

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)

Australia and New Zealand Banking Group Limited ABN 11 005 357 522
trading as Esanda (“**Esanda**”).

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

Supply of retail (consumer and commercial) financial products and services, including through authorised finance brokers who are able to offer financial products and services on behalf of Esanda 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:

Earthmoving Machinery purchased from “Brisbane Mini Excavator Sales Pty Ltd”.

Retail (commercial and consumer) financial products and services provided by Esanda and arranged through “Credit One Equipment Finance Pty Ltd” (**Broker**).

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

Esanda giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of financial products and services to customers of “Brisbane Mini Excavator Sales Pty Ltd” who are introduced to Esanda by the Broker, a finance broker who is authorised to

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act for Esanda, on condition that the customers will acquire earthmoving machinery from "Brisbane Mini Excavator Sales Pty Ltd".

Esanda refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of financial products and services to customers of "Brisbane Mini Excavator Sales Pty Ltd" who are introduced to Esanda by the Broker, for the reason that the customers have not acquired or have not agreed to acquire their earthmoving machinery from "Brisbane Mini Excavator Sales 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 "Brisbane Mini Excavator Sales Pty Ltd"

- (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:

Cosi De Angelis

20/111 Eagle Street

Brisbane QLD 4000

Telephone: (07) 3947 5230

Dated 9th October 2014

Signed by/on behalf of the applicant

[Signature]
(Signature)

Simon Collins
(Full Name)

Brisbane Mini Excavator Sales Pty LTD
(Organisation)

Manager
(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

“Brisbane Mini Excavator Sales Pty Ltd” (the **Dealer**) is a registered earthmoving machinery dealer. The Dealer sells earthmoving equipment manufactured but not limited to Volvo, Airman, XGMA, ECM, Miller.

Esanda carries on (amongst other things) the business of providing finance to purchasers of a variety of assets (including commercial purchasers).

The Dealer and Esanda have been introduced by “Credit One Equipment Finance Pty Ltd” (**Broker**), a finance broker. Under an agreement between Esanda and the Broker, the Broker is authorised to offer financial products and services on behalf of Esanda to its customers who are seeking asset finance.

Neither the customers of the Broker nor the Dealer are required to obtain finance from Esanda (or any other finance products or services) when purchasing their earthmoving machinery from the Dealer or seeking finance from the Broker.

Benefits and rewards for customers

From time to time, the Dealer and Esanda propose to offer a discount or rebate on the rate of interest applicable to finance provided by Esanda where a customer introduced by the Broker purchases a vehicle from the Dealer. The Dealer or the Broker may indirectly contribute to this discount or rebate by way of reimbursement or subsidy to Esanda.

Notified Conduct

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

Whilst the parties do not necessarily consider that this correctly characterises the conduct, they recognise that it is open to being characterised in this way. Accordingly, out of an abundance of caution and in order to minimise the risk of contravening sections 47(6) and (7) of the Act, Esanda, 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

We submit 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.

We do not believe that the proposed conduct will have an adverse affect on competition in any relevant market. We consider that the relevant markets for assessing this notification are the market for commercial earthmoving equipment, and the market for commercial financial products and services. 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 Mini Excavators. Similarly, Esanda is only one of a number of providers of financial products and services, with other providers including GE Money, St George, specialist asset finance providers and banking institutions providing suitable loans. These markets are likely to remain competitive for the foreseeable

future. Accordingly, we do 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 generate a number of public benefits, including:

- providing customers with the opportunity to obtain competitive rates on equipment finance in conjunction with their optional acquisition of earth moving equipment from the Dealer
- encouraging Esanda's competitors to offer similarly priced products and services, encouraging competition amongst providers of equipment finance. These factors will ultimately lead to further consumer benefits by reducing the cost of equipment finance.

We believe that the notified conduct causes little, if any, identifiable detriment to the public.

From a customer's perspective, the notified conduct offers a benefit in relation to the optional acquisition of finance in conjunction with their optional acquisition of earthmoving machinery from the Dealer. While some customers may consider that their choice of dealer is limited by the exclusive availability of the benefits or rewards through the Dealer or that their choice of financier is limited by the exclusive ability of the benefits or rewards through Esanda, the genuine choice of consumers' to deal with any equipment dealer and any financier based on the competitive terms offered by those particular parties is not restricted. By retaining the genuine choice of consumers, the conduct is not inherently anti-competitive.

Conclusion

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