



Australian
Competition &
Consumer
Commission

Draft Determination

Application for Authorisation

Lodged by

**The Australian Bankers' Association
(ABA) on behalf of 10 ABA member
retail banks**

In respect of

*proposed arrangement in which
the 10 member banks will agree to offer a Basic Bank
Account with an agreed set of minimum standards*

Date: 16 December 2002

Authorisation no: A30214
Public Register Number: C2002/782

Commissioners: Fels
Bhojani
Martin
Jones
McNeill
Wilkinson

Executive Summary

Application

On 20 May 2002, the Australian Bankers' Association (ABA) on behalf of 10 member banks lodged an application for authorisation for its basic bank account initiative.

The Basic Bank Account (BBA) initiative involves an arrangement in which the ten member banks will agree to offer a BBA which will contain at a minimum, the following features:

- no account keeping fee;
- no minimum account balance required to open the account;
- no minimum monthly balance requirements;
- unlimited number of deposits provided free of charge each month;
- six non-deposit transactions provided free of charge each month which includes three over the counter withdrawals each month.

The 10 member banks will agree to make available their BBA to at least holders of a Commonwealth Government Health Card, the Commonwealth Government Seniors' Card and the Commonwealth Government Pensioner Concession Card.

These features comprise the minimum features of the BBA. The 10 member banks may choose to offer a BBA which provides additional features or benefits.

Submissions

The ABA submitted that there is nothing in the proposed arrangement which would or should lead to a decrease in the number, features and service levels of existing transaction accounts and basic banking products. The ABA considers that the detrimental effect of the proposed arrangement on competition (if any) is minimised by the fact that the BBA sets out the minimum features or benchmarks for the BBA initiative and does not purport to mandate the features of such accounts. The ABA considered that the proposed BBA should expand customer choice in the Transaction Accounts Market and facilitate greater awareness amongst consumers to permit more informed choices in their dealings.

The Commission received 29 written submissions relating to the application for authorisation lodged by the ABA and held meetings with a number of community groups. The majority of submissions support in principle the idea of a BBA but did not support the minimum features proposed by the ABA.

Competition and Public Benefit Analysis

The Commission may grant authorisation where the public benefit arising from the arrangements or conduct outweighs the public detriment, including the anti-competitive detriment.

The Commission considered this application in the context of an emerging State-based market for basic banking products which are aimed at low income consumers, primarily concession card holders.

The Commission notes that current basic banking products appear to have developed as a result of competition amongst individual banks and this competition has been sufficient to drive individual banks to innovate in the development of basic banking products of which the majority provide a higher number of fee free transactions than that proposed under the BBA initiative.

The Commission strongly supports the idea of basic bank accounts being made available to low income earners. However, the Commission is concerned that the proposed agreement between the banks on minimum features of a basic banking product has the potential to dampen competition in the emerging market for basic banking products and may result in the minimum features becoming the de facto industry standard. Such a result may have the effect of reducing the features of basic banking products currently available to low income consumers and reduce consumer choice.

Agreed minimum standards for a basic bank account could benefit the public to the extent that the proposed standard promoted an increase in the features offered by current basic banking products and act as a "safety net" for low income consumers. However, the majority of basic banking products which are currently available provide a higher number of fee free transactions than that proposed under the BBA initiative. As such, the Commission does not consider that the proposed BBA initiative in its current form is likely to expand customer choice or enhance the products already available to an extent that it is likely to result in any significant public benefit.

The Commission accepts that the implementation of the BBA initiative could result in benefits to the public. However, the extent of the public benefit likely to result from the BBA initiative depends on the features of the proposed BBA initiative.

The Commission is concerned at the low level of features proposed under the BBA initiative. In particular, the Commission is concerned about the relatively small number of fee free transactions provided under the BBA initiative, the fact that balance inquiries will be counted as part of the 6 fee free transactions under the proposed BBA initiative and at the level of dishonour and/or account overdrawn fees which will be applied to basic banking accounts.

The Commission has not been provided with sufficient evidence to suggest that the proposed BBA would facilitate the supply of better information and awareness amongst consumers about basic banking products as claimed by the ABA.

Consequently, the Commission considers that the public benefit likely to result from the proposed arrangement will not outweigh the anti-competitive detriment.

As such, the Commission is proposing to deny authorisation.

The Commission would welcome a revised proposal by the ABA which addresses its concerns and the concerns of interested parties in response to this draft determination.

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ATTACHMENTS

- A List of written submissions received by the Commission**
- B List of meetings Commission held with interested parties**
- C List supplied to the Commission by the ABA of products currently offered by 10 member banks that meet or approximated the proposed BBA initiative**

1. Introduction

- 1.2 Organisations which engage, or propose to engage, in anti-competitive business arrangements that could breach the *Trade Practices Act 1974* (the Act) may apply to the Australian Competition and Consumer Commission (the Commission) for authorisation of such arrangements or conduct. Authorisation provides immunity from legal proceedings under the Act in respect of the arrangements. The Commission may grant authorisation where the public benefit arising from the arrangements outweighs the public detriment, including the anti-competitive detriment. When an application for authorisation is made, the Commission is required under the Act to make a determination in writing either granting or dismissing the application. The Commission can also grant authorisation subject to conditions. The Commission is required to take into account any submission made to it in relation to the application.
- 1.3 Before making a final decision the Commission is first required to issue a draft determination in writing. The applicant or any interested party dissatisfied with the draft may request that the Commission hold a conference with the applicant and interested parties. At the conference parties can discuss the operation and effect of the draft determination. After any such conference the Commission reconsiders the application taking into account the comments made and further submissions received and then makes its final determination.

Application

- 1.4 On 20 May 2002, the Australian Bankers' Association (ABA) on behalf of 10 member banks lodged an application for authorisation for its basic bank account initiative. Application A30214 was lodged under section 88(1) of the Act for an authorisation to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act.
- 1.5 Specifically, the ABA on behalf of 10 member banks is seeking authorisation for a proposed arrangement in which the ten member banks will agree to offer a Basic Bank Account (BBA) which will contain at a minimum the following features:
- no account keeping fee;
 - no minimum account balance required to open the account;
 - no minimum monthly balance requirements;
 - unlimited number of deposits provided free of charge each month;
 - six non-deposit transactions provided free of charge each month which includes three over the counter withdrawals each month.

- 1.6 The non deposit transactions include account withdrawals, account inquiries and the provision of account statements.
- 1.7 It is proposed that the 10 member banks will agree to make their BBA available to at least holders of the Commonwealth Government Health Card, the Commonwealth Government Seniors' Card and the Commonwealth Government Pensioner Concession Card.
- 1.8 These features comprise the minimum features of the BBA. The 10 member banks may choose to offer a BBA which provide additional features or benefits.

The Applicant

- 1.9 The ABA is an unincorporated association which represents members of the banking industry on major issues which affect financial services in Australia. The ABA is a non-trading, non-profit making body.
- 1.10 Any bank which is authorised to carry on a banking business in Australia, and which carries on such business, may apply for admission to the membership of the ABA. The ABA currently has 23 member banks which includes traditional retail trading banks, regional banks, foreign and wholesale banks.
- 1.11 This authorisation application has been lodged by the ABA on behalf of 10 member banks. These banks are:
 - National Australia Bank Limited;
 - Commonwealth Bank of Australia;
 - Bank of Western Australia;
 - Adelaide Bank Ltd;
 - Australia and New Zealand Banking Group Ltd;
 - Westpac Banking Corporation;
 - St George Bank Ltd;
 - Suncorp Metway Bank Ltd;
 - Bank of Queensland Ltd; and
 - Bendigo Bank Ltd.
- 1.12 ~~Most of the other banks that are members of the ABA but not parties to this agreement do not offer retail banking services to the general public.~~

Conduct of the Inquiry

1.12 The Commission conducts inquiries and assessment of authorisation applications in accordance with the requirements of the Act and with the procedures for authorisations as described in the Commission's *Guide to Authorisations and Notifications*. A chronology of the main stages of the Commission's inquiry is provided below in Table 1.1.

Table 1.1 – Chronology of the Commission's assessment of the authorisation application

Date	Action
20 May 2002	Application for authorisation received with request that the ABA's supporting submission be kept confidential
21 May 2002	Letter sent to applicant rejecting confidentiality claim for entire supporting submission
24 May 2002	Applicant withdraws its request for confidentiality
28 May 2002	Letter sent to applicant requesting additional information
28 May 2002	Letters seeking submissions sent to interested parties
8 July 2002	Letter to ABA providing copies of submissions received from interested parties.
17 July 2002	Closing date for receipt of submissions from interested parties ¹
26 July 2002 – 23 August 2002	Meetings held with interested parties ²
6 August 2002	Letter to ABA providing copies of further submissions received from interested parties.
28 August 2002	ABA provides information requested in the Commission's letter of 28 May 2002
2 September 2002	Letter to ABA providing copies of further submissions received from interested parties and copies of file notes from meetings with interested parties. In addition the Commission requested some additional information from the ABA by 13 September 2002.
3 September 2002	Staff from the Commission meet with ABA ³ . Further information was requested from the ABA at this meeting
16 October 2002	The ABA provides some of the information

¹ The closing date for submissions was originally set for 3 July 2002. This was extended to 17 July 2002 in response to requests from interested parties.

² Records of these meetings have been placed on the public register.

³ A record of this meeting has been placed on the public register.

	asked by the Commission. The ABA indicated that the Commonwealth Bank would respond to the Commission separately relating to the concern raised by interested parties that the Commonwealth Bank's Ezy Action account would only be offered only through its agency arrangement with Woolworths.
23 October 2002	The Commission sends a letter to ABA indicating that a substantive response is required to the issues raised by interested parties in their submissions if the ABA is to demonstrate that the public benefit likely to result from the BBA will outweigh the anti-competitive detriment. A response by the ABA is required before 13 November 2002.
29 October 2002	Staff from the Commission meet with the ABA to discuss issues raised in the Commission's letter of 23 October 2002. ⁴
30 October 2002	The Commission sends a letter to ABA confirming that if the ABA decides to provide a supplementary submission addressing one or more of the concerns of the interested parties in the context of its current application it would need to provide a response before 13 November 2002.
14 November 2002	ABA provides its response to issues raised by interested parties in submissions.
21 November 2002	The Commonwealth Bank responds to issues raised by interested parties relating to its Woolworths Ezy Action Account.

⁴ A record of this meeting has been placed on the public register.

2. Background to the Application

- 2.1 The merits of the introduction of a BBA have been a matter of public debate for many years.

The Martin Committee

- 2.2 The Martin Committee in its report "A Pocket Full of Change" published in 1991 considered whether banks should provide a basic banking product. The Martin Committee's Report stated:

When considering who should take responsibility for ensuring the on-going provision of basic banking services, it is important to take into account the need in any society for at least one 'safe haven' for consumer deposits and savings. Consumers need safety from institutional collapse. In Australia, that need is fulfilled by the banks.

The Australian society in which this primary policy goal is to be achieved is characterised by a high level of (partly compulsory) participation in the financial system by the poor. If their access to the 'safe havens' in the financial system is to be assured, it may be that one of the payments which society should demand of banks for their privileges is to ensure that all Australians can afford to deposit their savings and other funds in the safety of a bank.⁵

The Committee recommended:

that retail banks and the Department of Social Security jointly investigate the feasibility of developing a basic bank product. The product should be offered by all retail banks, should allow for a set number of free withdrawals each week and should be targeted to the needs of low income Australians.⁶

- 2.3 However, debate over the issues relating to providing a basic banking product remained unresolved.⁷

⁵ The House of Representatives Standing Committee on Finance and Public Administration, (1991), A Pocket Full of Change, pg 451.

⁶ The House of Representatives Standing Committee on Finance and Public Administration, (1991), A Pocket Full of Change, pg 452.

⁷ PSA, Inquiry into Fees and Charges Imposed on Retail Accounts by Banks and other Financial Institutions and by Retailers on EFTPOS Transactions, (1995), pg 227.

Prices Surveillance Authority

- 2.4 In 1995, the Prices Surveillance Authority (PSA) report of its Inquiry into bank fees and charges also raised the issue of a basic banking product.
- 2.5 The idea of a basic banking product and proposals for a regulatory imposition of such a product were the subject of much discussion in Inquiry hearings and in written submissions.
- 2.6 During the course of the inquiry the PSA prepared a draft Basic Transaction Account to assist the policy debate on providing such a product. This term was used by the PSA to widen the identification of the type of financial institution that may provide the service.
- 2.7 The main features of the PSA's draft Basic Transaction Account were:
- no account keeping fee;
 - no minimum or maximum monthly balance;
 - deposits credited directly to the account, cash deposits being free;
 - ATM deposits free for the statement-based BTA;
 - fees payable on cheque dishonours, etc., at the discretion of the institution;
 - minimum cash withdrawal of \$40 or a transaction fee would apply;
 - interest payable on credit balances at the institution's discretion; and
 - government charges payable, leaving discretion to institutions to absorb Financial Institutions Duty (FID)/Bank Account Debit tax (BAD).
- 2.8 The PSA made no recommendation relating to the provision of a Basic Transaction Account. There were a number of reasons given by the PSA for this conclusion:⁸
- other measures proposed in its report should have the effect of addressing a number of concerns. Measures proposed in the report included restructuring fees to better reflect costs; the reassessment of the basis on which fee exemptions are provided and the abolition of FID and BAD tax on accounts in receipt of social security payments;

⁸ PSA, *Inquiry into Fees and Charges Imposed on Retail Accounts by Banks and other Financial Institutions and by Retailers on EFTPOS Transactions*, (1995), pg xxxvii –xxxviii.

- there were a number of existing bank products which came close to providing the basic services discussed in the report;
- many credit unions and building societies offer products which fulfil the basic service requirements;
- there was evidence provided in confidential hearings which indicated that financial institutions were considering the development of basic transaction products and it was regarded as likely that such products would be a feature of the market in the future; and
- the concept of a compulsory basic product involves some complex issues in design and funding which would make implementation difficult (but not impossible).

2.9 The PSA did note that if developments in the pricing of retail transaction accounts were such that access to accounts was constrained for low income earners, then reconsideration of the provision of basic banking product would be justified.

Review of the Code of Banking Practice

2.10 In May 2000, Mr Richard Viney was appointed by the ABA to undertake an independent review of the Code of Banking Practice (the Code). Community concern relating to access to basic banking products for low income earners was raised in the submissions referred to in the Review.

2.11 Submissions from consumer representatives argued that the Code should provide that any person should be able to open a deposit account with any bank and that this right should not be limited by minimum deposit or opening balance requirements or other conditions. Submissions also argued that all subscriber banks should offer a basic banking account with a specified minimum number of fee free transactions.⁹

2.12 In his interim report, Mr Viney considered that there was not much point in requiring banks to offer basic accounts without also specifying detailed minimum features in specific terms. It was for this reason that the interim recommendation was that:

- *The Code requires banks to provide details of their accounts which are most suitable to low income or disadvantaged persons who are prospective customers and also to existing customers whose present facilities may not be optimal.*¹⁰

2.13 A working group was formed by the ABA to consider how the banking industry could respond to these concerns relating to the provision of banking services.

⁹ Review of the Code of Banking Practice Final Report, October 2001, pg. 35.

¹⁰ Review of the Code of Banking Practice Final Report, October 2001, pg 36.

These discussions resulted in the development of the Basic Bank Account initiative.

2.14 On 26 March 2001, the ABA announced a number of initiatives which included:

- the BBA initiative;
- a Disability Action Plan; and
- a transaction services and branch closure protocol for rural and remote areas.¹¹

2.15 The ABA stated in its media release of 26 March 2001 that it would need to apply for authorisation with the Commission before the BBA could be implemented by the ten member banks. The application was lodged on 20 May 2002.

2.16 Following the ABA's announcement a number of banks individually announced that they would be offering basic banking products, for example, the National Australia Bank announced its intention to offer a basic bank account on 24 May 2001,¹² and the ANZ announced on 3 June 2001 that it would introduce a basic bank account.¹³

2.17 In his Final Report on the review of the Code released in October 2001, Mr Viney noted that the ABA had announced a basic bank account standard and was proposing an application for authorisation to the Commission for banks to agree to provide accounts that at least meet the standard. As such Mr Viney considered that the interim recommendation stated above was satisfactory.

Bank Fees

2.18 The debate about the need for basic bank accounts has occurred in the context of concerns that rising bank fees impose a significant burden on low income earners and may limit access to banking products.

Outline

2.19 Historically, banks have tended to recover much of the cost of providing transaction services through their general deposit and loan business; for the most part, no interest was paid on deposits in cheque accounts. Transaction services were often provided free of explicit charge.

2.20 However, increased competition on deposit and loan business following deregulation has changed this situation substantially. Banks are increasingly unable to cross-subsidise payment services from other business areas and, as a result, both retail and wholesale payment services usually attract explicit fees.¹⁴

¹¹ See ABA Media Release 26 March 2001.

¹² See National Australia Bank Media Release 24 May 2001.

¹³ ANZ media release, 3 June 2001.

¹⁴ EMEAP Working Group on Payment and Settlement Systems, Payment Systems in EMEAP Economies, July 2002, Pg 19.

- 2.21 The Reserve Bank of Australia (RBA) Bulletin released in July 2001 on bank fees in Australia provides an outline of the results of the annual survey of the fee income of Australian banks for 2000. The RBA stated that the total domestic fee income of banks in 2000 amounted to \$6.3 billion, an increase of 14 per cent from the previous year, a little more than the increase in banks' assets for the year. The RBA noted that with banks' interest income growing more slowly than banks' assets (as interest margins have fallen due to increased competition) banks' fee income has increased as a proportion of their total income. In July 2001, banks' fee income currently represented 24 percent of their total income, up from 21 per cent in 1997.

Households

- 2.22 The RBA Bulletin indicated that of the \$2.15 billion in fees from households, loan fees contribute the largest share, while transaction fees have been the most rapidly growing component in recent years (see Table 2.1). The RBA stated that there were several factors which account for the overall growth in bank fees paid by households.
- 2.23 One relevant factor is the growth in the number of transactions, the number of deposit accounts and the volume of lending. The RBA Bulletin noted that loan fee earnings grew rapidly over this period partly reflecting an end to the discounting of home loan establishment fees. The average fee per credit card on issue also increased, reflecting increases in the annual fee charged by several banks and a decline in the share of credit cards on issue that do not carry an account keeping fee (and have no interest free period).

**Table 2.1: Banks' Fees from the Household Sector
\$million**

	1997	1998	1999	2000	Annual average per cent change from 1997 to 2000	Per cent of total fees earned from households in 2000
Deposits	189	218	266	317	19	15
Loans						
- Housing	288	430	402	482	19	22
- Personal	190	149	184	222	5	10
- Credit card	112	123	162	227	27	11
Total loans	590	702	747	932	16	43
Transactions	174	345	470	573	49	27
Other fees	274	306	331	327	6	15
Total households	1 227	1 572	1 814	2 148	21	100

Source: RBA Bulletin, Bank Fees in Australia, July 2001, p 2.

2.24 Costs incurred in running a bank account also contribute to the growth in bank fees paid by households. These costs typically consist of a flat monthly account servicing fee and transaction fees that are incurred when using an account. Total transaction fees paid in 2000 totalled \$573 million, of which over 80 per cent were fees from deposit accounts. Table 2.2¹⁵ gives an outline of the average charges on a standard household deposit account of the major banks for a range of transactions and shows how these have changed in recent years.

2.25 Since 1995, the average monthly account servicing fee has increased, as has the minimum balance required in order to avoid paying this fee. The average charge per transaction differs significantly between transaction types, as banks have sought to use the fee structure to encourage customers to move their transactions to less costly electronic channels. Over the counter withdrawals experienced a large increase in their average charge since 1995. Cheque transactions have changed little over the same time period.

¹⁵ Table 2.2 was taken from the RBA Bulletin, Bank Fees in Australia, July 2001, p 3.

Table 2.2: Transaction Charges of Major Banks*

	Dollars				
	1995	1998	1999	2000	Latest
Deposit accounts:					
Account-servicing (per month)**	2.00	4.00	5.00	5.00	5.00
Transaction fees (per transaction)					
- Counter withdrawals	1.00	2.00	2.15	2.15	2.75
- Cheques	0.70	0.65	0.75	0.75	1.00
- Own bank's ATM	0.40	0.55	0.60	0.60	0.65
- Other bank's ATM	0.40	1.05	1.30	1.40	1.40
- EFTPOS	0.40	0.45	0.50	0.50	0.50
- Telephone	na	0.30	0.35	0.35	0.50
- Internet	na	0.20	0.30	0.30	0.20
Memo items:					
Number of free transactions (monthly)***	11	8	8	8	8
Range of minimum balances required to waive account-servicing fees (\$)	300-500	500	500-2 000	500-2 000	2 000

*Based on public information on selected, widely used accounts. As at June.

**Predominant charge for banks with such a charge.

*** For banks with such a facility.

Source: RBA Bulletin, *Bank Fees in Australia*, July 2001, pg 3.

Bank Fees and Interest Margins

2.26 Changes in bank fees since the mid 1990s have occurred against a setting of falling bank interest spreads (measured as the average interest rate received less the average interest paid). The RBA stated that since 1997, the interest spread of the major banks has fallen by three quarters of a percentage point to 2.7 percentage points.

- 2.27 The RBA stated that data for 2000 continues to support the conclusion that the reductions in net interest margins have significantly exceeded the increases in banks' fee income.
- 2.28 However, the RBA noted that the aggregate data does not necessarily mean that the developments in fees and interest margins have made all customers better off. The RBA stated that benefits are likely to have been greatest for borrowers, especially for household borrowers, since they have gained significantly from lower interest rate margins and have also been partly protected from higher bank fees. In contrast, the RBA stated that customers who do not have a loan, who have a low balance, or those with a high volume of transactions will not have benefited from these trends.¹⁶

¹⁶ RBA Bulletin, Bank Fees in Australia, July 2001, p. 6.

3.Submissions

Submission by the Applicant

- 3.1 The ABA submitted that for the purposes of this application the relevant market which will be affected by the proposed arrangement is the Transactions Account market, being the market for the supply of retail transaction accounts in each State and Territory.
- 3.2 The ABA submitted that there is nothing in the proposed arrangement which would or should lead to a decrease in the number, features and service levels of existing transaction accounts and basic banking products. The ABA submitted that some participants may wish to rationalise their product offerings to avoid duplication, but the number and variety of retail transaction accounts in the Transaction Accounts Market is likely to remain stable.
- 3.3 The ABA submitted that it is of the view that the detrimental effect of the proposed arrangement on competition (if any) is minimised by the fact that the BBA sets out the minimum features or benchmarks for the BBA and does not purport to mandate the features of such accounts. The ABA stated that as the range of transaction and basic bank accounts currently offered differ significantly and as these products have evolved over time through competition and without any authorisation for a collective agreement on the minimum features to be included, it expects that additional features and benefits will continue to be provided by some of its members, in relation to their transaction and other basic accounts currently available in the market and in any account offered under the proposed arrangement.
- 3.4 The ABA submitted that the BBA should:
 - expand customer choice in the transaction accounts market, particularly for customers on low, fixed incomes; and
 - facilitate greater awareness amongst consumers to permit more informed choices in their dealings.
- 3.5 The ABA submitted that any lessening of competition which could flow from the BBA is clearly outweighed by the public benefits.
- 3.6 The ABA's response to specific issues raised by interested parties are discussed in the Commission's Evaluation section (Chapter 5).
- 3.7 The Commonwealth Bank also provided its own response to issues raised by interested parties in relation to its Ezy Action Account. This submission is discussed in the Commission's Evaluation section.

Submissions by Interested Parties

- 3.8 The Commission sought submissions from a wide range of interested parties in relation to the application. A copy of each submission is held on the Commission's public register. The Commission received 29 written submissions relating to the ABA's application for authorisation lodged by the ABA. A list of interested parties who lodged written submissions is at **Attachment A**.
- 3.9 Staff from the Commission also held meetings with a number of community groups who were not able to lodge written submissions with the Commission or who had requested to meet with Commission staff to discuss their written submissions further. A copy of each file note from these meetings is held on the Commission's public register. A list of the interested parties the Commission held meetings with is at **Attachment B**.
- 3.10 The majority of submissions support in principle the idea of a BBA but have a number of concerns with the proposal made by the ABA. The main issues raised by interested parties are discussed below.
- Interested parties expressed concern that by limiting the BBA to the holders of Commonwealth Government health concession cards this may exclude low income earners who may not be eligible for such concession cards.
 - The ABA's proposal includes a minimum standard of six free transactions per month including 3 over the counter withdrawals. The majority of interested parties argued that this was inadequate, with most proposals for fee free levels ranging from between 10 and 15 transactions per month. For example:
 - the Financial Counsellors Association of NSW stated that in its experience low income customers require at least 12 non deposit transactions per month with 6 of these free over the counter withdrawals;
 - the Redfern Legal Centre stated that consumers should be allowed to make at least 14.3 essential transactions per month for free;
 - the Albany Community Resource Agencies Network considered that the number of free transactions offered under the BBA should be increased to at least 10 a month which includes 5 over the counter transactions;
 - the Australian Council of Social Service considered that around fee free 15 withdrawals should be provided under the BBA;
 - Anglicare Financial Counselling Service (WA) stated that in their experience low income consumers require at least 12 transactions per month and consumers should be allowed to make 8 over the counter withdrawals per month.

- the Department of Veterans' Affairs considered that the number of free non deposit transactions should be increased to 15 or more per month and specifically include cheque withdrawals in this range;
 - the Australian Consumers' Association (ACA) stated that according to 2001 figures from the Australian Payments Clearing Association, Australian consumers make approximately 10 electronic transactions per month. The ACA considered that 10 electronic transactions and 4 over the counter transactions per month would appear to be a reasonable starting point;
 - the Council on the Ageing considered that the number of fee free transactions should be increased to 10 electronic transactions and 4 over the counter withdrawals as recommended by the ACA;
 - the Consumer Credit Legal Service WA considered that the number of fee free transactions should be increased to 12 withdrawals per month (3 withdrawals per week);
 - the NSW Department of Fair Trading considered that 12 free transactions per month including 4 over the counter withdrawals should be offered by basic bank accounts;
 - the Aboriginal and Torres Strait Islander Commission considered that the number of fee free transactions should be increased to 4 over the counter transactions and 8 electronic transactions;
 - the Consumer Credit Legal Centre NSW considered the number of fee free transactions should be increased to 12 over the counter withdrawals (3 per week) and 40 electronic transactions; and
 - the Financial Consumer Rights Council, Consumer Law Centre Victoria and the Combined Pensioners and Superannuants Association of NSW considered that the BBA should provide for an unlimited number of transactions. The Australian Financial Counselling and Credit Reform Association stated there should be an unlimited number of free over the counter transactions.
- A number of interested parties argued that balance inquiries should not be included in the number of fee free transactions provided under the BBA. This is important in order for low income consumers to have knowledge of how much money they have in their accounts and would assist low income consumers to avoid dishonour fees and account overdrawn fees.
 - It was argued that transactions which occur at Foreign ATM should be included in the number of fee free transactions.
 - A number of interested parties considered that the BBA should incorporate a cheque book facility.
 - Some consumer groups raised concern about the level of dishonour and account overdrawn fees charged by banks. The consumer groups who

commented on this issue considered that there should be a form of cap or exemption on such fees for low income consumers.

- It was noted that the ABA's submission does not disclose what fees will be charged for holders of the BBA who incur additional transactions above the six fee free transactions.
 - Interested parties were concerned that if authorisation is granted by the Commission then this could provide a forum for collective policy making by the banks in the future and would set a minimum standard in the market which banks would not exceed.
 - Building societies were concerned that if authorisation is granted to the BBA then banks will be able to compete against building societies as a bloc in the market. Building societies are concerned that through advertising and marketing conducted by the banks, the BBA would be perceived to be a banking only product.
 - Interested parties expressed concern that if the BBA was only made available through agency outlets then this could result in middle/high income earners being able to access their banking services through a bank branch and low income earners being able to only receive banking services from agency outlets. The majority of interested parties supported the BBA being available through agency outlets such as the Commonwealth Bank's agency arrangement with Woolworths, provided that the BBA is also made available through the bank's branch network.
 - Some interested parties expressed concern that the ABA or individual banks may promote and market their proposed basic banking products as "free fee" banking product when in fact a number of fees apply to these accounts.
 - Some interested parties expressed concern about the lack of compliance, educative, or advertising element accompanying the BBA initiative to facilitate awareness and availability of the BBA initiative amongst consumers.
- 3.9 In summary, the majority of interested parties considered that the proposed BBA initiative does not result in sufficient public benefit to outweigh the anti-competitive effect.

4. The Public Benefit Test

- 4.1 The Commission may only grant authorisation where the public benefit test in section 90 of the Act is satisfied.
- 4.2 While section 90 contains three slight variations of the public benefit test, the Commission adopts the view taken by the Trade Practices Tribunal (now the Australian Competition Tribunal) that in practice the tests are essentially the same.¹⁷
- 4.3 In this case, the ABA on behalf of 10 member banks has applied under sub-section 88(1) of the Act¹⁸ to give effect to arrangements that have the purpose, or have or may have the effect, of substantially lessening competition within the meaning of section 45 of the Act.
- 4.4 The relevant formulation of the public benefit test is found in sub-section 90(6) of the Act, which provides that the Commission shall not grant authorisation unless it is satisfied in all the circumstances:
- that the provision of the proposed contract, arrangement or understanding would result, or be likely to result, in a benefit to the public (the public benefit); and
 - that this benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, from the proposed contract, arrangement or understanding (the anti-competitive detriment).
- 4.5 The Commission therefore must examine the likely public detriment from any anti-competitive effect of the arrangements as well as the likely benefit to the public arising from the arrangements and weigh the two to determine which is greater. Should the likely benefit outweigh the likely anti-competitive detriment, the Commission may grant authorisation, which may in turn be subject to conditions.

Definition of public benefit and anti-competitive detriment

- 4.6 Public benefit is not defined by the Act. However, the Australian Competition Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.¹⁹

- 4.7 Similarly, anti-competitive detriment is not defined in the Act but the Tribunal has given the concept a wide ambit. It has stated that the detriment to the public constituted by a lessening of competition includes:

¹⁷ *Re Media Council of Australia (No. 2)*(1987) ATPR 40-774 at 48,419.

¹⁸ And the competition codes of each of the participating Australian jurisdictions.

¹⁹ *Victorian Newsagency* (1994) ATPR 41-357 at 42,677.

any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency...²⁰

Future with-and-without test

- 4.8 The Commission also applies the 'future with-and-without test' established by the Australian Competition Tribunal to identify and weigh the public benefit and anti-competitive detriment generated by arrangements for which authorisation has been sought.²¹
- 4.9 Under this test, the Commission compares the public benefit and anti-competitive detriment generated by arrangements in the future if the authorisation is granted with those generated if the authorisation is not granted. This requires the Commission to predict how the relevant markets will react if authorisation is not granted. This prediction is referred to as the counterfactual.

Whether arrangements breach the Act

- 4.10 As indicated above, the ABA's application seeks to make a contract or arrangement, or arrive at an understanding which would have the purpose or have or may have the effect of, of substantially lessening competition within the meaning of section 45 of the Act.
- 4.11 However, in assessing an application for authorisation, the Commission does not form a view about whether the arrangement between the 10 member banks to offer a BBA breaches section 45. It only determines whether the public benefit test has been satisfied.

Term of authorisation

- 4.12 Section 91(1) of the Act allows the Commission to grant authorisation for a specific period of time.
- 4.13 The Commission may authorise different aspects of conduct for which authorisation is sought for different periods.

Conditions

- 4.14 Section 91(3) allows the Commission to impose conditions on authorisations.

²⁰ *Victorian Newsagency(1994) ATPR 41-357 at 42,683.*

²¹ See, for example, *Re Australasian Performing Rights Association (1999) ATPR 41-701.*

5. Commission Evaluation

- 5.1 As set out in paragraph 4.8, the Commission applies the ‘future with-and-without test’ to identify and measure the public benefit and anti-competitive detriment resulting from the arrangement for which authorisation has been sought.
- 5.2 In this case, the Commission proposes to assess the public benefits and detriments resulting from the 10 ABA member banks agreeing to supply a basic bank account that complies with agreed minimum standards compared to a situation where there is no such agreement by the 10 member banks to offer a basic bank account that complies with the minimum standards.
- 5.3 In this context, the Commission notes that the majority of the 10 member banks already offer basic banking products with features that exceed the proposed minimum standards and that these products are being offered in the absence of the proposed agreement.

Market definition

- 5.4 The Commission uses market analysis to identify and measure the public benefit and anti-competitive detriment resulting from arrangements for which authorisation has been sought. This involves the identification of the relevant markets.
- 5.5 Section 4E of the Trade Practices Act states that a market for goods or services includes other goods or services that are substitutable for, or otherwise competitive with, the first goods or services. The QCMA case²² is often cited when seeking to explain how markets are defined:

A market is the area of close competition between firms or, putting it a little differently, the field or rivalry between them... Within the bounds of a market there is substitution – substitution between one product and another and between one source of supply and another, in response to changing prices. So a market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given sufficient price incentive... Whether such substitution is feasible or likely depends ultimately on customer attitudes, technology, distance and cost price incentives.

It is the possibilities of such substitution which sets the limits upon a firm’s ability to ‘give less and charge more’. Accordingly, in determining the outer boundaries of the market we ask a quite simple but fundamental question: If the firm were to ‘give less and charge more’ would there be, to put the matter colloquially, much of a reaction?

- 5.6 Broadly, it is generally accepted that there are four dimensions to assessing whether substitution is likely:
 - product (ie. whether one product is substitutable for another);
 - geographic (ie. whether one source of supply is substitutable for another);

²² *Re Queensland Co-op Milling Association Ltd & Defiance Holdings Ltd* (1976) ATPR 40-012.

- functional (ie. whether the vertical stages of production and/or distribution comprise separate markets); and
 - time (ie the period over which substitution possibilities should be considered).
- 5.7 The process of market definition can be viewed as establishing the smallest area of product, functional and geographic space within which a hypothetical current and future profit maximising monopolist would impose a small but significant and non – transitory increase in price above the level that would prevail absent the arrangement.
- 5.8 The Commission will generally only define these markets to the extent necessary to undertake the required public benefit analysis.

Applicant’s submission

- 5.9 The ABA submitted that the relevant market in which the application should be considered is the market for the supply of retail transaction accounts in each State and Territory.
- 5.10 The ABA stated that the retail transaction accounts market includes all day to day transaction accounts offered by banks and financial institutions which are at call and which are used to withdraw and deposit cash, receive salary and social security payments and to pay and collect the proceeds of cheques. Examples of such accounts include cheque, savings and pensioner accounts.
- 5.11 The ABA submitted that transaction accounts are accessible at bank branches, agencies and also generally accessible through ATM and EFTPOS networks as well as telephone and internet banking. Transaction accounts tend to earn lower rates of interest than other deposit accounts and generally carry transaction fees and monthly account keeping fees.
- 5.12 The ABA considered that the Transaction Accounts Market is a State based market as opposed to a national market as some customers continue to rely upon branches, agencies or other physical presences to access their transaction account services.

Commission’s consideration

- 5.13 The Commission considers that for the reasons discussed below there is an emerging market for basic banking products for low income consumers, primarily concession card holders.
- 5.14 This market is State based rather than national and the key structural features of this market are unlikely to change fundamentally in the short to medium term.

Features of existing basic banking products

- 5.15 The ABA provided the Commission with a list of products currently offered by the 10 member banks that meet or approximate the proposed BBA initiative, this list is provided at **Attachment C**.
- 5.16 The Commission notes that the list provided by the ABA does not provide a complete description of the basic bank accounts currently offered by member banks.²³
- 5.17 Current basic banking products typically have no account keeping fee and require no minimum monthly balance to be maintained. These basic banking products offer low income earners a specific number of fee free withdrawals. With the exception of the Ezy Action Account offered by the Commonwealth Bank, and the Ultimate Account offered by Bendigo Bank, access to basic banking products described in **Attachment C** requires consumers to meet specific eligibility criteria.²⁴ Consumers who wish to access existing basic banking products (except for those mentioned above) must hold a Commonwealth Government Concession Card²⁵ (such cards include the Pensioner Concession Card, Health Care Card, Seniors Card) and/or have their Centrelink benefits paid into the bank account. Current basic banking products typically do not provide access to a chequebook facility or pay interest on the balance in the account. Some basic accounts also do not provide access to overdraft facilities or credit card access.

²³ For example, the list includes the Direct Access Account offered by Suncorp Metway which does not meet the BBA standard. However, Suncorp Metway offers a Basic Access Account which provides 9 fee free Suncorp Metway ATM or EFTPOS transactions, 3 fee free staff assisted withdrawals, no account keeping fee and is available to customers who hold a Senior's Card, Pensioner Card, Commonwealth Government Health or a Repatriation Card and have their benefit or income paid into the account. The National Australia Bank's National Concession Card Account provides for no account service fees and provides unlimited deposits. The Westpac's Basic Account provides for 6 fee free withdrawals per month. The Bank of Western Australia's Fee Saver Basic Account is available to individuals who hold a Commonwealth Health Care Card, Pensioner Concession Card or the Commonwealth Seniors Health Card and have their pension or benefit paid into the account, provides for no monthly account keeping fee and requires no minimum monthly balance to be maintained.

²⁴ The list provided by the ABA of accounts which meet or approximate the features of the BBA include the Direct Access Account offered by Suncorp Metway and the Fee Saver Standard Account offered by the Bank of Western Australia. These accounts also do not have any eligibility criteria attached to them. However, the Commission considers that these accounts are unlikely to be included in the emerging market for basic banking products.

²⁵ In this document reference to Commonwealth concession cards include the Commonwealth Government Health Card, the Commonwealth Government Seniors' Card and the Commonwealth Government Pensioner Concession Card.

Features of retail transaction accounts

- 5.18 In contrast with basic banking products, retail transaction accounts generally have an account servicing fee charged to customers unless they maintain a minimum monthly balance. The minimum monthly balance required to be maintained to avoid the monthly account servicing fee varies considerably between retail transaction accounts. For example St George's Everyday Savings/Cheque Account requires a minimum balance of \$750 to avoid the monthly account servicing fee, the Bank of Queensland's Ultimate and Choice Accounts require a minimum monthly balance of \$1000 to be maintained to avoid the monthly account servicing fee, Westpac's Classic Account requires a minimum balance of \$2000 to avoid the account servicing fee and National Australia Bank's FlexiAccount, Everyday Savings Account and Personal Cheque Account require a minimum balance of \$5000 to be maintained to avoid the account servicing fee.
- 5.19 The monthly account servicing fees typically charged on retail transaction accounts vary considerably. The monthly account servicing fees can be up to \$10 per month.
- 5.20 Furthermore, banks generally waive all fees for consumers who have home loans, term deposits or other investments with the bank. These fee waivers are generally out of reach of low income consumers.²⁶
- 5.21 In addition, most retail transaction accounts offer a greater range of features than most basic banking products currently available. Most retail transaction accounts provide access to a chequebook facility, overdraft facility and pay interest on balances above a certain amount.

Substitutability between basic banking products and retail transaction accounts

- 5.22 The Commission considers that there is limited substitutability between retail transaction accounts and basic banking accounts. For the purposes of assessing the effect on competition of the ABA's proposal, the Commission is of the view that it is not appropriate to define the relevant market as a broader market for retail transaction accounts.
- 5.23 Paragraph 5.18 provides some examples of the minimum balances required to be maintained by consumers to avoid account servicing fees being charged on retail transaction accounts. In light of submissions from interested parties on this issue, the Commission considers that it is unlikely that low income consumers, particularly concession card holders, will be able to maintain such balances. In the event that a bank imposed a small but significant non-transitory price increase on a basic banking account, the key question for defining the relevant market is whether low income consumers would switch to other retail

²⁶ Connolly, C. and Hajaj, K., (2001), "Financial Services and Social Exclusion", Financial Services Consumer Policy Centre, University of NSW.

transaction accounts. If low income consumers switched to a retail transaction account they would likely be charged the account servicing fee (where they are applied) as it is unlikely they would be able to maintain the required minimum monthly balances. In view of the financial constraints to which such consumers are subject, the Commission does not consider that retail transaction accounts offer a close substitute for low income consumers because of these account keeping fees.

- 5.24 The Commission considers that, in all the circumstances, it is not appropriate to define the market as a broader market for the supply of retail transaction accounts in each State and Territory given the limited substitution possibilities that exist between basic bank accounts and other transaction accounts. The Commission considers that it is appropriate to consider this application in the context of an emerging State based market for basic banking products which are aimed at low income consumers, primarily concession card holders. Basic bank accounts, such as those outlined in Attachment C, would be close substitutes for one another and thus fall within the same market.

Effect on competition

Applicant's submission

- 5.25 The ABA submitted that the BBA initiative has the potential to provide access to a fee free transaction account to a large number of customers who may otherwise be unable to obtain such an account.
- 5.26 The ABA submitted that there is nothing in the proposed arrangement which would or should lead to a decrease in the features or service levels of existing transaction accounts and basic banking products. The ABA submitted that while some participants may wish to rationalise their product offerings to avoid duplication, the number and variety of retail transaction accounts in the transaction accounts market is likely to remain stable.
- 5.27 The ABA is of the view that the detrimental effect of the proposed arrangements on competition (if any) is minimised by the fact that the BBA sets out the minimum features or benchmarks for the BBA and does not purport to mandate the features of such accounts. The ABA noted that the current range of basic bank accounts have evolved over time through competition. As such, the ABA fully expects that basic bank accounts with additional features and benefits will continue to be provided by some banks.

Commission's consideration

- 5.28 The Commission notes that currently there are a number of banks that individually provide a range of basic banking products to low income consumers that would comply with the proposed BBA standard. The basic banking accounts currently available generally provide a higher number of fee free

transactions than that proposed by the ABA's BBA initiative.²⁷ For example, ANZ Basic Bank Account provides 15 fee withdrawals per month, St George's Everyday Concession Account provides 8 free withdrawals each month, the Commonwealth Bank's Ezy Action Account provides 50 fee free withdrawals per month in Woolworths Ezy Reward store and 5 fee free electronic or EFTPOS withdrawals elsewhere each month, Suncorp Metway's Basic Access Account provides 9 fee free ATM or EFTPOS transactions per month and 3 fee free staff assisted transactions. Other basic accounts provide a rebate to offset transaction fees. For example, the National Australia's Bank Concession Card Account provides a rebate of up to \$40 per month to offset transaction fees and the Adelaide Bank's Concession Xpress Account provides \$15 worth of free transactions each month.

- 5.29 The ABA submitted that the existence of a diverse range of basic banking bank accounts tends to support the existence of a level of competition between banks in respect of these products. The ABA stated that each member bank has its own reasons for offering such accounts and there is no single answer that broadly describes what motivates such banks to offer basic banking products.
- 5.30 The ABA considered that the BBA Initiative seeks a zero cost account standard within defined parameters for certain products that are proposed to be made to eligible consumers. The BBA Initiative does not constrain individual applicants from providing additional or extended features or concessions. The ABA submitted that any member bank would be free to price and offer benefits as part of their BBA that are more favourable than the features provided for under the proposed BBA Initiative. The ABA submitted that the current extent of differentiation between existing low cost transaction accounts indicates that the member banks would seek to maintain such product differentiation.
- 5.31 The ABA has submitted that these basic banking products have developed as a result of competition amongst individual banks. The Commission considers that competition in the emerging market for basic banking products is driven by a number of factors, including commercial considerations to some extent and also by the desire for banks to be seen to be fulfilling their community obligations. The Commission considers that competition has been sufficient to drive individual banks to innovate in the development of basic banking products with higher features than those offered under the proposed BBA by the ABA.
- 5.32 The Commission is concerned that the proposed agreement between the banks on minimum features of a basic banking product has the potential to operate to dampen this competition.
- 5.33 Indeed, by agreeing that the features in the proposed BBA constitute adequate minimum features for a basic bank account, the proposal could have the effect of giving legitimacy to the minimum features as being adequate for a basic bank

²⁷ Note the Commission does not consider that the Fee Saver Standard Account offered by the Bank of Western Australia or the Direct Access Account offered by Suncorp Metway are products which would be likely to exist in the emerging market for basic banking products.

account so as to encourage the provision of basic banking products that only meet these features.

- 5.34 The Commission received submissions from a wide range of interested parties arguing that these minimum features are not adequate. In particular, interested parties considered that:
- the proposed number of fee free transactions is too low;
 - balance inquiries should not be included in the number of fee free transactions;
 - access to basic banking products should not be restricted to only agency networks; and
 - the BBA initiative does not address the issue of dishonour and account overdrawn fees which will be applied to basic banking accounts.
- 5.35 The Commission notes that a number of consumer groups expressed concern that the BBA initiative would result in the minimum standard becoming the accepted industry standard. The Commission is of the view that the proposal has the potential to result in significant anti-competitive detriment. In the event that the 10 member banks decide in light of the BBA initiative to supply basic banking accounts which satisfy only the minimum standards proposed under the BBA, the Commission considers that this would result in a significant anti-competitive detriment.
- 5.36 The Commission notes that the ABA submitted that the BBA initiative is at the unprofitable end of the transaction account market. The Commission considers that if basic banking products are unprofitable, then there exists an incentive for member banks to only offer the minimum features proposed under the BBA initiative so as to mitigate any losses.
- 5.37 The Commission also notes that the current extent of differentiation between existing basic banking accounts has occurred in an environment in which each member bank individually offers a basic banking product. It is not clear to the Commission that this circumstance necessarily indicates that the 10 member banks will seek to maintain such product differentiation in a situation where authorisation was granted.
- 5.38 The Commission considers that ABA's BBA initiative would inhibit further development of competition in the market for basic banking products and is likely to restrict consumer choice. The Commission considers that if authorisation is granted the features proposed under the BBA initiative could become a de facto banking industry standard.
- 5.39 As noted in the submission by the Australian Association of Permanent Building Societies (AAPBS), some building societies also offer basic transaction account products. However, on the information before it, the Commission does not consider that credit unions and building societies are able to impose a sufficient competitive constraint on the banks on whose behalf this application is made to

allay the Commission's concerns about the potential for the BBA initiative to result in significant anti-competitive detriment in the market for basic banking products.

- 5.40 In this context, the Commission notes the concern of the AAPBS that if banks are allowed to agree on the minimum features of a BBA and in fact implement those features, then they will effectively be able to compete as a bloc in the basic banking market against AAPBS members. Furthermore, the AAPBS stated that while their members may be able to offer a better product they fear the ability of the banks and their dominant position in promotion and advertising to operate as a bloc in relation to BBA initiative.
- 5.41 The Commission considers that there is not sufficient competitive pressure from participants such as building societies and credit unions which would reduce the anti-competitive detriment which may result from the BBA initiative.
- 5.42 The Commission notes that the anti-competitive detriment resulting from the BBA initiative in the emerging market for basic banking products could be minimised if the features of the standardised BBA were significantly higher than those features currently offered by basic banking products.
- 5.43 In response to submissions arguing that the BBA initiative should provide higher features, the ABA submitted that if the features of the BBA were increased above the present standard then it would follow there would be a consequential and corresponding increase in the anti-competitive effect of the BBA initiative by making it harder for new participants to enter and for existing participants to remain in the market.
- 5.44 The ABA considered that providing features that fail to take account of operating costs may see investment and innovation in these markets diminish to the disadvantage of the consumer. The ABA submitted that the features of the BBA standard are set at a level where the member banks might address costs through efficient allocation of resources (for example, the BBA Initiative adopts a common, simple and cost effective mechanism for determining a potential consumer's eligibility for the BBA).
- 5.45 The Commission notes that with the exception of the Bank of Queensland all of the 10 member banks currently offer a basic banking product. As stated in paragraph 5.28 some of these basic bank accounts provide a higher number of fee free transactions than the proposed BBA initiative. Furthermore, based on information provided in the submission by the AAPBS, building societies also offer basic transaction accounts and compete with banks in providing such accounts. The Commission does not consider that increasing the features of the proposed BBA initiative would create a barrier to entry to new market participants.
- 5.46 Accordingly, the Commission considers that increasing the features of the BBA initiative will not necessarily result in a corresponding increase in the anti-competitive detriment associated with the BBA initiative.

Public benefits

Applicant's submission

5.47 The ABA submitted that the proposed arrangement should:

- expand customer choice in the transaction accounts market, particularly for customers on low, fixed incomes; and
- facilitate greater awareness amongst consumers to permit more informed choices in their dealings.

5.48 In particular, the ABA submitted that the BBA initiative will provide greater certainty to customers as they can be confident that:

- holders of Commonwealth Government concession cards will qualify for access to the basic banking accounts to be offered by the banks; and
- the basic bank accounts to be offered by the banks will at least meet the features set out under the BBA initiative.

5.49 The ABA is of the view that irrespective of whether the applicants were to withdraw existing products from the market, the BBA initiative itself is a public benefit. The ABA considered that it is no less a public benefit if future market imperatives lead product providers back to concessions in accordance only with the features proposed under the BBA initiative.

5.50 The ABA considered that the BBA initiative is a safety net that would protect consumers if the existing range, number or features of basic banking accounts were to change adversely due to market conditions. The ABA submitted that the BBA initiative would ensure that the likely adverse impacts of such changes on low income consumers would be minimised as the BBA initiative would remain as the consumers' safety net, a standard below which such products could not fall.

5.51 The ABA also considered that given support within sections of the community for the provision of basic bank accounts, the current and future banks who intend to participate in the proposed arrangement are likely to benefit from active promotion and publication of their basic bank accounts.

Commission's consideration

Expand customer choice

5.52 The Commission notes that with the exception of the Bank of Queensland, the other banks on whose behalf the authorisation application is made all currently provide a basic banking account. There are also a number of basic bank accounts which are currently provided by some applicants which do not satisfy all of the features of the proposed BBA. For example, Adelaide Bank's Concession Xpress Account requires a \$1 minimum opening and operating

balance and individuals are required to be customers of Adelaide Bank for at least 12 months. The Bendigo Bank's Ultimate Account which requires \$1 minimum opening balance, provides a \$4 rebate to offset transaction fees and does not appear to provide for no monthly account keeping fee to be charged. Accordingly, the Bendigo Bank's Ultimate Account does not meet the features proposed under the BBA initiative. There are also a number of basic banking accounts currently available which require low income consumers to be customers of the bank for 12 months before they can open the basic banking account. Basic banking accounts provided by the National Australia Bank and ANZ have this restriction.

- 5.53 In addition, there are a number of basic banking products including ANZ's Access Basic Account, St George's Everyday Concession Account and the Bank of Western Australia's Fee Saver Basic Account which all require \$1 minimum opening balance.
- 5.54 The Commission considers that a benefit to the public may arise to the extent that the proposed BBA would increase or improve the features offered by some current basic banking products. However, the Commission is of the view that this benefit to the public is small. The Commission notes that the majority of basic banking products which are currently available provide a higher number of fee free transactions than that offered under the proposed BBA. As such the Commission considers that introduction of the BBA initiative will not expand customer choice to any significant extent when compared to a situation without the proposed arrangement. Indeed, as discussed above the proposed arrangement may have the effect of reducing consumer choice and welfare by promoting the supply of a standardised basic banking product that meets minimum requirements.
- 5.55 The Commission notes that the ABA stated that if a bank decided not to comply with the BBA initiative the bank would be in breach of the agreement, but with the only apparent sanction being possible public relations consequences. The Commission notes that the ABA has not provided any explanation of the likely effectiveness of this compliance mechanism.
- 5.56 In this context, it is worth noting that during the Commission's public consultation process there was considerable debate about whether the Commonwealth Bank's Ezy Action Account complied with the agreed minimum standards. The Commonwealth Bank's Ezy Action Account does not appear to offer any free bank branch over the counter withdrawals. Rather, such withdrawals can only occur in a Woolworths store. The majority of interested parties supported the BBA initiative being available through agency outlets like Woolworths provided basic bank accounts could also be accessed through a bank's branch network. In particular, interested parties expressed concern that if basic bank accounts were only made available through agency outlets by some banks then this could result in middle/high income earners being able to access their banking services through a bank branch and low income earners being able only to receive banking services from agency outlets. Some submissions expressed concern that this could lead to discriminatory banking practices.

- 5.57 The Commonwealth Bank provided its own response in relation to the issues raised by interested parties concerning its Ezy Action Account. The Commonwealth Bank confirmed that its Ezy Action Account is the account which it intends to offer as its basic bank account. The Commonwealth Bank rejected the contention that the way in which it offers the Ezy Action Account amounts to or involves any discrimination in relation to its lower income customers. The Commonwealth Bank submitted that its Ezy Action Account is available to all Australians who desire access to a basic banking account, not just those who might be described as lower income customers. The Commonwealth Bank stated that the universal availability of the Woolworths Ezy Action Account establishes conclusively that there is no discrimination by it based on the income levels of customers or potential customers. The Commonwealth Bank also noted that the Ezy Action Account offers greater benefits to its customers than the proposed BBA initiative.
- 5.58 In the circumstances of this draft determination the Commission does not need to make a decision whether or not the Commonwealth Bank's Ezy Action Account satisfies the requirement of the BBA initiative. However, the Commission would anticipate that many consumers would consider there to be a significant difference between over the counter withdrawals from a bank branch compared to a an agency outlet such as a supermarket.
- 5.59 In addition, the ABA submitted that there is nothing in the application for authorisation that suggests that authorisation of the BBA initiative will lead to the member banks confining access to the relevant basic banking accounts to agencies only. The ABA stated that banks are represented by branches and where branches do not exist by agencies. The ABA considered that there is no likelihood that if one member bank was to only offer the BBA through agencies, that other member banks would necessarily follow.
- 5.60 Furthermore, the Commission notes that there are provisions under the new Code of Banking Practice which may assist consumers who are dissatisfied with a basic bank account offered by a bank who is a party to the agreement. However, the Commission notes that the Code of Banking Practice will not come into effect until August 2003.
- 5.61 As noted in paragraph 5.33 it is possible that the introduction of the proposed BBA may result in banks offering only the minimum features proposed under the BBA to low income consumers. The Commission considers that the ABA has not provided sufficient evidence to suggest that banks will offer additional features above the minimum features proposed under the BBA once the arrangement is implemented. As discussed in paragraph 5.38 the Commission considers that the introduction of the BBA proposed by the ABA in its current form may reduce customer choice in the emerging market for basic banking products. The Commission notes that the emerging market for basic banking products currently provides a range of basic banking products from which consumers can choose.
- 5.62 The ABA submitted that the proposed arrangement has the potential to provide access to a fee free transaction account for low income customers whose number

of transactions in any month are less than or equal to the stipulated maximum number of free transactions in each month. The ABA submitted that individual member banks will be free to offer more than six fee free transaction per month. The ABA stated that the BBA initiative takes account of the operating costs including allocative efficiency in resources in responding to a publicly expressed need. The ABA submitted that if comparable low cost accounts that currently exist ceased to be available because the cost of maintaining them was too high for a bank to economically sustain, the BBA initiative would still serve to protect consumers.

- 5.63 However, the Commission notes that most submissions indicated that 6 non deposit transactions provided free of charge each month under the proposed BBA were not sufficient to meet the basic banking needs of low income customers. Some interested parties stated that such a low number of fee free non deposit transactions may lead to low income earners carrying large amounts of cash on hand which would raise security concerns for such individuals.
- 5.64 Paragraph 3.10 provides a list of the number of fee free transactions which interested parties considered should be incorporated under the BBA.
- 5.65 Indeed, as discussed previously, the Commission is concerned that as basic banking accounts may be an unprofitable products for banks, there exists potential for banks to only offer 6 fee free transactions if authorisation was granted.
- 5.66 The Commission is of the view that the number of fee free non deposit transactions in the proposed agreement is extremely low. Based on information provided to the Commission in submissions lodged by interested parties, the Commission notes that it is likely that the majority of low income earners would be charged transaction account fees as it is unlikely that they would only make 6 non deposit transactions each month.
- 5.67 A number of submissions received by the Commission expressed concern that balance inquiries were included in the number of fee free transactions provided under the BBA. In particular, many submissions suggested that balance inquiries were an essential budgeting tool for low income earners.
- 5.68 In response to balance inquiries the ABA stated that six transactions per month provides a customer with an account update on each of those occasions. For example, a withdrawal from an ATM provides the customer with the option of a receipt that will show the remaining account balance. The ABA submitted that the inclusion of balance inquiries as part of the six fee free monthly transactions does not detract from the public benefit conferred by the BBA initiative.
- 5.69 The Commission agrees that it would greatly assist low income earners to have knowledge of how much money they have available in their account before they make a withdrawal. In particular, the Commission considers that if low income consumers had knowledge of their account balance before they withdrew money this is likely to assist them in avoiding dishonour and/or account overdrawn fees.

- 5.70 The ABA submitted that dishonour and account overdrawn fees are incurred because of the state of a customer's account rather than from a transaction itself having occurred. The ABA submitted that the BBA initiative is concerned with providing a safety net for customers to transact legitimately on their accounts at a lower cost. The ABA submitted that there is no public benefit, in fact there could be a public detriment, if the consequences of a customer's overdrawing or seeking to overdraw their accounts without arrangement with their bank are waived.
- 5.71 The Commission also notes the concern expressed by interested parties relating to the level of dishonour and account overdrawn fees charged by banks. The following list provides some examples of the level of dishonour and/or account overdrawn fees charged by banks:
- ANZ charges a \$45 dishonour fee when a cheque, periodical payment or direct debit is dishonoured. ANZ charges an honour fee of \$29.50 when it honours a drawing which overdraws the account²⁸;
 - Bankwest charges \$38 when a periodical payment is dishonoured. Bankwest charges \$30 for an overdrawn notice which is sent to a customer when their account is overdrawn without prior authorisation, or goes over the authorised credit limits;²⁹
 - The National Australia Bank charges a \$50 dishonour fee;
 - Westpac charges \$25 dishonour fee for cheques and direct debits. Westpac charges a \$25 Account Overdrawn fee on each occasion it honours a cheque or debit on an account.
- 5.72 The Commission understands that such fees will apply to the proposed BBA unless individual banks decide otherwise. Some submissions from interested parties suggested that such fees could have a significant impact on the financial situation of low income earners.
- 5.73 The Commission is not opposed to the imposition of account overdrawn or dishonour fees. However, the Commission is concerned with the high level of these fees and the impact such fees will have on the financial situation of low income consumers. The imposition of account overdrawn or dishonour fees at the level they are currently applied to basic banking accounts may undermine the public benefit resulting from providing the BBA initiative. These fees have the potential to impose costs on low income consumers far greater than the savings which consumers would experience with the provision of six fee free transactions per month. Furthermore, the Commission considers that it is not appropriate to promote the proposed BBA in its current form as a zero cost account when such fees are charged.
- 5.74 The Commission supports in principle the provision of basic banking services. However, the Commission does not consider that the proposed agreement

²⁸ The honour fee is applied to accounts without a credit limit. A different fee is payable on an account with a credit limit.

²⁹ The first notification on an account in a twelve month period is free.

between 10 ABA member banks in its current form will expand customer choice to an extent that would result in any significant public benefit.

- 5.75 The Commission notes that this public benefit could be greater if the BBA offered substantially enhanced features.

Facilitate greater awareness amongst consumers

- 5.76 As stated previously, the ABA is of the view that the proposed BBA will facilitate greater awareness amongst consumers to permit more informed choices in their dealings.
- 5.77 The ABA stated that the Financial Services Reform Act provides that in order for a bank's staff member to advise customers of which accounts are the most appropriate for their needs, staff are required to be trained to provide such information. The ABA also stated that the new Code of Banking Practice makes provision for customers to be provided the relevant information.
- 5.78 The Commission notes that the requirements mentioned above under the Financial Service Reform Act and Code of Banking Practice may facilitate the supply of better information to consumers. However, such a benefit to the public does not flow from the proposed BBA initiative but rather the Financial Services Reform Act and the Code of Banking Practice.
- 5.79 The Commission accepts that the implementation of the proposed BBA initiative has the potential to provide certainty to consumers that are holders of Commonwealth Government concession cards as they will be able to access basic bank accounts which at least met the minimum features proposed under the BBA.
- 5.80 However, the Commission notes that a large number of submissions lodged by interested parties suggested that low income earners were not aware of basic banking products currently offered by individual banks. The ABA did not provide as part of its application any details that the BBA initiative would be accompanied by any widespread advertising campaign, or with a compliance and education program for bank staff.
- 5.81 There appears to be a lack of awareness amongst low income consumers about existing basic banking products. The ABA has not clearly identified how the proposed minimum standards under the BBA initiative will improve consumer awareness.
- 5.82 Overall, the Commission considers that there is no evidence to suggest that the proposed BBA would facilitate the supply of better information and awareness amongst consumers. Therefore, the Commission considers that the proposed BBA does not provide this public benefit in this regard.

BBA initiative is itself a public benefit

- 5.83 The Commission notes that the majority of submissions welcomed and have supported the idea of the BBA initiative. The Commission also supports in principle the provision of basic banking services to low income consumers.
- 5.84 The Commission accepts that implementation of the BBA initiative would result in a public benefit. However, the extent of the public benefit likely to result from the BBA initiative depends on the features of the proposed BBA initiative.
- 5.85 The Commission considers that the current BBA initiative in its proposed form does not result in a significant public benefit as currently there are a number of banks that individually provide a range of basic banking products to low income consumers which generally provide a higher number of fee free transactions than that proposed by the ABA's BBA initiative.
- 5.86 The Commission is concerned at the low level of features proposed under the BBA initiative. In particular, the Commission is concerned that the number of fee free transactions provided under the BBA initiative, the fact that balance inquiries are counted as part of the 6 fee free transactions under the proposed BBA initiative and at the level of dishonour and/or account overdrawn fees which will be applied to basic banking accounts.
- 5.87 The Commission considers that the proposed BBA in its current form is not likely to result in a significant public benefit. The Commission notes that this public benefit could be greater if the BBA offered enhanced features.

BBA initiative as a safety net

- 5.88 The ABA considered that the BBA initiative is a safety net that would protect consumers if the existing range, number or features of basic banking accounts in the market were to change adversely due to market conditions.
- 5.89 The extent of the public benefit likely to result from the BBA initiative acting as a safety net depends on whether the 10 member banks are likely to offer higher features under their individual basic banking products. If the member banks are likely to offer a higher standard of features, then the public benefit resulting from the BBA initiative acting as a safety net is likely to be small. As discussed previously, the majority of basic banking products currently provided by banks on an individual basis provide for a higher number fee free transactions.
- 5.90 The Commission considers that some features of basic banking products currently supplied by some member banks may be improved as a result of the BBA initiative and to this limited extent may produce a public benefit. For example, some basic bank accounts currently available require that low income consumers are customers of the bank for 12 months before they can access a basic banking account. The Commission understands that such a restriction would be removed under the proposed BBA initiative. However, the Commission notes that the majority of basic banking products currently

available provide for a higher number of fee free transactions than that proposed under the BBA initiative. The Commission is concerned that the setting of low minimum standards may also result in member banks diminishing the features of basic banking products currently supplied in some respects. For example, by only supplying basic bank accounts which provide for the minimum number of fee free transactions.

- 5.91 The Commission considers that there is unlikely to be a significant public benefit resulting from the BBA Initiative in its current form acting as a safety net standard. As stated in paragraph 5.33 the Commission is concerned that the BBA initiative in its current form could have the effect of giving legitimacy to the minimum features as being adequate so as to encourage the provision of basic banking products that meet minimum standards.

Conclusion - Balance of public benefit and detriment

- 5.92 The Commission notes that current basic banking products have developed as a result of competition amongst individual banks and competition has been sufficient to drive individual banks to innovate in the development of basic banking products with higher features than those offered under the proposed BBA by the ABA.
- 5.93 The Commission supports the idea of a BBA being made available to low income earners. However, the Commission is concerned that the proposed agreement between banks on the minimum features of a basic banking product that is the subject of this application, without offering substantially more, has the potential to operate to dampen this competition. By giving legitimacy to these minimum features as being adequate for a basic bank account, the agreement could result in the minimum standard becoming the de facto industry standard. If this results in banks offering services at a level lower than that delivered in a competitive market, the proposed BBA initiative has the potential to result in significant anti-competitive detriment.
- 5.94 The introduction of the proposed BBA initiative in its current form could also reduce customer choice in the emerging market for basic banking products.
- 5.95 Agreed minimum standards for a basic bank account has the potential to benefit the public to the extent that the proposed standards promoted an increase in the features offered by current basic banking products. However, the majority of basic banking products which are currently available generally provide a higher number of fee free transactions than that proposed under BBA initiative. As such, the Commission does not consider that the proposed BBA initiative in its current form will expand customer choice to an extent that is likely to result in a significant public benefit.
- 5.96 The Commission has not been provided with sufficient evidence to suggest that the proposed BBA would facilitate the supply of better information and awareness amongst consumers as claimed by the ABA.
- 5.97 The Commission considers that the BBA initiative itself, in its current form, does not result in a significant public benefit.

- 5.98 The Commission considers that the BBA initiative is unlikely to act as a safety net in the market in its current form.
- 5.99 Consequently, following consideration of the submissions by the applicant and interested parties, and the information before it, the Commission considers that the public benefit likely to result from the proposed arrangement will not outweigh the anti-competitive detriment.
- 5.100 The Commission would welcome a revised proposal by the ABA which addresses its concerns and the concerns of interested parties in response to this draft determination.

DRAFT DETERMINATION

- 6.1 In relation to application A30214 the Commission concludes that in all the circumstances the proposed arrangement for which authorisation is sought will not result, or is not likely to result in a benefit to the public which will outweigh its anti-competitive effects.
- 6.2 For the reasons outlined in section 5, the Commission proposes not to grant authorisation to this application for authorisation lodged by the ABA.
- 6.3 This decision is subject to any request for a pre-decision conference or further submission by interested parties.
- 6.4 The draft determination is made on 16 December 2002.

ATTACHMENT A

- Financial Counsellors' Association of NSW
- Ryde-Eastwood Financial Counselling Service
- Ms Tania Buck (Financial Counsellor)
- Redfern Legal Centre
- Albany Community Resource Agencies Network
- Financial Counselling & Credit Reform Association of the Northern Territory
- Department of Justice and Industrial Relations (Tasmania)
- Department of Consumer and Employment Protection (WA)
- Northern Territory Consumer Affairs Council
- Australian Council of Social Service
- Association of Independent Retirees (Sydney – Northern Beaches Branch)
- Joint submission from Consumer Credit Legal Centre (NSW) and Consumer Credit Legal Service (VIC)
- Financial and Consumer Rights Council
- Australian Financial Counselling & Credit Reform Association Incorporated
- Anglicare Financial Counselling Service (WA)
- Treasury
- Council of Small Business Organisations of Australia
- Australian Association of Permanent Building Societies
- Consumers' Federation of Australia
- Department of Family and Community Services
- Commonwealth Department of Veterans' Affairs
- Australian Consumers' Association
- Minister for Consumer Affairs (VIC)
- Elders Rural Bank
- ACT Department of Justice and Community Safety

- **Financial Services Consumer Policy Centre**
- **Office of Consumer and Business Affairs SA**
- **Department of Fair Trading NSW**
- **Australian Securities and Investment Commission**

ATTACHMENT B

- **Aboriginal and Torres Strait Islander Commission**
- **Consumer Credit Legal Service WA**
- **Financial Counsellors' Association of NSW**
- **Council of the Ageing**
- **Consumer Law Centre of Victoria**
- **Australian Consumers' Association**
- **Combined Pensioners and Superannuants Association of NSW**
- **Consumer Credit Legal Centre NSW**
- **Consumers' Federation of Australia**
- **Financial Services Consumer Policy Centre**

Attachment C

SCHEDULE

PROVIDER	ACCOUNT	FEATURES
ANZ	ANZ Access Basic Account	<ul style="list-style-type: none"> • no minimum monthly balance • unlimited free deposit transactions • no monthly account servicing fees • 15 free withdrawals per month (including staff Assisted, EFTPOS, ANZ ATM, ANZ Phone and ANZ Internet Banking) • at call statement account • available to customers who: <ul style="list-style-type: none"> • hold a Seniors Card, Pensioner Card, Commonwealth Government Health Card or Repatriation Card; • provide the ANZ with a Centrelink or Veterans Affairs reference number; and • have their benefit or income paid into the account.
St George Bank	Everyday Concession Account	<ul style="list-style-type: none"> • at call statement account • available to Commonwealth Government Health Concession Card holders • no account service fee • no minimum monthly balance • 8 free withdrawals each month, including a maximum of 3 free over the counter withdrawals • unlimited free deposit transactions • no credit interest • ATM/EFTPOS access • access to phone and internet banking • no cheque facilities
Commonwealth Bank	Ezy Action Account	<ul style="list-style-type: none"> • 50 fee free face to face withdrawals in Woolworths stores each month • fee free electronic withdrawals outside of Woolworths stores each month using other

PROVIDER	ACCOUNT	FEATURES
		<p>specified electronic channels (eg CBA ATMs, EFTPOS, telephone and internet banking)</p> <ul style="list-style-type: none"> • no minimum balance requirement when opening account • no minimum operating balance • no account keeping fees • unlimited fee free deposits and inquiries • available to all personal customers
Bendigo Bank	Ultimate Account	<ul style="list-style-type: none"> • no minimum monthly balance • interest bearing • \$1 minimum opening balance • cheque book facility and/or Visa Debit card facility (minimum balance \$300) • Cashcard facility • unlimited free deposit transactions (fees apply to deposits made via GiroPost and National Australia Bank deposit facilities) • \$4 rebate to offset transaction fees • available to all personal customers (13 years and over) • may have payments made into the account • access to telephone and internet banking • at call statement account • ATM/EFTPOS access for cardholders
National Australia Bank	National Concession Card Account	<ul style="list-style-type: none"> • no minimum opening balance • no minimum monthly account balance • available to holders of Pensioner Concession Cards, Commonwealth Health Care Cards, Veteran Affairs Cards or Commonwealth Seniors Cards • rebate of up to \$40 automatically deducted from monthly total of transaction account fees (excludes some fee types)

PROVIDER	ACCOUNT	FEATURES
Westpac	Basic Account	<ul style="list-style-type: none"> • no monthly service fee • no minimum monthly balance • unlimited free deposits • fee free withdrawals per week (excludes certain types of withdrawals) • available to holders of Pensioner Concession Cards or Health Care Cards who have their pension or benefit paid directly into the account • access to EFT-POS, telephone and internet banking
Adelaide Bank	Concession Xpress Account	<ul style="list-style-type: none"> • available to Commonwealth Concession and Health Care Card holders who: • have been customers of the Adelaide Bank for at least 12 months; and • have their Centrelink benefits paid into their account • no account service fees • unlimited number of deposits per month • \$1.00 minimum opening and operating balance • access to EFT-POS, ATM telephone and internet banking • \$15 worth of free transactions each month (excluding GiroPost and foreign ATM transactions) • no cheque facilities
Suncorp Metway	Direct Access Account	<ul style="list-style-type: none"> • no account keeping fee if customer has deposits with Suncorp Metway of more than \$30,000 • 14 fee free EFT-POS transactions and 4 personal cheque withdrawals per month • no transaction or account keeping fees if monthly balance is above \$5,000 • access to ATMs, EFT-POS and telephone banking
Bank of Western Australia	Fee Saver Standard Account	<ul style="list-style-type: none"> • \$1.00 minimum opening balance

PROVIDER	ACCOUNT	FEATURES
		<ul style="list-style-type: none"> • free electronic withdrawals per month • 2 free cheque withdrawals per month • \$1,000 minimum monthly balance • 2 free operator assisted balance and transaction enquiries per month • access to electronic banking and cheque facilities
Bank of Western Australia	Fee Saver Basic Account	<ul style="list-style-type: none"> • \$1.00 minimum opening balance • free withdrawals per month including 3 over the counter withdrawals • access to electronic banking • no cheque facilities