

Commonwealth Bank of Australia
ABN 48 123 123 124

Financial and Risk Management

Level 8
48 Martin Place
Sydney NSW 1155
Australia

Telephone 02 9378 5949
Facsimile 02 9378 5473

Sarah Goddard-Jones
Executive Manager,
Group Compliance

27 June 2007

Australian Competition and Consumer
Commission
GPO Box 3648
Sydney NSW 2001

FILE No:
DOC:
MARS/PRISM

Dear Sir/Madam

Commonwealth Bank of Australia (CBA) – Notification of third line forcing exclusive dealing

We enclose for lodgement an exclusive dealing notification. A cheque in payment of the total lodgement fee is also enclosed.

CBA claims confidentiality over the information set out in the Confidential Schedule to the notification, on the grounds that the information disclosed therein is commercially sensitive. CBA therefore requests that the information in the Confidential Schedule not appear on the public register.

If you have any questions in relation to this notification, please do not hesitate to contact me on (02) 9378 7993.

Yours faithfully

A handwritten signature in black ink, appearing to read "S. Goddard-Jones", written over a light grey rectangular background.

Sarah Goddard-Jones
Executive Manager
Group Compliance

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. APPLICANT

(a) Names of persons giving notice

N93051

Commonwealth Bank of Australia ABN 48 123 123 124 (CBA)

CBFC Limited ABN 26 008 519 462 (CBFC)

N93052

(b) Short description of business carried on by those persons

CBA is a publicly listed company and a leading provider of banking and financial services in Australia. CBA also has businesses in New Zealand, Asia and the United Kingdom. CBA provides a full range of banking services, including home loans, personal loans, commercial loans, transaction accounts, credit cards, savings and investment products and term deposits. Its subsidiaries provide stock broking, superannuation and insurance products and services.

CBFC is a wholly owned subsidiary of CBA. It offers consumer loans and equipment finance, including finance leases, operating leases, novated leases, hire purchase and equipment loans. It also offers debentures to investors. CBFC's products are distributed through branches and offices of CBA and through brokers.

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

Group Compliance
Commonwealth Bank of Australia
Level 8,
48 Martin Place,
SYDNEY NSW 1155

2. NOTIFIED ARRANGEMENT

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

The appointment by CBA and CBFC of brokers to introduce customers seeking some or all of the following services: equipment finance facilities (which expression includes finance leases, operating leases, novated leases, hire purchase and equipment loans) and, in the case of CBFC, consumer loans.

(b) Description of conduct or proposed conduct

Background

CBA and CBFC enter into arrangements with brokers who introduce to CBA and CBFC customers seeking equipment finance facilities and in the case of CBFC consumer loans (collectively **Financing Services**). These arrangements are normally entered into with a broking group that has a number of individual brokers working for it. These individual brokers may be employees, contractors or independent brokers who are affiliated with the group.

Brokers can introduce borrowers to CBA and CBFC as well as a number of other lenders. They provide customers with information about which lender's services best suits their needs. CBA and CBFC estimate that [see Confidential Schedule 1] percentage of new CBA and CBFC equipment finance facilities and CBFC consumer loans are originated through brokers.

Details of notified conduct

CBA and CBFC require broking groups and individual brokers who may be employees, contractors or independent brokers affiliated with such groups (**Accredited Brokers**) to maintain memberships of the following:

- (i) a professional industry body or association approved by CBA and CBFC (**Approved Association**) that has an acceptable code of conduct, disciplinary procedures, internal dispute resolution procedures, and education, training and accreditation programs; and
- (ii) an external dispute resolution (**EDR**) scheme approved by the Australian Securities and Investments Commission and by CBA and CBFC (**Approved EDR Scheme**).

At present, the Mortgage and Finance Association of Australia (**MFAA**) and the Finance Brokers Association of Australia (**FBAA**) are Approved Associations. If another association were to meet CBA and CBFC's requirements by offering a code of conduct, disciplinary procedures, internal dispute resolution procedures, and education, training and accreditation programs equivalent to those offered by the MFAA and the FBAA, then the CBA and CBFC may consider that association to be an Approved Association.

Approved EDR Schemes currently include those established by the Banking and Financial Services Ombudsman (**BFSO**), the Credit Ombudsman Service Ltd (**COSL**) and Financial Industry Complaints Service (**FICS**).

CBA lodged a Notification N92860 in respect of a similar arrangement for brokers introducing customers seeking some or all of the following services: commercial loans, home loans, investment home loans and residentially secured lines of credit.

There is an argument, not necessarily accepted by CBA and CBFC, that the notified conduct amounts to a contravention of s 47(6) and/or (7) of the *Trade Practices Act 1974* (Cth).

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:

Broking groups, individual brokers and agents who have arranged with CBA and CBFC to introduce potential borrowers for their equipment finance facilities and in the case of CBFC consumer loans.

(b) Number of those persons:

(i) At the present time:

Please see Confidential Schedule

(ii) **Estimated within the next year:**

Please see Confidential Schedule

(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**

Public benefits

The most significant benefit associated with the conduct is that Accredited Brokers will be bound by the codes of conduct and disciplinary rules set down by MFAA or FBAA, and also have access to continuing education programs that will ensure they are giving up-to-date and accurate advice to potential borrowers.

By requiring Accredited Brokers to be members of an Approved EDR Scheme, there is a further benefit to the public in that consumers will be able to obtain redress for any complaints they may have against a broker.

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

Mortgage and Finance Association of Australia

The MFAA was established in 1980 and provides representation and services to mortgage brokers, finance brokers, mortgage managers, and lenders (bank and non-bank). There are currently over 12,000 MFAA members.¹ Applicants must satisfy strict criteria before becoming a member, including experience, education, character and criminal history checks. They must also have membership of the COSL, or a COSL-approved, EDR scheme.

Members must abide by the MFAA Constitution, Code of Practice, Disciplinary Rules, Internal Dispute Resolution Procedures and Advertising Guidelines. The Disciplinary Rules set out procedures to be followed when conducting investigations of complaints regarding members and allows for membership to be suspended in serious cases (e.g. if the member has been involved in fraud or dishonesty).

Benefits of MFAA membership include a continuing professional development program, industry accreditation and marketing and network services. Membership fees are set out on the MFAA website at <http://www.mfaa.com.au/default.asp?artID=2039>.

Finance Brokers Association of Australia

The FBAA provides representation to finance and mortgage brokers. Like the MFAA, experience, education and probity checks are conducted before membership is approved. Members must agree to abide by the FBAA Code of Practice and Disputes Resolution Service, and provide compliance training to employees. Breaches of the Code of Practice may result in disciplinary action by the FBAA, including the termination of membership. Benefits of full membership include access to FBAA-run or approved training course and workshops, including Uniform Consumer Credit Code (UCCC) courses, bulletins on important industry issues and a complaints resolution process to deal with consumer grievances and member disputes. FBAA members must provide proof of Membership of COSL or BFSO and proof of professional indemnity insurance.²

¹ MFAA, "Mission and Objectives", at <http://www.mfaa.com.au/default.asp?menuid=480>.

² FBAA, "Join the FBAA", at <http://www.financebrokers.com.au/pages/join.php>.

Lack of regulation of brokers

Given the broking industry is largely unregulated, these codes and rules assist in the protection of consumers from unscrupulous brokers and brokers who may not have the necessary experience or training to provide advice to potential borrowers. As the Commission concluded in the MIAA Determination, the MIAA Disciplinary Rules “*generate a public benefit by assisting members to act ethically and professionally within the employment service industry.*”

Except for Western Australia, there is currently no effective regulation of brokers. In Western Australia, probity and experience checks are undertaken before a broker is licensed. Brokers must also comply with a code of conduct published pursuant to section 81 of the *Finance Brokers Control Act 1975 (WA)*.

On 13 December 2006, the NSW Office of Fair Trading announced that the States had agreed to the implementation of national legislation for finance and mortgage brokers.³ However, no timeframe for implementation was set out in the announcement.

The EDR schemes run by BFSO, FICS and COSL are industry-funded and individuals and small businesses are not charged a fee for making a complaint to either ombudsman. In relation to a notification by AHL Investments Pty Ltd (N92787), submissions were lodged by ASIC and the Consumer Credit Legal Centre (NSW) Inc supporting a requirement that brokers belong to an ASIC approved EDR scheme.

Previous notifications

The Commission has previously allowed notifications of similar conduct. The following notifications, for example, have been allowed to stand:

Notification N405752 lodged by Australian and New Zealand Banking Group Limited with legal immunity commencing on 9 September 2004.

Notification N31384 lodged by St George Bank Limited and legal immunity commencing on 25 May 2005;

Notification N92787 lodged by AHL Investments Pty Limited with legal immunity commencing on 16 February 2007; and

Notification N92860 lodged by CBA with legal immunity commencing on 4 April 2007.

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);**

Market definition

For the purposes of this notification only, CBA and CBFC consider the relevant markets are likely to be the Australian markets in which retail personal finance and asset finance facilities are supplied.

CBA and CBFC note that there is a large number of suppliers of retail personal finance and asset finance facilities, including many banks and non-bank financial institutions. There is also a very broad range of acquirers of retail personal finance and asset finance facilities comprising individuals (including joint borrowers and partnerships), companies and other incorporated and unincorporated bodies and trustees.

6. PUBLIC DETRIMENT

³ NSW Office of Fair Trading, “National legislation ahead for finance brokers”, 13 December 2006, at <http://www.fairtrading.nsw.gov.au/corporate/aboutus/2006/20061412nationallegislationaheadforfinancebrokers.html>.

- (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:**

CBA and CBFC are of the view that the notified conduct does not have any anti-competitive impact on consumer choice, nor does it impose any significant competitive constraints in relation to Financing Services including personal finance and asset finance facilities.

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

The MFAA and the FBAA are competing professional associations which offer similar benefits to its members. The loss of membership of one is thus unlikely to impede on a broker's ability to compete as they can apply for membership of the other.

Brokers are free to choose between MFAA or FBAA. CBA and CBFC's position is that should another professional industry association be established and provide equivalent services as discussed above, that association may also be considered an Approved Association by CBA and CBFC.

7. FURTHER INFORMATION

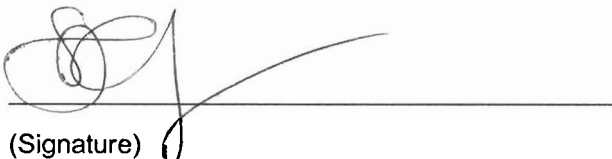
- (a) **Name, Postal address and contact telephone details of the person authorised to provide additional information to this notification:**

Sarah Goddard-Jones
Executive Manager, Group Compliance
Commonwealth Bank of Australia
Level 8,
48 Martin Place,
SYDNEY NSW 1155

Ph: (02) 937 85949

Dated: 26TH JUNE 2007

Signed on behalf of the applicants



(Signature)

Sarah Goddard-Jones
Executive Manager, Group Compliance
Commonwealth Bank of Australia

CONFIDENTIAL SCHEDULE
EXCLUDED FROM PUBLIC REGISTER

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.