

The Partner
Contact

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Our ref
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EMA:HHL:1053041
AA1000640-1



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By email: lyn.camilleri@acc.gov.au

Lyn Camilleri
General Manager
Competition Exemptions

Dear Ms Camilleri

Commonwealth Bank of Australia & Ors application for authorisation AA1000640

We refer to:

- the application for authorisation dated 17 April 2023 (**Application**) lodged by the Commonwealth Bank of Australia, Westpac Banking Corporation, Australia and New Zealand Banking Group Limited, National Australia Bank Limited and Macquarie Bank Limited (the **Applicants**); and
- the Australian Competition and Consumer Commission's (**ACCC**) draft determination dated 18 October 2023 in relation to the Application.

1 Response to the ACCC's Draft Determination

We enclose the following documents:

- A public and confidential version of the Applicants' response to the Draft Determination.
- To reflect the Applicants' proposed modifications to the Aggregator Assurance Program:
 - public and confidential versions of the updated Unincorporated Joint Venture Deed (**UJV Deed**);
 - a public version of the revised Review Scope (to be inserted as Schedule 2 of the UJV Deed, once finalised);
 - public versions of the AAP Lender Deed (to be inserted as Schedule 3 of the UJV Deed, once finalised).

The public versions of these documents may be published on the ACCC's public register.

2 Amendments to the Proposed Conduct

The original Application describes the Proposed Conduct for which authorisation is requested to include:

- the conduct engaged in by the Assurance Service Provider (**ASP**) appointed from time to time under the Program;¹ and
- to permit the Applicants to make and give effect to the agreements and arrangements to seek proposals from, and engage, an assurance firm as the ASP to provide Assurance Reviews of aggregators' system under the Program.²

Consistent with the enclosed updated version of the Unincorporated Joint Venture Deed and its annexures, the Applicants would like to make the following amendments to the Application in relation to the Proposed Conduct for which authorisation is requested to reflect that the Applicants propose that more than one ASP be appointed to provide Assurance Reviews of aggregators' system under the Program:

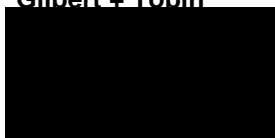
- Paragraph 4.1(d) of the Application: "~~the~~ any Assurance Service Provider (**ASP**) appointed from time to time under the Program"
- Paragraph 4.4(c) of the Application: "to seek proposals from, and engage, ~~an~~ assurance firms as ~~the~~ ASPs to provide Assurance Reviews of aggregators' systems under the Program".

3 Confidentiality claims

The confidential version of the Applicants' response to the Draft Determination and the UJV Deed contain information that is identified and marked as confidential to one or more Applicant for the reasons set out in **Confidential Schedule A**. We request that the ACCC treat such information (including copies of such information in Confidential Schedule A) as confidential and that it be excluded from the ACCC's public register on the following terms:

- there is no restriction on the internal use, including future use that the ACCC may make of confidential information consistent with the ACCC's statutory functions;
- confidential information may be disclosed to the ACCC's external advisors and consultants on the condition that each such advisor or consultant will be informed of the obligation to treat the information as confidential;
- the ACCC may disclose the confidential information to third parties (in addition to its external advisors or consultants) if compelled by law or in accordance with section 89(7) or section 155AAA of the Act.

Yours sincerely
Gilbert + Tobin



Elizabeth Avery
Partner



Haidee Leung
Special Counsel



¹ Paragraph 4.1(b) of the Application.

² Paragraph 4.4(c) of the Application.