



AUSTRALIAN  
COMPETITION  
& CONSUMER  
COMMISSION

# Statement of Reasons

In respect of a notification lodged by  
the Council of Australasian University Directors of  
Information Technology Incorporated

in respect of  
collective bargaining with information technology  
companies

Date: 20 September 2019

Notification number: CB10000470

## Summary

The ACCC does not object at this time to collective bargaining notification CB1000470 lodged by the Council for Australasian University Directors of Information Technology Incorporated (CAUDIT) on behalf of itself and 63 current, and any future, members.

CAUDIT proposes to continue to collectively negotiate with information technology (IT) companies, including large multi-national companies such as Apple, Microsoft, Google and Amazon Web Services. CAUDIT has been negotiating with IT providers under a similar collective bargaining notification since it was originally notified on 29 August 2016.

The ACCC considers that the conduct is likely to result in public benefits in the form of information sharing efficiencies, transaction cost savings and enabling better input into contracts for CAUDIT members. There is likely to be limited, if any, public detriments.

The ACCC has decided to allow the notification to remain in force for a period of three years. The notification was lodged with the ACCC on 29 August 2019 and came into force on 12 September 2019. The notification will remain in force until 29 August 2022, unless it is withdrawn or revoked.

## The Notification

1. On 29 August 2019, CAUDIT, on behalf of itself and 63 current members, and any future members, lodged a notification to collectively bargain with 116 listed, and any future, IT companies (targets) (the **Notified Conduct**).
2. Specifically, the Notified Conduct is to allow CAUDIT to continue to negotiate terms and conditions of contracts, which may include the products and/or services to be provided, the term for which the products/ services will be provided, technical capabilities and performance, jurisdiction, and limitations on liability. CAUDIT will also negotiate, in some instances, the final contract price.
3. The set of terms and conditions that CAUDIT negotiates with each target will be available to its members if they decide to accept the offer. CAUDIT members will independently determine whether to accept the offer and/or may negotiate or finalise their own terms and conditions with the target. In the past, members have routinely negotiated their own final terms using the terms negotiated by CAUDIT as a starting point.
4. CAUDIT submits that the Notified Conduct will continue to result in more beneficial terms and conditions, including price, for CAUDIT members and cost savings in the form of process efficiencies and decreased transaction costs. In addition, CAUDIT submits that the Notified Conduct will provide education institutions the opportunity for greater input into the terms and conditions that vendors will apply, for example in relation to appropriate levels of support.
5. CAUDIT lodged a notification for the same conduct on 29 August 2016. The ACCC considers that the conduct will continue, unchanged, as it has since 2016. The public benefits claimed are based on those achieved since 2016.
6. The notification is available on the [ACCC's public register](#).

7. The Notified Conduct does not include any collective boycott.
8. CAUDIT has requested that the notification be allowed to continue for three years.

## Background

9. CAUDIT currently has 63 members (listed at **Attachment A** of notification), all of which are organisations or institutions which undertake or support education, research or research development. All Australian universities are members of CAUDIT.
10. The Notified Conduct relates to a list of 116 targets (listed at **Attachment B** of notification), all of whom provide IT products and services. These products and services include computer hardware and software, video conferencing, telecommunications, cybersecurity and cloud computing services, among others. Targets include significant IT companies, such as Apple, Microsoft, Amazon Web Services and Google, among others.
11. CAUDIT previously lodged a notification for the same conduct on 29 August 2016. The conduct has been ongoing since that time.

## Consultation

12. The ACCC invited submissions in respect of the notification from parties that raised concerns regarding the original notification in 2016.
13. No submissions were received and no objections to the Notified Conduct were raised.

## ACCC's assessment

14. The ACCC has considered the Notified Conduct in accordance with section 93AB of the *Competition and Consumer Act 2010* (the Act).
15. 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, CAUDIT members would individually negotiate contractual terms, including the price paid, for their IT products and services.
  - The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary areas of competition relate to the acquisition and supply of IT products and services and the supply of higher education.

## Public Benefits are likely to arise

16. The ACCC considers that the Notified Conduct is likely to result in the following public benefits:
  - More beneficial terms and conditions, including price, for the acquisition of IT products and services by CAUDIT members than they would be able to achieve negotiating on their own. CAUDIT submits that under the previous notification it was generally able to receive a discount in the range of 15-25 per cent.

- Transaction cost savings by way of decreased costs associated with collectively negotiating IT contracts. CAUDIT submits that negotiations take 2-3 months for simple contracts and 12-18 months for complex contracts. The Notified Conduct will reduce this burden for both members and targets. Absent the Notified Conduct all 63 CAUDIT members would be required to negotiate with targets on an individual basis.
- Increased opportunity for higher education institutions to have input into the terms and conditions which IT suppliers will apply (for example in relation to appropriate levels of support), as a result of increased bargaining power provided by the Notified Conduct.

## **Minimal public detriment**

17. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment:

- Participation in the Notified Conduct is voluntary for CAUDIT members. If parties wish to negotiate individually they remain free to do so.
- CAUDIT members make up only a small portion of a target's sales.
- The Notified Conduct relates to a very small portion of the market for the supply of IT products.
- The Notified Conduct would have a minimal effect on competition for the supply of higher education services.

## **Period for which the Notification will be in force**

18. 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.
19. In this case, CAUDIT has requested that the notification remain in place for three years. CAUDIT advises that negotiated offers are typically for contract terms between 1 and 3 years.
20. The ACCC considers that it is appropriate for the notification to remain in force for a period of three years.

## **Decision**

21. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh any detriment to the public that is likely to result.
22. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with section 93A of the Act, 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.
23. With respect to the period for which the notification will remain in force, in accordance with section 93AD(5) of the Act, the ACCC is satisfied that a three year notification period is appropriate in all the circumstances.

24. The protection provided by notification CB1000470 will expire on 29 August 2022, three years from the date of lodgement, unless the notification is withdrawn or revoked.