

12th September 2011

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

Dear Sir or Madam,

RE: COMMENTS ON BANKWEST NOTIFICATION N95514

I write in regard to the recent Bank of Western Australia Ltd (**Bankwest**) notification N95514 regarding immunity in relation to potential third line forcing conduct for its first homebuyer 97% Rate Cutter Home Loan. This notification seeks to allow exclusive dealing with two WA building companies, BGC (Australia) Pty Ltd (**BGC**) and Alcock Brown-Neaves Group (**ABN**).

We, the Summit Homes Group (**Summit**), are one of the top 6 residential builders in Western Australia. We also operate a Mortgage broking business Westgate Financial Services. We oppose the granting of exclusive dealing immunity to Bankwest for third line forcing under Notification N95514 because of the potential impact this has on competition in the home construction services sector of Western Australia. We disagree with some of the statements of Bankwest in its notification in section 4 Public benefit claims, section 5 market definition, and section 6 public detriments. We strongly endorse the product itself however as potentially providing significant public benefit in the supply of home loans in Australia because it addresses housing affordability issues for first home buyers, particularly in Western Australia.

Introductory comments

Western Australia currently constructs approximately 16,620 new homes per annum (source HIA WA). According to HIA estimates, roughly 22% of these are for first homebuyers, or 3,600 pa. In first homebuyer lending, roughly 30% are for newly constructed homes and 70% established (based on HIA data for WA FHOG Applications paid). Bankwest proposes to allocate \$500m to their 97% Rate Cutter product, which is available for both existing dwellings and new construction. Assuming the average first home buyer requires a \$400,000 loan (which our experience suggests is the case), this would provide roughly 1250 possible loans, which is in line with Bankwest's public statements of 1300-1500 borrowers. If the industry ratio's hold, they could expect something like 30% of these to be for new construction, or 375 loans. 375 loans would therefore be 10.5% of total expected WA first home buyer sales in a 12-month period, but could be as high as 34% if all loans went towards construction lending. Bankwest has advised that should this product perform well they will release further funds, so an argument that their product will have limited market impact appears unsubstantiated.



Bankwest's new product is available for purchase of an existing dwelling (they call this "turnkey") or construction of a new dwelling on a "turnkey" basis, but will only provide payment support for land settlement and construction progress payments if the construction is by an ABN or BGC controlled company.

Builders of new homes rely on progress payments from banks to fund the construction of new homes and first homebuyers rely on banks to provide funds to allow land to settle (a pre-requisite for construction). Therefore offering the product on a turnkey only basis to a new home builder without progress payment support puts that builder at a significant cost disadvantage to a builder that has such support. The turnkey builder would need to fund the working capital to fully construct the home. Any argument that there is no disadvantage because the product can be acquired by any builder on a turnkey basis also appears incorrect and misleading.

The product is attractive for first home buyers because it increases the loan to value (LVR) ratio from 95% currently in the market to 97%. On a typical \$400,000 first homebuyer house & land package, at 95% LVR, a customer must find a deposit of \$20,000, of which \$7000 is provided under the Government first home buyer's grant (FHOG), resulting in a net deposit requirement of \$13,000. The additional 2% loan coverage from the new Bankwest product reduces the required deposit to \$12,000 less \$7000 FHOG, or \$5000, a "saving" of \$8,000 to the first home buyer in terms of how much deposit they need. Bankwest's eligibility terms and conditions require a customer to be FHOG eligible.

This \$8,000 is significant because of the difficulty many WA first home buyers have in saving a deposit in the current market. We find that typically first home buyers are paying a considerable portion of weekly incomes in rent. As a result they can often service repayments on a \$400,000 loan because their rent payments are not dissimilar, but cannot save a deposit simultaneously with making rent payments. This has given rise to a range of financial products in the market to overcome this difficulty, including "savings plans", "parental guarantees", deposit gifting etc. **Our view is that any financial product which significantly reduces the required first home buyer deposit therefore offers a significant competitive advantage to a building company that can exclusively access such product.**

We note that the ACCC has already granted the ABN Group via its subsidiary Bluebay Finance Corporation Pty Ltd immunity from third line forcing in its Notification N94386 for a 95% LVR non genuine savings product. This product is also targeted at the first homebuyer segment in WA. Given the figures previously quoted, this means that the ABN Group potentially has a large competitive advantage in the first homebuyer segment of home construction services if it is also allowed exclusive access to the Bankwest 97% LVR product.

Public benefit arguments

In its submission, Bankwest argues a public benefit that their proposed conduct will promote competition in home construction services by encouraging companies such as ours to arrange similar relationships with other home loan providers. We disagree with this statement because our recent experience with the industry for the supply of home loan products is that most market participants in the current market and post-GFC do not want to offer loan products at this LVR. The lack of such providers (at 95% LVR) was already cited by Bluebay Finance in its notification N94386 as a key reason why their exclusive dealing immunity should be granted.

Summit, via its subsidiary Westgate, has been seeking similar arrangements with financial institutions for over 6 months. Hence we applaud Bankwest for creation of the product in support of WA first homebuyers, but refute their argument that this necessarily promotes competition in home construction.

The impact of allowing only the two companies to exclusively have access to this product is that this has the potential to create a public detriment. Rather than promoting competition in home construction services, it could reduce competition because it allows the selected companies to market their homes very differently. Instead of marketing homes on price/value/features, homes could be marketed by Finance product availability. If a customer who wants to construct a new home does not have the required deposit to qualify for a 95% LVR loan, but they can raise sufficient deposit to qualify for the 97% loan, then the companies who can access that product would be advantaged. This reduces the customer's choice of new home and reduces their ability to negotiate on price because any builder which could access such finance product exclusively would know that the customer has more limited options than usual.

If Bankwest was to offer the product for newly constructed dwellings to all or a broader range of market participants, we agree that there would be a public benefit. The customer would be able to gain finance and their choice of home construction provider would not be limited. They would retain the full ability to secure the lowest possible price/best value they can for the home construction component. **On the basis of information provided in the submission, restricting access to the product to two home construction providers seems not to create any additional public benefit over and above the initial loan product creation by Bankwest.**

Facts and Evidence in Support of the claims

Firstly, Summit would like to comment on Bankwest's listing of its key competitors. It does not list the Commonwealth Bank of Australia (**CBA**), of which Bankwest is a subsidiary. Between Bankwest and CBA, they control a substantial (eg. 40-50%) of home loan lending in WA. They fail to list any of the smaller Banks such as Adelaide Bank, Bank of Queensland, Police & Nurses Credit, St George Bank or Suncorp Bank. We do not believe that any of these providers, or the other Major Banks, currently supply any product above a 95% LVR, making the 97% LVR product unique at present.

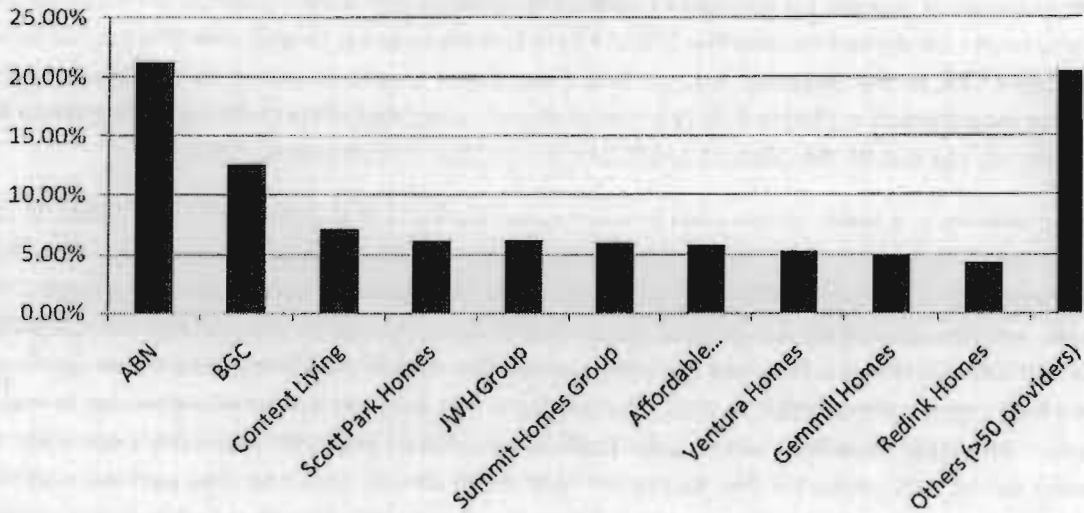
Secondly, Bankwest cites "a trend towards supply of increasingly customized home loan products" as evidence that an exclusive dealing arrangement between a financial institution and home construction providers is warranted. Our experience of the post-GFC financial market is in fact the opposite. Most financial institutions have standardized product, tightened lending criteria and more carefully scrutinized customer risk before approving loans. Little factual evidence has been tabled in the submission of the trend to which Bankwest refers.

Thirdly, Summit queries the factual basis for Bankwest's claim that it faces less risk by restricting construction to ABN and BGC. A market share table of WA home builders is shown in Figure 1, indicating that ABN and BGC are the two largest players in the market. Although ABN and BGC are the largest market participants, they are not known within the industry to have been operating longer or with different operating structures than other building competitors in the market. ABN and BGC are also not known to operate with different construction processes, techniques or timeframes for first homebuyer products than any other WA home builder in our opinion. Content Living (Dreamstart), for example, is reportedly fast at getting projects to site and completing them quickly, and is a first homebuyer specialist brand, yet they are not listed by Bankwest as a competitor to ABN/BGC. In addition, there has not been a large (top 10) building company fail to meet its obligations in the last 15 years in WA.

Bankwest's argument about builder risk, for which no evidence is tabled, has not been supported by fact in their submission. For example, if Bankwest had run a competitive tender process for access to this product which included selection criteria around construction processes & timeframes, then suitable evidence might be available. We are not aware that any such research was undertaken by Bankwest in reaching their view.

In addition, Bankwest, like any financial institution undertaking construction lending, will only pay out funds on progress payments once a milestone stage of construction is completed and verified by their valuers. Hence it does not expose itself to significant builder risk. Home Construction projects are also protected by mandatory Insurance to protect against builder failure. In summary, the assertion by Bankwest that ABN or BGC offer less risk to them does not seem to be supported by any evidence submitted with their notification.

Single dwelling - Metro WA Market Share (%)
12months Jul '10 to Jul '11



Source: Cordell Market Movements Report July 2011. This information is copyright to Cordell Information. ¹

Figure 1

Public detriments

We agree with Bankwest’s statements that the WA market for home construction services is normally highly competitive. In an open market, ABN and BGC are effectively constrained and competition is intense, particularly in the current residential building market downturn. However, as stated earlier in the Public Benefit argument section, if these two companies are given continued exclusive access to a advantageous financial product then they will not be as constrained by competition for the class of customer that must have the that product if they are to secure financing for the construction of a new home.

¹ The information contained within this report has been prepared with the utmost confidence and is, to the best of the author’s knowledge, accurate as at the date of publication. The information is a representative sample covering approximately 60% of the total WA single dwelling housing market and should be used as a general guide only. Cordell Information accepts no responsibility for the consequences of any person relying upon this information.

Bankwest states that purchasers and potential purchasers are under no obligation to acquire services from ABN or BGC to acquire home loan services from Bankwest. This would be untrue if the customer wishes to construct a home (as opposed to purchasing an existing or a newly completed dwelling) and they only have a 3% deposit because the 97% LVR Rate Cutter product is unique. The 97% product is not of the same LVR as the Westpac, ANZ or NAB home loans quoted as these do not allow lending (excluding capitalization of LMI) to 97% LVR. Hence there is a segment of customers who only have a 3% deposit (or wish to restrict their deposit to 3%) who would have no alternative product.

What we observe as a home construction provider in the market is that access to finance products can become more important in a new home construction project ultimately proceeding with first homebuyers than the price/specification/quality of that home might normally in other segments. For example, industry speculation surrounding the existing Bluebay Finance product exclusively distributed to the ABN Group is that this has given that company significant market advantage and driven significant enquiry level since its introduction in 2010. Our opinion is that no other builder would be able to match the price advantage ABN/BGC would gain from being offered progress payments exclusively by Bankwest on the 97% product if they had to self-fund the build with only a turnkey payment method. We therefore disagree with the statement that the proposed conduct will have an "insignificant" impact on the ability of the listed (or the real competitors) to compete for first home buyer customers.

Bankwest also cites several home construction providers as competitors to ABN and BGC. As discussed previously and shown in Figure 1, these are not the main competitors to BGC or ABN in WA and are clearly not of the same scale (given they are not in the Top 10). Most of the names listed in the submission are not first homebuyer brands, and the list even includes one of the ABN's own brands (Celebration Homes).

We reject Bankwest's statement that because the Rate Cutter Home Loan is restricted to only 1300-1500 borrowers (at typical deals sizes of \$400,000) it will have limited impact on competition. As we have presented, this represents at least 10.5% of total likely first homebuyer sales for the next 12 months in WA. Given that Bankwest has not restricted the proportion of the funding which can go to construction (progress payment) lending as opposed to turnkey, it is possible (but admittedly unlikely) for all 1250 deals to be done by ABN and BGC. Once again, to us, this does not appear to be an insignificant advantage or an insignificant part of the market.

The potential public detriment with any exclusive dealing proposal is that it gives the parties who are part of the exclusive arrangement an unfair advantage over excluded parties. This is particularly true when the parties involved are the largest market share participants, because they can combine product access advantage with normal scale advantages (should they exist). Public detriments can then be created when the included parties start to influence prices knowing they are somewhat protected from the usual competitive forces. It is this risk that we feel could occur should the ACCC allow the 97% Rate Cutter or a multitude of similar exclusive dealing arrangements to proliferate between Financial Institutions and Home Construction providers as Bankwest suggests in its submission.

We feel the home construction services industry will be better served by promoting open fair competition in which financial products should be made available to all parties. This allows maximum choice for consumers and minimizes the possibility for price escalation and abnormal returns by construction competitors operating under the protection of exclusive arrangements.

Summary and conclusion

The market for provision of home loan products in Australia (including Western Australia) restricted severely following the Global Financial Crisis. Lender LVR limits dropped markedly, increasing the deposit requirements substantially, which forced many customers out of the market and into the rental sector as they were unable to obtain finance. The banks also tightened eligibility requirements, often requiring evidence of "genuine savings", which meant that customers needed to demonstrate a history of being able to save in order to qualify for loans. This has created a "rental trap", where the most disadvantaged part of the community are forced into large rental payments and in doing so can no longer save excess funds in order to build a track record of genuine savings.

The proposed Bankwest product addresses some of this issue and is welcomed. What is not welcomed is the proposed conduct of the State's largest home lender to deal exclusively with the two largest home construction providers because of the detrimental impact we believe this could have for competition in the home construction services market in Western Australia. We cannot see why the ACCC would endorse or promote such third line forcing arrangements when the exclusive dealing submission provides little evidence of a tangible public benefit in excess of the creation of the loan product itself.

We recognise that Bankwest has attempted to dilute the anti-competitive nature of its request for exclusive dealing immunity by selecting two panel firms over one, most likely in an attempt to increase the customer's choice of first homebuyer brands. We note that such conduct has precedent and can be acceptable, but this is often when the panel of allowable providers is much broader than two (say 5), has been determined through some form of open tender process by the party seeking immunity, and is not restricted to those with the largest overall market shares.

As a result we feel that the proposed Bankwest arrangement is anti-competitive for the home construction services market and in our opinion ultimately not in the customer's best long-term interests. We believe such arrangements restrict customer choice in the range of home designs they can access and has the potential to result in customers ultimately paying higher prices for a home. In our opinion, financial services providers should supply finance, and home construction providers should provide home construction – they should not be exclusively tied together in any way if we are to promote fair and open competitive markets between two very different industries.

We would strongly request that the ACCC reject Bankwest's notification for third line forcing immunity for their proposed 97% Rate Cutter Home Loan or as a minimum seek clarification of the evidence they hold to substantiate the claims in their submission.

I am happy to discuss our letter and views at your convenience.

Yours faithfully,



Simon Walsh
Group General Manager
Summit Homes Group