

20th October 2011

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Sir or Madam,

RE: SUBMISSION BY BLUE BAY FINANCE CORPORATION PTY LTD IN RESPONSE TO SUMMIT HOMES GROUP PTY LTD COMPLAINT FOR AN EXCLUSIVE DEALING NOTIFICATION N94386 LODGED BY BANK OF WESTERN AUSTRALIA LIMITED

Introductory comments

This submission has been prepared by Blue Bay Finance Corporation Pty Ltd (**BBFC**) as a courtesy to the ACCC in response to an invitation from the ACCC to BBFC to make a submission in respect of the above referenced Summit Homes Group Pty Ltd (**Summit Homes**) complaint dated 12 September 2011 (**Complaint**).

The Summit Homes Complaint concerns an exclusive dealing notification lodged by Bank of Western Australia Limited on 12 September 2011 (**Bankwest Notification**). The Complaint makes a comparative reference to BBFC by citing the immunity which BBFC was granted in 2009 (which remains in force as at the date of this submission) (**BBFC Immunity**) for a financial product offered to first home buyers by BBFC. BBFC understands that it is not the subject of the Summit Homes Complaint.

The Bankwest Notification refers to a product to be offered by Bankwest to certain customers for a mortgage home loan product which is based on a 97% LVR (**Bankwest Product**). The immunity, which BBFC has obtained from the ACCC concerns a financial product which offers first home buyers a home loan product based on a 95% LVR (**BBFC Product**).

BBFC and ABN Group Holdings Pty Ltd (ABN Group)

For the purpose of clarification, the BBFC Product which is cited in the Summit Homes Complaint (for comparative purposes) has been developed between BBFC and the ABN Group including the following residential home builders, which form part of the ABN Group:

- 1) Homebuyers Centre;
- 2) Celebration Homes;
- 3) Dale Alcock Homes;
- 4) APG Homes;
- 5) Webb & Brown-Neaves;
- 6) TR Homes;
- 7) Boutique Homes (Vic); and
- 8) Homebuyers Centre (Vic).

BBFC Product

The Bankwest Product, the subject of Summit Homes Complaint is a different product from the BBFC Product.

The BBFC Product which is offered by BBFC to first home buyers was developed in conjunction with the ABN Group and the residential building companies (outlined above) to structure a financial product which mitigated the risks for BBFC and its funding partners.

The strategy and development concept of the BBFC Product is closely guarded by BBFC and the ABN Group and it is considered to be a confidential business process. If the ACCC wishes to review certain information pertaining to the development of the BBFC Product, BBFC would be prepared to oblige on the basis that any information disclosed to the ACCC is excluded from the public register in accordance with the ACCC *"Guidelines for excluding information from the public register for authorisation, merger clearance and notification processes"*.

Whilst the BBFC Product is considered by BBFC to be unique in the market, the BBFC Product is simply one of many financial products that are available to first home buyers in the Australian lending market place. The Complaint by Summit Homes fails to address a number of factors which play an integral role in a first home buyer's decision to acquire a financial product that is suitable for that individual, such as:

- 1) competitive housing construction prices;
- 2) free product offers or financial incentives for first home buyers;
- 3) competing financial packages from first tier and second tier lenders; and
- 4) the fluctuating lending climate and overall impact which interest rates have on borrowers accessibility and affordability criteria.

The relevance test:

When applying the net public benefit test, the BBFC Product continues to meet the criteria for that test up to the date of this submission. The net public benefit test is designed to measure the extent of public benefit derived from alleged anti-competitive behaviour and to determine if that behaviour outweighs any public detriment. BBFC contends that the benefits of the BBFC Product outweighs any possible public detriment for the following reasons:

- 1) the small number of consumers who qualify for the BBFC Product (in our view) when compared to the overall number of consumers in the first home buyer's lending market; and
- 2) the wide range of financial products offered by other first and second tier lenders in the Australian market (National Australia Bank, ANZ, Commonwealth Bank, Westpac, Bendigo Bank, St George Bank and various credit unions by way of a few examples only).

BBFC obtained the necessary immunity in respect of the BBFC Product from the ACCC on 7 January 2010. BBFC is only dealing with companies which are related to it and which fall within the ultimate control of the ABN Group. Accordingly, for the purposes of section 47 (6) of the *Competition and Consumer Act 2010*, BBFC maintains that it is not engaging in an exclusive dealing.

Conclusion:

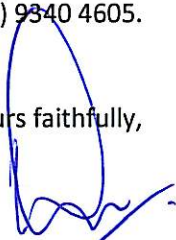
In conclusion BBFC confirms that the BBFC Product is subject to a grant of immunity from the ACCC as set out in the preceding paragraph. Whilst BBFC has not had the opportunity to consider the merits of the Bankwest Product, BBFC is comfortable that the BBFC Product is sufficiently different from the Bankwest Product and on this basis, BBFC does not perceive any risk of public detriment.

BBFC contends that the example made of BBFC and the BBFC Product in the Summit Homes Complaint is an inappropriate example on the basis that Summit Homes has failed to consider the broader scope of the financial lending market and other relevant factors as set out above.

We confirm that BBFC continues to comply with the conditions of the immunity granted to it by the ACCC on 7 January 2010 in respect of the BBFC Product.

Should you have any questions concerning this submission, please telephone Don Crellin at BBFC on (08) 9340 4605.

Yours faithfully,



Don Crellin
Director
Blue Bay Finance Corporation Pty Ltd