



Australia's First Bank

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY

29 MAR 2007

Westpac Banking Corporation ABN 33 007 457 141

Sydney NSW 2000 Australia
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28 March 2007

Mr Scott Gregson
General Manager, Adjudication
Australian Competition & Consumer Commission

C/- ACCC Sydney Office
Level 7, Angel Place
123 Pitt Street
SYDNEY NSW 2000

FILE No:

DOC:

MARS/PRISM:1

Dear Sir,

Notification of exclusive dealing

Pursuant to section 93 of the Trade Practices Act 1974, please find enclosed Westpac Banking Corporation's notice of exclusive dealing in relation to a requirement for brokers to be accredited with an appropriate industry body.

Please find enclosed a cheque in the amount of \$100.00 as payment of the lodgement fee.

Please contact me should you require any further information

Yours sincerely

Jonathan Abandowitz
Counsel
Commercial, Technology &
Intellectual Property

Form G
Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. APPLICANTS

N 92872

(a) Names of person giving notice

Westpac Banking Corporation ABN 33 007 457 141 and its subsidiaries (**Westpac Group**)

(the **Notifying Party**)

(b) Short description of business carried on by that person

Westpac provides banking and financial services, please refer to Attachment A for a further information.

(c) Address in Australia for service of documents on that person

Legal Services
Counsel, Commercial Technology and Intellectual Property
Westpac Banking Corporation
275 Kent St
SYDNEY NSW 2000

2. NOTIFIED ARRANGEMENT

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates

Please refer to Attachment A.

(b) Description of conduct or proposed conduct

Please refer to Attachment A.

3. PERSONS, OR CLASS OF PERSONS, AFFECTED OR LIKELY TO BE AFFECTED BY THE NOTIFIED CONDUCT

(a) Class or classes of persons to which the conduct relates:

Persons who apply to become accredited introducers for Westpac in Australia.

(b) Number of those persons:

(i) At the present time: approximately 13500

(ii) Estimated within the next year: approximately 13500

- (c) **Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses.**

Not applicable.

4. PUBLIC BENEFIT CLAIMS

- (a) **Arguments in support of notification**

Please refer to Attachment A.

- (b) **Facts and evidence relied upon in support of these claims**

Please refer to Attachment A.

5. MARKET DEFINITION

- (a) **Provide a description of the market(s) in which goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions);**

Please refer to Attachment A.

6. PUBLIC DETRIMENT

- (a) **Detriments to the public resulting or likely resulting from notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:**

- (b) **facts and evidence relevant to these detriments.**

Please refer to Attachment A.

7. FURTHER INFORMATION

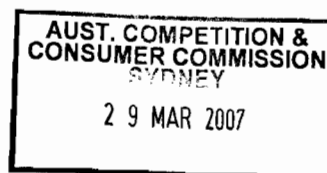
- (a) **Name, Postal address and contact telephone details of the person authorised to provide additional information to this notification:**

Jonathan Abandowitz
Counsel, Commercial Technology and Intellectual Property
Westpac Banking Corporation
275 Kent St
SYDNEY NSW 2000

Phone: (02) 82541281

Dated: 28/3/07

Signed on behalf of the applicant



(Signature)

Attachment A:

Submission in support of notification under s 93(1) of the Trade Practices Act 1974 (Cth)

1 Proposed Conduct

1.1 Background

Westpac currently has in place arrangements whereby third parties can introduce customers (borrowers) to the bank. Borrowers may seek housing loans (backed by a mortgage), or a business or commercial loan.

Westpac's third party introducer arrangements are often effected through agreements between Westpac and parties known as broker groups or referrer groups (also known as aggregators). These groups enable individual introducers to aggregate their business and collectively work with lenders. Aggregators will have individual brokers or referrers who are part of the group.

A broker sources the new customer opportunity, and assists the customer in submitting the loan application to Westpac in an approved format. The broker's tasks include assisting with key documentation, deal workshopping, negotiating customer terms and assisting at various stages through to loan drawdown. If Westpac ultimately approves the loan, and the customer draws upon the approved loan, the broker is paid a commission.

A referrer sources the new customer opportunity and refers them to Westpac. If that introduction leads to Westpac approving a loan, and the customer drawing upon that loan, the referrer is paid a commission. A referrer is not accredited to recommend Westpac products or otherwise assist the customer in the preparation of his / her loan application, and their role is to refer their client directly to Westpac to assess and recommend the relevant product.

The nature of the broker and referrer role differs in that the broker has an ongoing representational role in the customer transaction, whereas the referrer role is limited to an immediate introduction.

Introducers, whether individual brokers/referrers or broker/referrer groups, must be accredited by Westpac. Accreditation is the mechanism by which Westpac can determine whether it wishes to permit a third party to make customer introductions to it. As one element of the accreditation process for broker/referrer groups and broker introducers, Westpac requires that the group or broker must have professional accreditation with an appropriate industry body, the relevant body is one of the following: the Mortgage and Finance Association of Australia (**MFAA**) (formerly the MIAA); the Finance Brokers Association of Australia (**FBAA**); and, in some (non consumer lending) cases the Australian Asset Finance Association (**AAFA**).

While there is no specific statutory or other requirement for membership of an industry association in order for a broker to introduce customers to Westpac, Westpac requires accreditation and membership by the MFAA, FBAA or AAFA of brokers as a practical way

to ensure that brokers are adequately trained, competent, are parties to an External Dispute Resolution Scheme, and continue to meet the professional standards required for ongoing membership of the relevant associations, including, for example, by undertaking ongoing training. This is important to Westpac because it facilitates a high quality and efficient working relationship between Westpac and its accredited brokers and because it also enhances the Westpac customer experience.

1.2 Description of proposed conduct

The Notifying Party proposed to require introducers hold membership of one of the following: the MFAA, the FBAA, or in certain cases the AAFA; or a training body approved by Westpac.

There is an argument (not necessarily accepted by the Notifying Party) that the proposed conduct amounts to a contravention of s 47(6) and (7) of the *Trade Practices Act 1974* (Cth).

2 Public Benefits and Competition Issues

For the reasons set out below, the impact of the proposed conduct is not such that, under the test laid down in section 93(3A)(b) of the Act, the likely benefit to the public will be outweighed by any likely detriment to the public.

While the context in which this notification is submitted does not require a specific submission on market definition, the relevant markets are markets for the supply of financial brokerage services, including:

- housing loans;
- business loans; and
- commercial loans.

2.1 Public detriments

The Notifying Party considers that the proposed conduct gives rise to no anticompetitive impact. While Westpac requires brokers to become accredited, there are presently three accreditation bodies, the MFAA, the FBAA or, in certain cases the AAFA. Introducers can choose which body they acquire the accreditation from.

Other relevant considerations include that Westpac is operating in a highly competitive market for banking and financial services. Westpac does not restrict introducers from acting for more than one bank. Nor does Westpac receive remuneration from the approved training bodies.

We note that St George Bank and ANZ Banking Corporation notified similar conduct in 2005 and 2004 respectively. Both required introducers to be members of either the Mortgage Industry Association of Australia (predecessor of the MFAA) or the FBAA.

Together these factors mean that the notified conduct is unlikely to create a distortion in the market for the supply of accreditation services.

2.2 Public benefits

There are clear public benefits associated with the proposed conduct. The most significant benefit is that accreditation by an approved training body is an efficient means

by which Westpac can ensure brokers and introducer groups are adequately trained, competent and able to provide high quality services to borrowers.

In addition, requiring accreditation by acceptable industry bodies has created efficiencies in the supply of training services. In the past introducers were required to undertake direct accreditation training with Westpac. As many introducers deal with a number of financial institutions, it was burdensome on them to require them to undertake lender specific training with each institution. An open accreditation system, whereby accreditation is supplied by an approved industry body is acceptable to Westpac and does away with the requirement to undertake lender specific training. Westpac considers that the provision of one stop training and accreditation that is suitable for all banks will encourage introducers to act for more than one lender and enhance competition in markets for banking and financial products.

2.3 Conclusion

For the reasons above, the Notifying Party considers that the proposed conduct satisfies the test laid down in s 93(3A) of the *Trade Practices Act 1974* (Cth) in that the likely benefits to the public are likely to outweigh the detriment (if any). The Notifying Parties therefore request that the Commission allow the notifications to stand.