



Commercial Asset Finance Brokers
Association of Australia

Mr D Channing
Director
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke St
Canberra ACT 2601

29th September 2016

Dear Mr Channing,

**Finance Brokers Association of Australia (FBA) application for authorisation
A91554 & A91555 – interested party consultation**

The **Commercial Asset Finance Brokers Association of Australia Limited (CAFBA)** welcomes the opportunity to comment on the ACCC's authorisation of the FBA's proposed implementation of its Disciplinary Rules and changes to its Constitution.

CAFBA is the peak national body of commercial equipment finance brokers, whose prime area of business is the distribution of commercial equipment finance facilities to their clients. **CAFBA** members are career professionals who arrange in excess of \$8bil of new commercial equipment finance for their clients annually. Our members and their clients are predominantly small to medium sized businesses, and operate in the commercial finance market. The total receivables in the Australian equipment finance market is approximately \$100 billion, so it is an important component of the Australian economy.

CAFBA embodies the strengths of its members in a unified approach for dealing with financiers and legislators at a national level and regularly seeks the views of members. CAFBA prides itself on being self-regulating and maintains strict membership standards on probity, continuing professional development, industry experience and reputation.

As an association CAFBA provides the framework and support to professionally assist our members in their daily activities. This involves education and training, legislative and regulatory updates and forums where the members can interact and exchange ideas with their peers.

CAFBA is run by a Board of Directors who are elected from the membership by the membership, and there is no fiduciary payment to undertake this role.

It is CAFBA's belief that the ACCC should reject the FBA proposal as unnecessary, given the current regulatory framework.

Whilst the ACCC has sought CAFBA's comments generally, it specifically asks about whether FBA's proposed disciplinary process is likely to:

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1. Result in a public benefit that is not provided by any other regulation i.e. the National Consumer Credit Protection Act 2009, by providing a means for enforcing a professional and ethical standard that FBAA members must comply with when operating as finance and mortgage loan writers.
2. Provide additional avenues for consumer redress, and protection.
3. Have an impact on the ability of members or non-members to compete.
4. Provide adequate procedural protections from an abuse of the interpretation of the FBAA Code of Conduct to facilitate expulsion of members for anti-competitive purposes.

Many lenders prefer to deal with brokers who are members of a broker association. Loss of membership by a person or business results in exclusion from the market and loss of occupation. That is a significant consequence; more so than loss of membership. It is this anti-competitive element that requires adjudication by the ACCC.

It is CAFBA's belief that an industry association which includes disciplinary roles resulting in loss of livelihood confuses the role of the association. An association wants members to belong and professionalism fostered as a result of membership.

To CAFBA, the ACCC's specific issues are both reasonable and compelling.

For an initial assessment of the first two ACCC issues, if you consider the Mortgage Finance Association of Australia (MFAA) experience, the following links indicate a recent decline in disciplinary actions since ASIC began enforcing the NCCP Act. Also, many of the disciplinary matters were triggered as a result of ASIC disciplinary action. So, at best, a duplication of what the regulatory environment already provides.

- Cancelled, suspended or expelled by MFAA
<https://www.mfaa.com.au/AboutUs/OurMembers/Pages/expelled.aspx>
- Disciplinary actions by MFAA
<https://www.mfaa.com.au/AboutUs/OurMembers/Pages/Suspension-Reasons.aspx>

Of course, ASIC's primary regulatory focus is on consumer broking, not commercial. But regardless, as we understand the FBAA's ongoing approach to membership (whether consumer or commercial), it is broadly consistent with CAFBA's. Broker clients already have a range of protections, including:

- Professional indemnity insurance
- External dispute resolution scheme membership, with each scheme compelled by ASIC to report systemic non-compliance

- ASIC enforcement action against brokers under the ASIC Act and the Criminal Code
- Continuing professional development requirements
- Membership standards
 - No findings of fraud or dishonesty
 - Not insolvent

In addition, financiers have an obligation to report suspicious matters (i.e. a breach of any law) to AUSTRAC. These can include conduct by brokers which is fraudulent or dishonesty, or otherwise illegal. AUSTRAC can then allocate matters to law enforcement bodies, e.g. ATO, Crime Commission, police, ASIC.

If the FBAA proceeds with its disciplinary approach, it sets itself as a quasi-regulator, with the potential consequences including:

- Capacity to seriously impact on the livelihood of brokers outside a regulatory/law enforcement processes
 - banning from the Association may result in lack of access to financiers and inability to earn a living as a broker
 - brokers have no appeal mechanism
 - brokers banned from FBAA membership may not necessarily qualify for membership of either CAFBA or MFAA, given area of expertise and membership criteria, so a competition issue
 - reputational damage based on a non-judicial process
- Duplication of redress mechanisms with the potential for double jeopardy for a broker who is subject to more than one disciplinary process
- Promotion of the disciplinary scheme as standards matter when, in fact, it could be a competition matter to gain more market share for members by seeking financier commitments to use FBAA brokers only

It is therefore CAFBA's view that the ACCC should reject the FBAA proposal.

We appreciate the opportunity to comment, and should you wish to discuss further we would be pleased to make ourselves available.

Yours Faithfully



David Gandolfo
President



Kathryn Bordonaro
Vice President