



Australian  
Competition &  
Consumer  
Commission

23 Marcus Clarke Street  
Canberra ACT 2601

GPO Box 3131  
Canberra ACT 2601

tel: (02) 6243 1111

fax: (02) 6243 1199

[adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

[www.accc.gov.au](http://www.accc.gov.au)

Our ref: 60758  
Contact officer: Luke Griffin  
Contact phone: 02 6243 1114

31/08/2016

By email

Dear Sir / Madam

**Collective Bargaining Notifications CB00328 – CB00432 lodged by the Council of Australian University Directors of Information Technology (CAUDIT) on behalf of itself and its members—interested party consultation**

**Introduction**

The Australian Competition and Consumer Commission (the ACCC) has received collective bargaining notifications from CAUDIT with regard to collectively negotiating with producers, sellers and distributors for the provision of computing information technology products and services to CAUDIT and/or its members.

The purpose of this letter is to invite your comments as a party who may be interested in providing a submission to the ACCC in relation to these arrangements.

**Collective bargaining notification process**

The ACCC is the Australian Government agency responsible for administering the *Competition and Consumer Act 2010* (the Act). The broad objective of the Act is to benefit all Australians by promoting competition and to ensure consumers are treated fairly.

The competition provisions of the Act prohibit certain forms of anti-competitive agreements or conduct including agreements which typically occur during collective bargaining.

Collective bargaining refers to an arrangement where one or more competitors in an industry come together to negotiate terms and conditions (including price) with a supplier or a customer.

While the Act prohibits certain forms of anti-competitive conduct, it does recognise that conduct which may otherwise breach the Act may, in some circumstances, be of benefit to the public. The Act accordingly allows businesses that are considering engaging in anti-competitive arrangements to seek immunity from legal action. One way businesses may obtain immunity to engage in collective bargaining and collective boycott conduct that may be at risk of breaching the Act is to lodge a notification with the ACCC.

Once a notification has been validly lodged with the ACCC, immunity from legal action in respect of the notified conduct commences 14 days after the notification was lodged, unless the ACCC issues a draft objection notice proposing to prevent the immunity coming into effect.

The ACCC may proceed to remove the immunity provided by a collective bargaining notification where it is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct.

### **Collective bargaining notifications lodged by CAUDIT**

On 29 August 2016, CAUDIT lodged collective bargaining notifications concerning the provision of IT products and services to its membership. CAUDIT has 43 members listed in its notifications, most of whom are Australian universities. CAUDIT has sought immunity from legal action in order to negotiate with 104 nominated targets which are listed in the notifications. CAUDIT submits that each of these targets are companies that sell to a wide range of customers, not limited to CAUDIT's members, nor to the education sector generally. CAUDIT further submits that the arrangements are unlikely to result in any public detriments because:

- the current level of individual bargaining power of its membership is very low
- its membership represents a very small proportion of the targets' sales
- the arrangements are voluntary for both CAUDIT's membership and the targets.

CAUDIT submits that the arrangements are likely to result in public benefits in the form of:

- more beneficial terms and conditions, including price in some instances for CAUDIT members
- promotion of cost savings for CAUDIT members and targets as a result of decreased transaction costs associated with negotiations that may otherwise take place on an individual basis.

The immunity from legal action provided by notifications CB00328 – CB00432 will commence on 12 September 2016 provided the ACCC does not issue a draft objection notice proposing to prevent the immunity coming into effect.

The collective bargaining notification lodged by CAUDIT will shortly be available on the ACCC's public register and an electronic copy of the notification will shortly be found on the collective bargaining notification register, available on the ACCC's website at [www.accc.gov.au](http://www.accc.gov.au).

### **Request for submissions**

To assist the ACCC in its consideration of the notification it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed arrangements.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be excluded from the public register in certain circumstances. Submissions which are excluded from the public register may still be taken into account by the ACCC in conducting its assessment of the notified arrangements. Guidelines for seeking exclusion from the public register are available here: [Exclusion guidelines](#)

If you wish to lodge a submission, please address your submission to:

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

Submissions can also be lodged by email to [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au). If relevant, please provide a preferred email address for any future correspondence from the ACCC.

Please ensure that your submission is lodged with the ACCC by **6 September 2016**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Luke Griffin on 02 6243 1114 or myself on 03 9290 1475.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G Jones', with a stylized flourish extending from the end.

Gavin Jones  
Director  
Adjudication