

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)

N98797

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 financial products and services and credit facilities ("**Banking Products**") to consumer and commercial customers, including through nominated finance brokers who:

- provide "credit services" (as defined in the *National Consumer Credit Protection Act 2009* (Cth) ("**NCCPA**")) to consumer customers and equivalent services to commercial customers ("**Credit Services**"); and
- in the course of providing such Credit Services, may refer or introduce customers to ANZ,

("Nominated Brokers").

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

Australia and New Zealand Banking Group Limited
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:
- Credit Services provided by Nominated Brokers.

- Banking Products provided by ANZ to consumer and commercial customers.
- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)
- ANZ:
 - (i) supplying, or offering to supply, Banking Products;
 - (ii) supplying, or offering to supply, Banking Products at a particular price; and/or
 - (iii) giving or allowing or offering to give or allow, each of (or a combination of) a discount, allowance, rebate or credit in relation to the supply of Banking Products,

to customers of Nominated Brokers on the condition that the customers will acquire Credit Services from the Nominated Brokers.
 - ANZ refusing:
 - (i) to supply Banking Products;
 - (ii) to supply Banking Products at a particular price; and/or
 - (iii) to give or allow a discount, allowance, rebate or credit in relation to the supply of Banking Products,

to consumer or commercial customers for the reason that the customers have not acquired or have not agreed to acquire Credit Services from a Nominated Broker.

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)
- Commercial and consumer customers wishing to acquire Banking Products.
 - The Nominated Brokers and other suppliers of Credit Services.
- (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:

Name: Cosi De Angelis
Address: Level 17, 111 Eagle Street
Brisbane QLD 4000
Phone: +61 7 39475230

Dated.....16 December 2015.....

Signed by/on behalf of the applicant:



.....
(Signature)

Cosi De Angelis
General Manager Commercial Origination

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 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

Each Nominated Broker conducts a business of (among other things) supplying Credit Services to consumer and/or commercial customers.

ANZ carries on (among other things) the business of providing Banking Products to consumer and commercial customers. Under each agreement between a Nominated Broker and ANZ, the Nominated Broker is permitted to:

- (a) refer customers to ANZ for the purposes of applying for Banking Products; and/or
- (b) procure applications, requests or offers to obtain Banking Products and submit those applications, requests or offers to ANZ.

The Nominated Brokers are not required to offer their customers Banking Products from ANZ, and the Nominated Brokers' customers are not required to obtain Banking Products from ANZ when acquiring Credit Services from the Nominated Brokers.

Benefits and rewards for customers

Customers who obtain Credit Services from a Nominated Broker and who are introduced to ANZ by the Nominated Broker may be offered:

- (a) Banking Products that are not available to other customers;
- (b) Banking Products at a price that is not available to other customers; and/or
- (c) each of (or a combination of) a discount, allowance, rebate or credit in relation to the supply of Banking Products.

Notified Conduct

ANZ and the Nominated Brokers 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 ANZ:

- (a) supplying, or offering to supply, Banking Products;
- (b) supplying, or offering to supply, Banking Products at a particular price; and/or
- (c) 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 Nominated Brokers on the condition that the customers acquire Credit Services from a Nominated Broker (and the corresponding refusal to supply Banking Products on such terms for the reason that the customer has not acquired Credit Services from a Nominated Broker).

While 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, ANZ and the Nominated Brokers 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 considers that the relevant markets for assessing this notification are the market for Credit Services and the market for 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 Nominated Brokers are only a few of many finance brokers offering Credit Services to customers. Similarly, ANZ is only one of a number of providers of Banking Products, with other providers of similar products in the market including Australian banks, foreign banks operating within Australia, building societies, credit unions and other financial institutions. These markets are 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 generate a number of public benefits, including:

- providing customers with the opportunity to obtain competitive rates on Banking Products in conjunction with their acquisition of Credit Services from the Nominated Brokers; and
- encouraging ANZ's competitors to offer similarly priced Banking Products.

These factors should ultimately lead to further consumer benefits by reducing the cost of Banking Products.

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

Some customers may consider that their choice of finance broker or financier, or their choice of Credit Services or Banking Products, is limited because the benefits and rewards for customers (discussed above) are only available through the Nominated Brokers and ANZ. However, consumers retain the genuine choice as to whether or not to deal with any particular finance broker or financier (including the Nominated Brokers and ANZ) on the terms offered by those parties. This choice is not restricted and therefore the conduct is not anti-competitive.

Conclusion

For the reasons set out above, ANZ does 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.