) the ABA would not object to a condition requiring the annual publication of a list of member banks who offer basic accounts as suggested in paragraph 39(a) of ASIC's submission dated 27 November 2024. However, the ABA notes that this is already substantively covered by the condition set out in paragraph 5.8(e) of the 2019 Authorisation;
- (b) the ABA considers that the amended condition proposed in paragraph 39(b) of ASIC's submission is not appropriate as the current Eligible Customers Condition to which the reporting conditions relate places an obligation on member banks in relation to existing customers, rather than new customers. In addition, there are existing Banking Code obligations that relate specifically to new customers, including to raise awareness of basic accounts and to train staff to recognise customers or potential customers that may qualify for basic accounts.² The ABA does not consider that an additional ACCC condition focussed on new customers is warranted in the circumstances;
- (c) further, it is not appropriate to use the number of customers 'successfully migrated' (as a percentage of customers identified by member banks as eligible) as a measure of success of basic accounts or of member banks' awareness campaigns, as suggested by ASIC's proposed condition in paragraph 39(c) of its submission. The basic account framework is not designed to remove customer choice and there will be many reasons why a customer may elect not to move a basic account despite being eligible, including differences in functionality between basic and other accounts. Many eligible customers exercise their choice and actively elect not to have a basic account. The ABA does not consider that this proposal is appropriate, nor that this additional reporting condition would achieve the original purpose of the conditions which is to monitor effectiveness of the authorised conduct or compliance with other conditions. However, as proposed below, member banks are able to report on actions taken to make existing customers who may be eligible for a basic account aware of their potential eligibility and the

² Banking Code, cls 45 and 48 and corresponding cls 60 and 66 in the Revised Code.

special features of these basic accounts in compliance with the Eligible Customers Condition; and

- (d) the ABA also notes the feedback of the BCCC and CALC which stated that public reporting would increase accountability and awareness. As noted above, the ABA would not object to ASIC's proposed condition at paragraph 39(a) and report on which banks offer BBAs on an identified basis annually to increase awareness. However, the ABA considers the information provided in the reporting is confidential and competitively sensitive in nature. Other than a list of banks who offer basic accounts, the ABA does not consider it appropriate to publish the reporting information in an identifiable (i.e. named) manner.

The ABA makes the following suggestions as to how the Reporting Conditions could be streamlined to operate more effectively:

- the Reporting Conditions should apply equally to all member banks and no longer distinguish between different categories of member banks. This will ensure the reporting obligations are standardised across all member banks and increase consistency around reporting compliance;
- the ABA would report annually on the following:
 - on an identified basis:
 - a list of member banks that offer basic accounts and the account product name;
 - on a deidentified basis:
 - whether a member bank commenced, continued, or ceased to offer basic accounts that have the minimum features set out in cl 44B of the current Code;³
 - for member banks who have commenced or continued to offer basic accounts during the reporting period, or if banks ceased to offer basic accounts then for the part of the reporting period prior to them ceasing:
 - the number of basic accounts that have been opened by each member bank that have the minimum features set out in cl 44B of the current Code;⁴
 - number of basic accounts, subject to the special features in cl 47 of the current Banking Code and the Informal Overdraft Condition, that were overdrawn in circumstances where it was impossible or reasonably impractical for the bank to prevent a customer's account from being overdrawn without the account holder's express consent;⁵ and actions taken to make existing customers who may be eligible for a basic account aware of their potential eligibility and the special features of these basic accounts.⁶

Term of the reauthorisation

The ABA notes the submissions from the BCCC and AFCA that authorisation should only be granted for a further five-year period to enable changes to the Banking Code to address "*emerging issues or compliance gaps*".

The ABA submits that granting authorisation for a ten-year term would not be an impediment to any updates to the Banking Code. If any updates to the provisions of the Banking Code that are subject of

³ Clause 59 in the Revised Code.

⁴ Clause 59 in the Revised Code.

⁵ As noted above at page 1, for certain members the design of the basic bank account is to have no overdraft facilities at all and consequently, this reporting criteria likely to be irrelevant to such members.

⁶ Please note, that for certain members of the ABA the default account or only account offering is a basic bank account. Consequently, this reporting criteria is likely to be less relevant or irrelevant to such members.

the new reauthorisation are required in the future, the ABA and member banks would be, in any event, required to approach the ACCC to either seek a minor variation (as the ABA has done in the past) or apply for revocation and substitution of the existing authorisation to implement the changes. It is not the case that the Banking Code would have to remain unchanged for ten years and indeed the ABA has committed to independent reviews of the Banking Code on a 5-year cycle.

Given the significant public benefits that have arisen during the current authorisation and the review mechanisms that already exist in the Banking Code, the ABA submits that a 10-year authorisation period is appropriate.

Member banks' processes relating to droughts and natural disasters

As stated in the reauthorisation application, it is the policy of each of the eight member banks that currently offer loans for farming operations not to charge customers default interest during periods of drought or natural disaster, with some member banks going beyond the Banking Code requirements and not charging any default interest on agricultural loans regardless of any periods of drought or natural disaster.

In response to queries from the ACCC regarding member banks' processes in relation to droughts and natural disasters, the ABA notes the following:

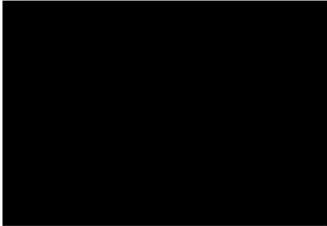
- *How many times have State or Territory governments declared a drought or natural disaster between 12 December 2019 – 12 December 2024*
 - While the ABA does not have a readily available record for all member banks of every occasion where a State or Territory Government has declared a natural disaster or drought over this period, the Department of Home Affairs maintains a public register of declared disasters on its website.⁷ Based on these records there were 256 natural disasters declared between December 2019 to December 2024.⁸
- *Under the Banking Code member banks may also be satisfied on other grounds that land under an agricultural loan may be subject to drought or natural disaster. Please provide further details of the member banks' processes for determining these periods.*
 - In lieu of a State or Territory government declaration, as noted in the Banking Code, banks may be satisfied on other grounds that land is in drought or subject to a natural disaster. Member banks manage this on a case-by-case basis, including through discussions with their customers who may be experiencing hardship and encourage all customers to contact their bank to seek support. In these circumstances, member banks may independently offer various financial assistance measures, including:
 - not charging default interest on loans secured by agricultural land for the period of the drought or natural disaster (per cl 179A of the current Banking Code);
 - a deferral of scheduled loan repayments;
 - waiving fees and charges, including break costs on early redemption of farm management deposits;
 - debt consolidation to help make repayments more manageable;
 - restructuring existing loans free of the usual establishment fees;

⁷ Department of Home Affairs, Australian Disasters register. Available at: <https://www.disasterassist.gov.au/find-a-disaster/australian-disasters#>.

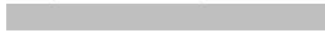
⁸ Please note, the Department of Home Affairs' disaster register does not record periods of drought. The ABA understands this is because the majority of State and Territory Governments no longer have an official drought declaration policy.

- deferring other interest payments on a case-by-case basis;
- offering additional finance to help cover cash flow shortages;
- deferring upcoming credit card payments;
- increasing emergency credit card limits; or
- waiving the interest rate reduction for early withdrawal of term deposits.

Yours faithfully



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