

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra

26 October 2007

By Hand

Mr Scott Gregson
The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Our reference: 608/14602/80010926

Dear Mr Gregson

Third Line Forcing Notification – ING Bank (Australia) Ltd

Please find enclosed:

- a notification under section 93(1) of the *Trade Practices Act 1974* prepared on behalf of ING Bank (Australia) Limited; and
- a cheque in the amount of \$100 for the lodgement fee.

If you have any questions concerning this notification, please do not hesitate to contact us.

Yours sincerely



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Emily Hawcroft, Solicitor
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Enclosure

Legal\105295340.1

FILE No:

DOC:

MARS/PRISM:

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Form G

Commonwealth of Australia
Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition and Consumer Commission:

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

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. **Applicant**

- (a) Name of person giving notice:
(Refer to direction 2)

ING Bank (Australia) Limited ABN 24 00 893 292 ("ING Bank"). N93186

- (b) Short description of business carried on by that person:
(Refer to direction 3)

ING Bank offers a range of competitively priced mortgage products sold mainly via intermediaries such as mortgage brokers and financial planners ("Introducers").

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

Clayton Utz
Solicitors
Levels 19 - 35
No. 1 O'Connell Street
Sydney NSW 2000

Telephone: (02) 9353 4000
Fax: (02) 8220 6700
Attention: Kirsten Webb / Emily Hawcroft

2. **Notified arrangement**

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

The services to which this notice relates is the appointment by ING Bank of Introducers to introduce prospective borrowers to ING Bank.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

ING Bank will engage Introducers to introduce prospective borrowers to ING Bank on the condition that the Introducers undertake training conducted by the Mortgage & Finance Association of Australia ("MFAA") ("Conduct").

Out of an abundance of caution and in order to minimize the risk of contravening section 47(6) and 47(7) of the Trade Practices Act ("TPA"), ING Bank wishes to notify the Conduct under section 93(1) of the TPA.

3. **Persons, or classes of persons, affected or likely to be affected by the notified conduct**

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

Introducers who are engaged by ING Bank to introduce potential borrowers to ING Bank.

- (b) Number of those persons:

- (i) At present time:

Number of active mortgage manager firms = 34.

Number of active individual brokers = 18,369.

- (ii) Estimated within the next year:
(Refer to direction 6)

Unknown.

- (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:
(Refer to direction 7)

As there is currently minimal industry regulation of Introducers, ING Bank is of the view that the training offered by MFAA plays an important role in maintaining high standards of service provided by Introducers to consumers.

The Conduct is a practical way for ING Bank to ensure that Introducers are adequately trained, competent, continue to meet the professional standards required and comply with all relevant legislation. For example, ING Bank wishes to ensure that its Introducers undergo a training program in relation to the recent *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), which requires a financial institution or other person who provide designated services to have and comply with money-laundering and counter-terrorism financing programs.

The MFAA has elected to be a registered training organization and provide ING Bank with a database which can be matched against ING Bank's database to verify completion of the training. As ING Bank is able to monitor the MFAA training, it

can satisfy itself that the training offered meets its requirements and has been completed by its Introducers. For example, ING Bank has actively participated in the formulation of the MFAA training program in relation to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) so that it meets ING Bank's requirements.

Introducers often act for a range of lenders. A further benefit of the Conduct is that an Introducer will only have to undertake one uniform set of training rather than different training for all lenders. This creates efficiencies in the supply of training services. The alternative would be for Introducers to undertake specific training with ING Bank (which ING Bank presently does not provide). As many Introducers deal with a number of lenders, this would be inefficient and onerous on Introducers. The training that Introducers will undertake as a result of the Conduct will benefit other lenders as well as consumers.

Moreover, the Conduct will encourage competition both amongst mortgage broking groups, individual mortgage brokers and their industry associations to improve and maintain standards.

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

None in addition to those facts already described above.

5. **Market definition**

Provide a description of the market(s) in which the 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):
(Refer to direction 8)

The markets

- (i) the markets for the supply of loans to consumers; and
- (ii) the market in which the services described in 2(a) above are supplied.

6. **Public detriments**

(a) Detriments to the public resulting or likely to result from the 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:
(Refer to direction 9)

The public benefits described in 4(a) above outweigh any perceived public detriments. An Introducer who does not agree to undertake the training conducted by the MFAA is free to operate as an Introducer for other lenders. There will continue to be vigorous and effective competition in the relevant markets. The Conduct will have negligible, if any, impact on competition in those markets.

ING Bank notes the small number of Introducers, relative to the overall size of the market for the provision of these services, affected by the Conduct and their choice as to whether to enter into engagements with ING Bank.

(b) Facts and evidence relevant to these detriments:

None in addition to those facts already described above.

7. **Further information**

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Clayton Utz
Solicitors
Levels 19 - 35
No. 1 O'Connell Street
Sydney NSW 2000

Telephone: (02) 9353 4000

Fax: (02) 8220 6700

Attention: Kirsten Webb / Emily Hawcroft

Dated 26 October 2007

Signed by/on behalf of the applicant

Kirsten Webb

(Signature)

KIRSTEN WEBB

(Full Name)

CLAYTON UTZ

(Organisation)

PARTNER

(Position in Organisation)

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.