

Our reference  
RM/BANK5960-9065452

FILE No:
DOC:
MARS/PRISM:

8 August 2011

By email: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Special Counsel  
Rowan McMonnies (02) 9210 6230  
Email: [rowan.mcmonnies@corr.com.au](mailto:rowan.mcmonnies@corr.com.au)

Adjudication Branch  
Australian Competition and Consumer  
Commission  
Level 20  
175 Pitt Street  
Sydney NSW 2000

Dear Sir/Madam

## Bank of Western Australia Ltd - Notification of Exclusive Dealing

We act for Bank of Western Australia Ltd (**Bankwest**). Bankwest is seeking immunity in relation to potential third line forcing conduct arising from its proposal to offer a Rate Cutter Home Loan product. We enclose a completed Form G Notification of Exclusive Dealing.

We have made arrangements for the lodgement fee to be paid by way of an electronic funds transfer.

Should you require any further information regarding any aspect of the proposed conduct, please do not hesitate to contact me on (02) 9210 6230.

Yours faithfully  
Corrs Chambers Westgarth

*R. C. McMonnies*

Rowan McMonnies  
Special Counsel

attachments



## Form G

Commonwealth of Australia  
*Competition and Consumer Act 2010 – 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 *Competition and Consumer Act 2010*, 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) Name of person giving notice:  
(Refer to direction 2)

N95514

Bank of Western Australia Ltd ABN 22 050 494 454 (**Bankwest**)

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

Bankwest provides banking and financial services through a network of 211 branches and business banking centres across Australia. These services include, but are not limited to, home loans.

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

c/- Corrs Chambers Westgarth  
Governor Phillip Tower  
Level 32  
1 Farrer Place  
SYDNEY NSW 2000

Attention: Rowan McMonnies

### 2. Notified arrangement

- (a) The goods or services in relation to the supply or acquisition of which this notice relates are as follows:
- home loan services for home buyers in Western Australia.
  - home construction services for home buyers in Western Australia.
- (b) Description of the conduct or proposed conduct:

Bankwest offers the Rate Cutter Home Loan to home buyers, including first home buyers, in relation to both existing homes and homes to be constructed.

Currently, where a first home buyer applies for a Rate Cutter Home Loan for borrowing of up to 95% of the property value for the construction of a new home, Bankwest provides finance for the land at the time the land is purchased and provides finance for the construction of the home by way of progress payments throughout the construction period.

Bankwest proposes to provide first home buyers that obtain the Rate Cutter Home Loan for borrowing between 95% and 97% of the property value for the construction of a new home with finance for the land at the time the land is purchased, and finance for the construction of the home by way of progress payments throughout the construction period on condition that the customer acquires construction services from the following companies:

- BGC (Australia) Pty Ltd (**BGC**); and/or
- Alcock Brown-Neaves Group (**ABN**).

**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)

Acquirers of home loan banking and financial services in Western Australia.

- (b) Number of those persons:

- (i) At present time:

Not known, but substantially greater than 50.

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

Not known, but substantially greater than 50.

- (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)

The proposed conduct will be of benefit to the public as it will:

- drive product innovation in the financial services industry, particularly in relation to the supply of home loan products;
- allow persons who may otherwise have been unable to acquire finance to construct a new home the ability to do so, in circumstances where they may have been unable to negotiate such finance on their own behalf;
- promote competition in the supply of home loan products by encouraging competitors of Bankwest to offer similar value added services; and
- promote competition in relation to home construction services by encouraging competitors of BGC and ABN to arrange similar relationships with other home loan product providers.

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

The supply of home loans in Western Australia is highly competitive with home loan providers competing in relation to price, service and product features/innovation. Key competitors to Bankwest include Westpac, ANZ and NAB.

The proposed conduct reflects the trend towards the supply of increasingly customised home loan products. In this case, this customisation is made possible by the decreased risk in dealing with reputable construction companies such as BGC and ABN. These companies have the ability to deliver home construction within shorter timeframes than industry averages and with increased certainty in relation to the timing of delivery. This means the risks faced by Bankwest at the point where the home has been financed but not completed are more limited.

It is envisaged that the ability to obtain progress payments throughout the construction period of a new home will be an attractive offer for first home buyers. It is likely that in some cases, being able to take advantage of the offer facilitated by the proposed conduct will determine whether first home buyers are able to proceed with the purchase of their first home.

It is likely that competing suppliers of home loan products will take the proposed conduct into account in formulating their offers to first home buyers. Similarly, it is likely that competing suppliers of home

construction services would recognise the benefit in entering into arrangements with home loan suppliers to facilitate customised home loan products.

## 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 supply of home loan products in Australia.

The supply of home construction services in Western Australia.

## 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)*

Bankwest does not consider that the proposed conduct will result in or is likely to result in any public detriment as:

- competition in the supply of home loans in Australia is vigorous, and there are sufficient alternative home loan suppliers that competitively constrain Bankwest;
- competition in the supply of home construction services in Western Australia is vigorous, and there are sufficient alternative home building services suppliers that competitively constrain BGC and ABN;
- the proposed conduct concerns a very small part of the supply of home loan products in Australia such that the impact of the proposed conduct on competition is likely to be insignificant; and
- purchasers and potential purchasers are under no obligation to acquire services from BGC and ABN to acquire home loan services from Bankwest.

- (b) Facts and evidence relevant to these detriments:

Home buyers considering the Rate Cutter Home Loan will have a broad range of alternative home loan products to choose from. Importantly,

each of Bankwest's key competitors offer home loans customised to first home buyers such that there is no customer segment that would be without practical alternatives to acquiring the Rate Cutter Home Loan in the context of the proposed conduct. For example, Westpac offers the Flexi First Option Home Loan, ANZ offers the Simplicity PLUS Home Loan, and NAB offers the Introductory Rate Home Loan.

There is also a range of alternative home construction providers operating in Western Australia that would constrain BGC and ABN. Each of Mirvac Ltd, Ross North Homes Pty Ltd, Celebration Homes Pty Ltd and Highbury Homes (WA) Pty Ltd offer home construction services that are comparable to those of BGC and ABN in terms of scale, price, quality and construction processes. The proposed conduct is unlikely to have a significant impact on the ability of these home construction companies to compete for home buyers, including first home buyers.

Most importantly, the limited scope of the proposed conduct means that its impact on competition is likely to be insignificant. This is because:

- the Rate Cutter Home Loan is one of a broad range of home loan products available to first home buyers in Western Australia;
- the proposed conduct relates to only a subset of home loans supplied as part of the Rate Cutter Home Loan (i.e. to first home buyers borrowing between 95% and 97% of the property value for the construction of a new home);
- all home buyers would continue to have the ability to obtain the Rate Cutter Home Loan and still use a home construction provider of their choice; and
- all home buyers would continue to have the ability to obtain construction services from BGC or ABN without acquiring the Rate Cutter Home Loan.

## **7. Further information**

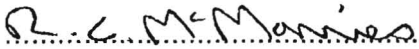
- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Rowan McMonnies  
Special Counsel  
Corrs Chambers Westgarth  
Governor Phillip Tower  
Level 32  
1 Farrer Place  
SYDNEY NSW 2000  
Australia

Telephone: (02) 9210 6230  
Facsimile: (02) 9210 6611

Dated 8 AUGUST 2011

Signed on behalf of the applicant

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Rowan McMonnies  
Special Counsel  
Corrs Chambers Westgarth