

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)

N98638 Australia and New Zealand Banking Group Limited ABN 11 005 357 522
("ANZ").

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

Provision of consumer and commercial financial products and services and credit facilities (**banking products**), including through authorised finance brokers who are able to offer banking products on behalf of ANZ to their customers.

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

ANZ Centre
Level 9, 833 Collins Street
Docklands Victoria 3008.

2. Notified arrangement

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

Silage Wagons Purchased from, or otherwise acquired through, Tracmac Farm Equipment Pty Ltd ("Agricultural Equipment").

Banking products provided by ANZ and arranged through Vehicle & Equipment Finance Pty Ltd.

- (b) Description of the conduct or proposed conduct:

ANZ giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of banking products to customers

of Tracmac Farm Equipment Pty Ltd, on condition that the customers will acquire Agricultural Equipment from Tracmac Farm Equipment Pty Ltd.

ANZ refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of banking products to persons wishing to acquire or acquiring Agricultural Equipment, for the reason that the customers have not acquired, or will not acquire, Agricultural Equipment from Tracmac Farm Equipment Pty Ltd.

(Refer to direction 4)

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)

Customers of Tracmac Farm Equipment Pty Ltd and persons wishing to purchase goods similar to the Agricultural Equipment from other dealers.

- (b) Number of those persons:

- (i) At present time:

In excess of 50

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

In excess of 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)

Please refer to attached submission.

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

Please refer to attached submission.

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)

Please refer to attached submission.

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)

Please refer to attached submission.

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

Please refer to attached submission.

7. Further information

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

Ivan Mioc
Level 28, 55 Collins Street
Melbourne VIC 3000
Telephone: (03) 8654 0935

Dated 16-9-2015

Signed by/on behalf of the applicant

Mioc
.....
(Signature)

IVAN MIOC
.....
(Full Name)

ANZ
.....
(Organisation)

State Manager Commercial Broker
.....
(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 *Competition and Consumer Act 2010* 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.

Submission

Background

Tracmac Farm Equipment Pty Ltd (“the **Dealer**”) is a wholly owned Australian company focusing on sales and service of agricultural equipment.

ANZ carries on (amongst other things) the business of providing banking products to purchasers of a variety of assets (including commercial purchasers).

The Dealer and ANZ have been introduced by Vehicle and Equipment Finance Pty Ltd (“the **Broker**”), an authorised finance broker. The Dealer refers customers who are seeking finance for their purchases to the Broker, who provides assistance in locating suitable finance. Under an agreement between ANZ and the Broker, the Broker is authorised to offer banking products on behalf of ANZ to approved customers who are seeking asset finance.

Benefits and rewards for customers

From time to time, ANZ proposes to offer a discount or rebate on the rate of interest applicable to finance provided by ANZ where a customer introduced by the Broker acquires equipment from the Dealer using finance. The Dealer or the Broker may indirectly contribute to this discount or rebate by way of reimbursement or subsidy to ANZ.

Notified Conduct

ANZ, the Broker and the Dealer are concerned that the conduct described above could be viewed as a contravention of section 47(6) and (7) of the *Competition and Consumer Act 2010* (Cth) (the “**Act**”). Specifically, the conduct could be viewed as ANZ giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of banking products to customers of the Dealer or the Broker on condition that the customers acquire equipment from the Dealer or are introduced to ANZ through the Broker (and the corresponding refusal to supply for the reason that the customer has not so acquired equipment from the Dealer or been introduced by the Broker).

Whilst the parties do not necessarily consider that this is the correct characterisation of the conduct, they recognise that such a characterisation is open to interpretation. Out of an abundance of caution, and in order to minimise the risk of contravening sections 47(6) and (7), ANZ, the Broker and the Dealer wish to notify the conduct under section 93(1) of the Act. The conduct is set out in the attached Form G.

Competition Issues

ANZ submits that the conduct in question will not adversely affect competition in any relevant market and the conduct in question will result in public benefits and no identifiable public detriment.

ANZ does not believe that the proposed conduct will have an adverse effect on competition in any relevant market. ANZ considers that the relevant markets for assessing this notification are the retail market for Agricultural Equipment, and the market for commercial banking products. These markets are highly competitive and characterised by relatively low levels of concentration, with a diverse range of services and continuing innovation in product development.

The Dealer is only one of many retailers of Agricultural Equipment the subject of this notice, with other providers including (for example) John Deere and Ag Machinery Australia. Similarly, ANZ is only one of a number of providers of banking products to the agricultural market, with other providers including Westpac, St George, Rabobank and Bank of Queensland. This market is likely to remain competitive for the foreseeable future. Accordingly, ANZ does not consider that the conduct will distort demand, create barriers to entry or otherwise harm competition in the market.

Moreover, the notified conduct is pro-competitive and will in our opinion generate a number of public benefits, including:

1. Providing customers with the opportunity to obtain competitive rates on banking products in conjunction with their acquisition of Agricultural Equipment from the Dealer.
2. Encouraging ANZ's competitors in the agricultural finance space to offer similarly priced products and services, encouraging competition amongst providers of Agricultural Equipment finance. These factors will ultimately enhance consumer financial welfare via the reduction in the cost of Agricultural Equipment finance.

ANZ believes that the notified conduct causes little, if any, identifiable detriment to the public.

Conclusion

For the reasons set out above, ANZ considers that the Commission should not serve a notice under section 93(3A) of the Act in respect of the attached notification. This is because the notified conduct will cause little, if any, identifiable detriment and will generate public benefits.