

21 September 2016

By email

Gavin Jones and Luke Griffin
Adjudication
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Dear Mr Jones and Mr Griffin

CAUDIT – collective bargaining notification

We refer to the interested party submission dated 6 September 2016. We thank you for the opportunity to provide a response to the submission.

CAUDIT is disappointed to hear that a vendor does not see the value in its services, or has found dealing with CAUDIT less than ideal. CAUDIT would encourage the vendor to make contact (as CAUDIT cannot, given the vendor's identity has not been disclosed) to discuss its concerns.

CAUDIT would welcome the opportunity to discuss opportunities with this vendor and indeed, the vendor's inclusion in the notification confirms CAUDIT's intention to discuss the possibility with the vendor. However, the vendor is under no obligation to deal with CAUDIT, and this will not change as a result of the collective bargaining notification.

As the vendor makes clear, it has not been required to deal with CAUDIT, and has been able to sell directly to CAUDIT's members, without involvement with CAUDIT. This demonstrates the lack of anti-competitive detriment in CAUDIT's activities. The vendor's ability to negotiate and sell directly to CAUDIT's members (and CAUDIT's members' ability to negotiate and deal directly with the vendor), without CAUDIT involvement, will not change as a result of the collective bargaining notification.

Further, CAUDIT cannot, and will not, take any action to terminate or not renew the vendor's individual agreements with universities. Those agreements are and will remain between the vendor and the universities. CAUDIT is not privy to the details of the commercial arrangements and contractual payments between its members and the relevant vendors; nor is it involved in relationships between individual universities and vendors.

CAUDIT does not consider the vendor's fears in relation to CAUDIT becoming the only avenue to sell its products well-founded. The collective bargaining notification aims to put beyond doubt that CAUDIT's activities are lawful. Neither CAUDIT, nor its members, are seeking to engage in collective boycott conduct. The vendor will not be forced into collective bargaining as a result of the notification. CAUDIT merely provides its members with an additional offer (or offers) from vendors where it is able to do so, and provides vendors with another opportunity to market to all CAUDIT members.

CAUDIT disagrees that its activities are of minimal benefit to universities, as demonstrated by universities choosing to utilise CAUDIT's services, despite being under no obligation to do so. CAUDIT considers that its members are likely to access more beneficial terms and are likely to receive transactional efficiencies in terms of reduced costs in negotiating procurement contracts with



numerous vendors as a result of CAUDIT's activities. CAUDIT members are largely universities and one of CAUDIT's aims is to enable public funds to be spent more judiciously. However, CAUDIT acknowledges that at times some or all members choose to negotiate directly with vendors, either to vary the terms of an offer made via CAUDIT, or bypassing CAUDIT altogether, and there is no reason for this to change as a result of the notification. From a vendor perspective, CAUDIT's activities also enable vendors to market to all CAUDIT members – thereby offering vendors an opportunity potentially to expand their businesses and reduce transactional costs.

CAUDIT notes that the author of the submission is particularly concerned about the impact of the notification on small business. The vendors with which CAUDIT deals are most often very large businesses, although CAUDIT recognises that from time to time a vendor may be smaller, particularly where it is a distributor of products produced by a larger company, which appears to be the case in this situation. CAUDIT considers that smaller businesses would be well-placed to benefit from CAUDIT's activities. As discussed above, an offer through CAUDIT can be a valuable marketing tool, and can reduce internal transactional costs, both for the vendor and the universities. CAUDIT's activities in negotiating with numerous vendors also provide CAUDIT members with awareness of the choice and options available, which is of benefit to both CAUDIT members and vendors (especially smaller and less well-known companies). However, those benefits aside, the vendor can continue to operate on the same basis as before the notification. For the reasons set out in CAUDIT's submission, CAUDIT does not agree that universities have significant bargaining power in relation to the relevant products and services. In any case, the optional nature of dealing with CAUDIT means that it is not accurate to describe it as a negotiating "block". It appears that the vendor has had a great deal of success in marketing to universities. However, CAUDIT notes that the products listed by the vendor also have a much larger potential range of customers.

In conclusion, CAUDIT does not consider that any public detriments will arise from its activities, including because neither CAUDIT members nor the vendors are in any way obliged to participate in any negotiations conducted by CAUDIT. The collective bargaining notification does not affect or impact the relationships, or ability to negotiate directly, between CAUDIT members and vendors. To the extent the vendor who authored the submission is concerned about that, it misunderstands what is permitted by the notification. There is no reason to believe that the vendor will be "shut out" of future supply of any type of supply (whether hardware, software, consulting or other products or services).

CAUDIT also notes the vendor's complaint in relation to its lack of success in application to sponsor CAUDIT events. Approximately 4-10% of CAUDIT's vendors have an opportunity at any given time (without taking into consideration the thousands of other vendors). While CAUDIT endeavours to provide opportunities for vendors, it is not possible to provide all vendors with such opportunity as, apart from our bi-ennial conference, there are generally only two occasions per year to do so. However, as noted above, CAUDIT would welcome the opportunity to discuss this further with the vendor.



Anne Kealley

