



AUSTRALIAN  
COMPETITION  
& CONSUMER  
COMMISSION

# Statement of Reasons

Notification CB10000486

lodged by

The Customer Owned Banking Association (COBA) on  
behalf of Small Australian Mutuals (SAM)

in respect of

collective bargaining with Widget Works Pty Ltd and  
other potential providers of a loan serviceability calculator  
for SAM members

Notification number: CB10000486

Date: 24 April 2024

Commissioners:

Lowe  
Carver

## Summary

The Australian Competition and Consumer Commission (**ACCC**) does not object to the collective bargaining notification CB10000486 lodged by The Customer Owned Banking Association (**COBA**). COBA lodged the notification on behalf of a subset of its members known as Small Australian Mutuals (SAM) and The Mutual Bank to enable Shared Services Partners Pty Ltd (SSP), a procurement company, to negotiate with potential providers of a Loan Serviceability Calculator for SAM members.

The ACCC is satisfied that the notified collective negotiations are likely to result in public benefits in the form of reduced overall transaction costs for SAM members and the provider of the relevant product, as well as the negotiation of more efficient terms and conditions. There is likely to be minimal, if any, public detriment.

The ACCC has decided to allow the notification to remain in force for a period of 10 years, as requested by COBA. The ACCC considers the likely benefits of the conduct will continue for the duration of the conduct. The extended notification period is also unlikely to increase the minimal public detriment which is likely to result from the conduct and the ACCC may act to remove the protection by the notification at a later stage.

The notification was lodged on 15 January 2024 and the legal protection commenced on 29 January 2024. It will remain in force until 14 January 2034 unless or until the ACCC ends the protection provided by the notification or the notification is withdrawn by COBA.

The ACCC may revisit this assessment at any time if circumstances change or the ACCC receives information that suggests the public benefits no longer outweigh the public detriments.

## 1. The notification

- 1.1 On 15 January 2024, the Customer Owned Banking Association (**COBA**), on behalf of a subset of its members known as Small Australian Mutuals (SAM) and The Mutual Bank (together, the **Notifying Parties**) lodged a notification to enable Shared Services Partners Pty Ltd (SSP), a procurement company, to negotiate on behalf of current and future SAM members (as listed in Schedule 1 of the Notification), with Widget Works Pty Ltd (**Widget Works**) or other potential providers of a Loan Serviceability Calculator for use by SAM members.
- 1.2 Specifically, SSP will (on behalf of current and future SAM Members), negotiate directly with Widget Works, or such other third-party providers of a replacement Loan Serviceability Calculator (Target or Targets), in relation to:
  - the requirements and functionality for the base model replacement Loan Serviceability Calculator as per the requirements of, and advised by, current and future SAM Members (SSP will also negotiate additional specific customisations and requirements on behalf of individual SAM Members if required), and
  - the terms of the contractual arrangements applying to each current and future SAM Member that agrees to enter into an arrangement with the Target for the replacement Loan Serviceability Calculator. It is intended that, given the nature of the procurement of the Loan Serviceability

Calculator, that contractual arrangements will be largely based on the Target's standard terms with differences largely limited to the functional requirements of the Loan Serviceability Calculator, any specific implementation requirements, and pricing.

The notified conduct does not include a collective boycott and participation by SAM members is voluntary.

(the **Notified Conduct**).

- 1.3 The current SAM members are the entities listed in Schedule 1 of the Notification. While not currently a SAM member, The Mutual Bank also wishes to participate in the Notified Conduct and for the purposes of the notification and this assessment is included in any reference to SAM members.
- 1.4 The Notifying Parties have requested that the notice remain in force for 10 years in recognition that there is likely to be re-engagement with Widget Works or another Target from time to time to renegotiate terms and address technical changes, upgrades and maintenance of the relevant product.
- 1.5 Businesses which meet certain criteria may lodge notifications to gain protection from legal action under the competition provisions in Part IV of the *Competition and Consumer Act 2010* (the Act) for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.6 By lodging a notice with the ACCC, the Notifying Parties seek legal protection to participate in collective bargaining that may otherwise breach competition laws because it involves joint action by competitors.

## 2. Background

- 2.1 COBA is the industry association for Australia's customer-owned banking institutions, which include mutual banks, credit unions and building societies. COBA currently has 56 members. A subset of these members are members of the Small Australian Mutuals (SAM) Network who collaborate on ideas, solutions, services and opportunities to provide better banking options for their customers. SAM members typically hold less than \$1 billion each in assets under management. For reference, they represent ~7% of total COBA assets and ~0.2% of banking sector assets under management in Australia.<sup>1</sup>
- 2.2 A number of credit unions established a specialist procurement company in 2015 which is called SSP. This entity is used by COBA members to provide various procurement services, including the procurement which is the subject of this notification.
- 2.3 A number of SAM members used a home loan serviceability calculator which was provided by Helia Group Limited (Helia). The calculator was used solely for determining home loan serviceability for internal use by SAM members. However, Helia decided to terminate its home loan serviceability calculator from 31 December 2023.

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<sup>1</sup> COBA Collective Bargaining Notification of 15 January 2024, section 1.3.

- 2.4 Widget Works was identified as a possible provider of a replacement home loan serviceability calculator.

### 3. Consultation

- 3.1 The ACCC published the notification on its website shortly after it was lodged on 15 January 2024. The ACCC also contacted the target specified in the notification, Widget Works. No objections or concerns have been raised.

### 4. ACCC's assessment

- 4.1 The collective bargaining notice relates to conduct which would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act. The ACCC has considered the Notified Conduct in accordance with section 93AC of the Act, which requires the ACCC to consider the likely public benefits and public detriments.
- 4.2 In its assessment, the ACCC considers that:
- the acquisition of the home loan serviceability calculator occurs nationally, and
  - the likely future without the Notified Conduct is that SAM members would negotiate licence arrangements directly with Widget Works or another provider, on an independent basis.

#### Public benefit

- 4.3 The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.<sup>2</sup>*

- 4.4 The ACCC considers that the Notified Conduct is likely to result in public benefit by reducing transactions costs for the Notifying Parties and Widget Works (or an alternative provider) when negotiating terms and conditions for provision of the loan serviceability calculator. This is achieved by having a single negotiation between SSP (on behalf of SAM members) and Widget Works (or an alternative provider) rather than a series of separate negotiations.
- 4.5 The ACCC considers the notification will allow the more efficient negotiation of product specification and terms of access common to the SAM members, whilst allowing scope for individual needs to be addressed separately if needed, thus reducing the scope and cost of such engagement.

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<sup>2</sup> *Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.*

- 4.6 The ACCC therefore considers the Notified Conduct will result in public benefit through the negotiation of more efficient terms and conditions of access to the loan serviceability calculator at lower costs to all parties.

## Public detriment

- 4.7 The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>3</sup>

- 4.8 The ACCC considers the Notified Conduct is likely to result in minimal, if any, public detriment arising from a reduction in competition between the Notifying Parties to acquire a loan serviceability calculator. In particular:

- Participation in the Notified Conduct is voluntary. If any of the Notifying Parties wish to negotiate directly with Widget Works or another potential provider of a Loan Serviceability Calculator, they remain free to do so.
- Participation in the Notified Conduct does not involve a collective boycott.
- The Notifying Parties represent a relatively small group of potential acquirers of the relevant product, and customers other than the Notifying Parties will continue to deal separately with Widget Works and likely other potential providers of the relevant product. Accordingly, the Notified Conduct is unlikely to have any material adverse effect on the business of the target(s).

## Balance of public benefit and detriment

- 4.9 For the reasons outlined in this Statement of Reasons, the ACCC is satisfied that the Notified Conduct is likely to result in a public benefit and that the public benefit would outweigh any likely detriment to the public from the Notified Conduct.

## Period for which the notice will be in force

- 4.10 A collective bargaining notice (and therefore the protection it confers) will be in force for a period of 3 years from the date it is lodged unless the ACCC determines that another period is appropriate, or the notice is withdrawn or revoked.<sup>4</sup>
- 4.11 In this case, COBA requests the notice to be in force for a period of 10 years.
- 4.12 The ACCC has determined that the notice will remain in force until 14 January 2034 (i.e. a 10-year period starting on the date it was lodged) for the following reasons:
- The likely benefits of the Notified Conduct will continue for the duration of the Notified Conduct. A period of 10 years will provide adequate time to

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<sup>3</sup> *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

<sup>4</sup> Section 93AD(3)(c) of the Act.

negotiate new licence agreements in the medium to long term without having to lodge another notification.

- The extended period for the notice to be in force is unlikely to increase the minimal public detriment which is likely to result from the Notified Conduct and the target(s) can choose not to negotiate with the collective at any time.
- The ACCC is satisfied that a shorter period of 3 years would not be appropriate given the anticipated public benefits and minimal public detriments.
- The ACCC may act to remove the protection afforded by the notice at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.<sup>5</sup>

## 5. Decision

- 5.1 The ACCC considers that the Notified Conduct is likely to result in public benefits that will outweigh the likely public detriment.
- 5.2 With respect to the period for which the notice will remain in force, for the reasons set out in paragraph 4.12, in accordance with s 93AD(5), the ACCC is satisfied in all the circumstances that a period of 3 years beginning on the day of the notice was given is not appropriate, and that a 10-year period is appropriate, being the period ending on 14 January 2034.
- 5.3 Accordingly, the ACCC does not object to the notification at this time. The protection provided by notification CB10000486 commenced on 29 January 2024 and will continue until 14 January 2034. However, the ACCC may revoke the notification at any time if it forms the view that the public benefits do not outweigh the public detriments.
- 5.4 This Statement of Reasons serves as the written notice and written statement of reasons for giving the notice required by section 93AD(6) of the Act.

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<sup>5</sup> Section 93AC of the Act.