



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Statement of Reasons

in respect of a notification lodged by

Byron Shire Council (in its own right and on behalf of
Ballina Shire Council, Clarence Valley Council,
Kyogle Shire Council, Rous County Council and
Tweed Shire Council)

in respect of

collective bargaining for transactional banking
services

Date: 10 May 2019

Notification number: CB10000465

Commissioners:

Sims
Keogh
Court
Featherston

Summary

The ACCC has decided not to object to the notification lodged by Byron Shire Council to enable it and five other local councils from the Northern Rivers region of NSW to jointly tender for transactional banking and bill payment services and to give effect to the resulting contracts.

This notification, and the ACCC's decision, provides legal protection; joint tendering by the Councils may otherwise breach competition laws.

The Councils propose to seek tenders from financial institutions to provide a full range of banking services including corporate cards, electronic banking, bill payment platforms, credit card merchant services, branch banking and relationship management.

The Councils advise that the purpose of the joint process is to allow each of the Councils to combine their banking transaction volumes to potentially obtain cost savings in relation to fees payable for banking services. They advise that any resulting cost savings obtained can be reallocated to the provision of Council services.

The notification was lodged on 27 March 2019 and the ACCC has decided to allow it to remain in force for a period of six years. The notification came into force on 10 April 2019 and will remain in force until 1 April 2025, unless it is withdrawn or revoked.

The notification

1. On 27 March 2019, Byron Shire Council lodged a collective bargaining notification¹ to enable it, Ballina Shire Council, Clarence Valley Council, Kyogle Shire Council, Rous County Council and Tweed Shire Council (collectively, the **Councils**) to:
 - engage in a joint request for tender to engage an appropriate financial institution to provide transactional banking and bill payment services (as described at pages 11 and 12 of the Request for Tender attached to the Councils' notification, the **Services**) to each of the Councils,
 - collectively negotiate individual contracts (on common terms) with the successful tenderer for the provision of the Services, and
 - administer the individual contracts during the terms of those contracts, which is expected to be five years commencing 1 July 2019.(collectively, the **Notified Conduct**).
2. To allow for the tender period and a five year term for the resulting contracts, the Councils seek a notification period of up to six years.²

¹ Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010 (CCA)* for collective bargaining including associated collective boycotts by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) will generally commence 14 days after the collective bargaining notification is lodged.

² The ACCC may provide a written notice determining the expiry of the collective bargaining notice if the ACCC is satisfied that the standard three year period is not appropriate and another period (up to 10

Consultation

3. The ACCC invited comments from each of the financial institutions identified by the Councils as likely to respond to the tender process.
4. NAB, ANZ and Commonwealth Bank advised that they had no objection to the Notified Conduct. No further comments were received.

ACCC's assessment

5. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* Cth (**CCA**).
6. In doing so, the ACCC has taken into account:
 - The likely future with and without the Notified Conduct. In particular, the ACCC considers that, absent the Notified Conduct, each Council is likely to individually negotiate and contract with a financial institution to provide the necessary transactional banking services.
 - The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary area of competition relates to the provision of transactional banking and bill payment services in the Northern Rivers region of NSW.

Public Benefit

7. The ACCC considers that the Notified Conduct is likely to result in the following public benefits:
 - Improved efficiency through:
 - Providing the opportunity for the Councils to have greater input into the negotiation of contracts. This may provide terms of supply that are more comprehensive and that better reflect the needs of the group, resulting in more efficient outcomes.
 - Transaction cost savings resulting from the Councils sharing the costs associated with running the tender and negotiating and managing final contracts.
 - Improving access to information about transactional and bill payment services offered to or used by the Councils.

Public Detriment

8. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition between the Councils for the acquisition of transactional banking and bill payment services because:
 - The Councils represent a small proportion of acquirers of transactional banking and bill payment services in the Northern Rivers region of NSW and more broadly. As such the Notified Conduct is unlikely to have a significant impact on the ability of financial institutions that are unsuccessful in the tender process and other providers of financial services to continue to compete to provide transactional banking and bill payment services.

years) is appropriate in all the circumstances. The ACCC must, in or with the notice, provide a written statement of its reasons for giving the notice.

- Participation in the Notified Conduct is voluntary for Councils and the financial institutions (the Councils each reserve the right not to accept the terms proposed by the successful tenderer and will be free to seek an alternative service provider if they wish).
- The proposed request for tender provides the opportunity for competition between financial institutions to win the contracts.

Period for which the Notification will be in force

9. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
10. In this case, the Councils request the notification remain in force for a period of up to six years to allow for tenders to be requested and assessed and then a five year contract term entered into with the successful tenderer.
11. The Councils submit that their previous contracts for the provision of transactional banking and bill payment services also operated for a term of five years.
12. The ACCC considers that it is appropriate for the notification to remain in force until 1 April 2025 for the following reasons:
 - Providing a six year notification period will allow for resulting contracts to run for the typical term of contracts of this kind while allowing time for the tender process to take place.
 - The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
 - The extended notification period is unlikely to significantly increase the minimal public detriment which is likely to result from the Notified Conduct.

Decision

13. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the detriment to the public that is likely to result.
14. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s 93AC of the CCA, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.
15. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 12, in accordance with s 93AD(5) of the CCA, the ACCC is satisfied that:
 - a three year notification period is not appropriate in all the circumstances, and
 - another period is appropriate in all the circumstances, being the period ending on 1 April 2025.³

³ As required by s 93AD(5)(b), this period will end no later than 10 years after the day that the notification was lodged.

16. Accordingly, the protection provided by notification CB10000465 commenced on 10 April 2019 and will continue until 1 April 2025, unless the notification is withdrawn or revoked.
17. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.