25 January 2024

Mr Gavin Jones
Director
Competition Exemptions
Mergers, Exemptions and Digital
Australian Competition and Consumer Commission

Via portal: accc.gov.au

Dear Mr Jones

Commonwealth Bank of Australia and Ors – Authorisation for Establishing an Aggregator Assurance Program – Applicants' Response to ACCC's Draft Determination

COBA appreciates the opportunity to contribute to the ACCC's consultation on the response of the Applicants to the ACCC's Draft Determination on the application to establish an Aggregator Assurance Program (AAP).

COBA is the industry association for Australia's customer owned banks (mutual banks, credit unions and building societies). Collectively, our sector has over $170 billion in assets and 5 million customers. Customer owned banking institutions account for around two thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market leading levels of customer satisfaction in the retail banking market.

Key points

COBA strongly supports the establishment of a voluntary and industry wide AAP due to the many benefits it will provide to lenders, aggregators, and consumers. We expect the AAP to lead to less costly, higher quality assurances for customer-owned banks on more aggregators.

COBA supports the changes made by the Applicants in response to the ACCC's Draft Determination and we believe that they have adequately addressed the ACCC's concerns.

COBA supports the new proposed funding model as being more equitable and for providing easier access for customer-owned banks into the AAP.

COBA supports the changes to the Operating Committee of the AAP, and we are willing to coordinate the appointment of a representative of the customer owned banking sector to serve on the Committee.

COBA thanks the ACCC for its due consideration of our submission made on 22 May 2023 on the authorisation to establish an AAP. We appreciate the ACCC acknowledging and accepting our concerns about the originally proposed funding model.

COBA wishes to reiterate our strong support for the establishment of the AAP as we believe that it will deliver many benefits to lenders, mortgage aggregators and consumers. We believe that it will greatly help customer-owned banks to gain access to higher quality assurance reviews of mortgage aggregators versus a counterfactual of no AAP. We believe that the AAP will help facilitate customer-owned banks moving into utilising mortgage brokers, where assurance cost or quality is a barrier, thereby increasing lender and product choice for consumers.

We support the changes that the Applicants have made in response to the ACCC's Draft Determination. COBA were consulted by the Applicants on their proposed changes to the funding model and to the Operating Committee. The changes made by the Applicants have resulted in a better outcome for customer-owned banks and for consumers. COBA urges the ACCC to approve its establishment.

We will now respond to areas of concern that were raised by the ACCC and why we believe these have now been adequately responded to by the Applicants.

Funding model

As noted in our earlier submission, the funding model as originally proposed was of significant concern for COBA as it was inequitable and would likely have limited the accessibility of the AAP for customer-owned banks. This is because it would have required smaller banks, like our members, to pay the same amount for each review as each of the Applicants, which are the five largest banks in Australia. We appreciate the ACCC recognising and acknowledging this issue in its Draft Determination.

The new proposed funding model will cap the cost for each review that are opted into by non-Applicant lenders at $5,000. The funding model has an additional obligation that the opt-in Applicant lenders must always pay at least 50% of the costs of the review. In situations where there are numerous non-Applicant lenders opting into a review, and where their $5,000 contributions in total would exceed 50% of the costs of the review, the fees for the non-Applicant lenders will be reduced accordingly to ensure that the Applicant lenders are still covering 50% of the costs. This means that opt-in non-Applicant lenders could be paying less than $5,000 per review. We consider this to be a reasonable and likely proposition particularly for reviews of the largest mortgage aggregators as they will provide lenders with the widest possible access to the market.

The one area of concern raised by some of our members is that the AAP could further benefit from the inclusion of an additional tier. This feedback is based on concern that the new model does not appropriately distinguish between the mid-sized banks and the smaller banks among the non-Applicant lenders. It has been suggested that there should be better recognition within the funding model between larger mid-sized banks such as Suncorp, Bank of Queensland and Bendigo Bank, and smaller banks, like customer owned banks. This is because under the current proposal, the $5,000 per review is applied equally to all non-Applicant lenders regardless of size.

The Applicants' have not addressed this issue in their submission most likely due to their desire to minimise the complexity of the funding model. Increased complexity in the funding model would likely increase the administrative and operating costs of the AAP which could minimise the benefit that could be obtained from introducing the additional tiering in the first place. COBA believes that on balance, the new proposed model addresses our original concerns about inequity and limitations imposed on smaller bank (i.e. non-major bank) access to the scheme. We do not believe that the absence of additional tiering should prevent the ACCC from approving the revised AAP.

Significant savings and improved access to high-quality reports for customer-owned banks

COBA supports the cap of $5,000 per review for non-Applicant lenders as we consider it to be reasonable and affordable for many customer-owned banks when compared to the costs of them conducting their own reviews to a similar standard. Under the AAP the opt-in lenders will be gaining access to a review that is more comprehensive and is completed to a higher standard than an individual review. While customer-owned banks could perform cheaper reviews, such as an annual attestation by the aggregator, these will not be as comprehensive as the AAP reviews.

COBA considers the examples provided by the Applicants in Part 3 of their Submission[1] to be reasonable estimates of the significant savings that could be achieved through the AAP. To assist the ACCC we will highlight at a high level some conservative estimates on current costs and potential savings that could be achieved for the customer owned banking sector from the approval of the AAP.

Currently, there are significant differences between the costs borne by individual COBA members in conducting their assurance reviews, which is primarily due to the differing levels of comprehensiveness and depth in the conducting of the reviews. For example, some of our members will incur costs in the hundreds of dollars via an internally resourced assurance review via an annual attestation made by the aggregator. This compares with some other members who are paying as much as $40,000 per review per aggregator, which covers a much more comprehensive audit of the aggregator through a third party.

For COBA members conducting annual attestations they have noted that paying up to $5,000 per review is reasonable due to the quality of the reviews that will be gained compared to their current practice. Additionally, these members may not find sufficient benefit to conduct a similar quality review for that price demonstrating the benefits of economies of scale that could be gained by the AAP. While COBA members who use more comprehensive third party reviews, could achieve real savings of approximately $35,000 per review per aggregator for a report of similar or higher quality than they are currently conducting. We note that for the same amount of a single individual review under the AAP a COBA member could have done 8 AAP reviews.

We estimate that our sector could save around $1.7 million per year through the AAP on a conservative 'like for like' review basis. This is based on the following assumptions:

- Assume COBA's eight largest members seek to perform similar quality and comprehensive assurance reviews at $40,000 per review.
- Assume the average broker-utilising member uses six aggregators and therefore needs six assurance reviews per year.
  - This would cost each bank $240,000, for a total combined cost of $1,920,000 for the sector (48 reviews).
- Assume the AAP cost is $5,000 per review.

	Current	**AAP**	**Saving**
Per review cost	$40,000	$5,000	$35,000
Per bank cost (6 reviews)	$240,000	$30,000	$210,000
Sector Cost (48 reviews)	$1,920,000	$240,000	$1,680,000

While we note that current expenses are not indicative of future expenses and that not all the banks are necessarily paying $40,000 per review, we consider this to be a reasonable estimate due to the following factors:

- Many of our largest members use more than six aggregators meaning that individual savings per bank could be higher.
- This does not include those members outside of our largest eight members who also use aggregators who could gain the benefit or who will have barriers to entry removed.

[1] *Applicants' submission in response to the ACCC's Draft Determination dated 18 September 2023* (13 December 2023), 7-12.

- For those members who are currently only performing annual attestations they will gain access to reports that are more comprehensive, and which would cost them more than $5,000 to complete.
- The estimate assumes that the fee to access the AAP review will be $5,000 when there is a strong likelihood it will be less for our members for the more utilised aggregators.
- The reviews conducted by the AAP will likely be conducted to a standard higher than our members could achieve even if they are paying $40,000 per review.

These figures may appear relatively small in dollar terms when compared to the potential savings of the Applicants, however, when considered against the relative size of our sector we consider these to be significant. These savings will allow resources to be reallocated towards other programs or products that will assist our members in providing competitive offerings to the major banks. The AAP will also make the broker market more accessible to customer-owned banks by making quality assurance reviews available at an affordable price, thereby encouraging entry into the market.

Applicant discretion over scope of assurance reviews

In its Draft Determination, the ACCC expressed concern that decisions on the scopes of assurance reviews would be subject to significant Applicant discretion, and that there were limited roles for smaller lenders in the decision-making processes of the AAP. The ACCC was concerned that this could see reviews being conducted in a manner that prioritises the Applicants' requirements over those of the smaller lenders and it suggested that there needed to be more representative lender input into decisions about the operation of the AAP. While COBA did not raise this issue in our submission, we agree with the ACCC that the originally proposed AAP model did create this risk.

The Applicants have proposed that the Operating Committee be expanded to be made up of seven representatives, which is constituted of the five Applicants plus two additional representatives appointed by COBA and/or the Mortgage & Finance Association of Australia (MFAA). Additionally, key decisions of the Committee, including on the scopes of assurance reviews, will be subject to decisions made by a 'super majority' where six of the seven representatives must agree. This ensures that the five Applicant representatives cannot force decisions without the agreement of either the COBA or MFAA representative.

COBA supports this change, and we confirm that we have members who are willing and able to serve on the Committee. In our discussions with the Applicants, we outlined our willingness to perform a facilitative role to enable our members to serve as a representative on the Committee. However, a condition of our agreement was that any representative from our sector must have a meaningful role on the Committee and not be relegated to having a lesser status than the Applicant representatives. We are satisfied that the COBA/MFAA representatives are of equal standing to the Applicant representatives. We believe that the inclusion of 'super majority' decisions on key matters will ensure that smaller lender views are properly heard and considered as part of Committee deliberations and decision-making.

Interaction and co-ordination of the major banks

COBA welcomes the changes made by the Applicants to the operations of the Operating Committee in response to the ACCC's concerns about increased interaction and co-ordination between the major banks. These changes include requiring the attendance of an external lawyer, the inclusion of a standing agenda item to ensure meetings are properly minuted, and other changes on whom may serve on the Committee to represent each of the businesses. This will support the governance and competition protocols that the Applicants' have developed as part of the program.

We note that the expansion of the Committee to include representatives appointed by COBA and/or the MFAA ensures that there will be non-major bank representatives in attendance at these meetings which should help discourage any inappropriate interactions or co-ordination between the major banks. If any forms of unlawful interaction or co-ordination was observed by these representatives, they would be obliged to notify the ACCC and other relevant regulators of these activities. These non-

Applicant representatives will be required to also comply with the governance and competition protocols established under the APP.

Public benefit outweighs public detriment

COBA believes that the Applicants' have addressed the concerns raised by the ACCC in its Draft Determination. We trust that with these changes, including the additional information that we have provided here, that the ACCC should be able to be satisfied that the test in s 90(7)-(8) of the *Competition and Consumer Act 2010* has been met and that the public benefit of the AAP outweighs any public detriment.

We look forward to engaging with the ACCC on this issue and thank you for taking our views into account. Please do not hesitate to contact Robert Thomas, Policy Manager (rthomas@coba.asn.au) if you have any questions about our submission.

Yours sincerely

MICHAEL LAWRENCE
Chief Executive Officer