



Our Ref: C2006/50
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**Australian
Competition &
Consumer
Commission**

4 May 2006

Sent to
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Dear <<sal>>

**Applications for Revocation and Substitution lodged by the Community Care
Underwriting Agency (CCUA) in relation to supply of public liability insurance –
draft determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the above applications for revocation of authorisations A30217 and A30218 and substitution of replacement authorisations, which were lodged by the Community Care Underwriting Agency (CCUA) on 22 December 2005.

The Applicants (Allianz Australia Insurance Limited, QBE Insurance Limited and Insurance Australia Limited – trading as NRMA Insurance) are seeking re-authorisation of an unincorporated joint venture agreement – operating through an agent (QBE) and trading as Community Care Underwriting Agency (CCUA) – for the collective supply of public liability insurance to eligible ‘not for profit organisations’ (NFPOs) through a ‘co-insurance pool’.

The co-insurance pool arrangements were originally granted interim authorisation on 28 November 2002 and conditional authorisation was first granted on 24 March 2004.

The key difference with respect to the current application for re-authorisation is that the Applicants have made an amendment to the CCUA joint venture agreement. Specifically, each of the parties to the CCUA joint venture agreement are now *not* obliged to refer new NFPO business to the ‘co-insurance pool’ but may elect to do so on a case-by-case basis. In effect, this means that each of the parties to the joint venture agreement would now not be constrained from competing individually against the co-insurance pool.

Summary of ACCC considerations

The ACCC considers that changes to the conditions in the market within which public liability insurance is supplied, as well as changes to the CCUA joint venture agreement itself have reduced both the anti-competitive detriments and the public benefits associated with these arrangements.

The ACCC is of the view that the anti-competitive detriment flowing from the proposed arrangements is likely to now be limited due to the increased level of competition in the market, improved conditions for market entry and the increased countervailing power of brokers. In addition, the ACCC considers that the amendment to the CCUA joint venture



agreement may operate to reduce the level of anti-competitive detriment in that the Applicants are now not prevented from competing against each other for NFPO business, and in some cases may have a commercial incentive to do so.

However, the extent to which the Applicants will compete against each other for NFPO business under the arrangements as amended is unclear given that it will remain the case that they will continue to set the terms of supply for some NFPOs collectively which may affect the terms on which they offer such insurance individually.

Further, to the extent that the agreement by the Applicants not to pay broker commissions in respect of business written by the co-insurance pool reduces the role of brokers in the market, this may also generate some public detriment.

On the other hand, the ACCC notes that evidence of increased availability and affordability of public liability insurance for NFPOs since authorisation was last considered suggests that the public benefits associated with the co-insurance pool have also reduced.

The ACCC considers that it is possible that the co-insurance pool arrangements could continue to result in a limited public benefit to the extent that they improve the availability and affordability of public liability insurance for certain NFPOs. However, the ACCC considers that the Applicants have not provided specific evidence which establishes that the co-insurance pool would significantly impact on the availability or affordability of such insurance for NFPOs in the current market environment.

The ACCC does accept that the continuation of the co-insurance pool will allow its NFPO clients to avoid the one-off transition costs of moving to new insurance providers.

On balance, based on the information before it, the ACCC is not satisfied that ongoing authorisation of the co-insurance pool arrangements is likely to result in a public benefit that will outweigh any public detriment. That said, the ACCC considers that there is a net public benefit in authorising the arrangements for a short period to allow NFPOs currently sourcing insurance from the co-insurance pool to access alternative arrangements.

On this basis, the ACCC proposes to revoke authorisations A30217 and A30218 and grant substitute authorisations to the Applicants in respect of the joint venture arrangements which govern the operation of the CCUA co-insurance pool to:

- continue to write or renew policies up until 31 December 2006; and
- give effect to any policies until 31 December 2007.

For further detail a copy of the ACCC's draft decision is available at www.accc.gov.au

Next steps

Once the ACCC issues a draft determination, the Applicants or any interested party who may be dissatisfied with the ACCC's draft determination may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Under the *Trade Practices Act 1974*, the ACCC must set a date within 14 days of which any pre-decision conference must be requested. Accordingly, if you wish the ACCC to hold a pre-decision

conference in relation to the draft determination, you must notify the ACCC in writing by **cob 18 May 2006**. Conferences are conducted informally, without the participation of legal or other professional advisers.

You are also invited to make a written submission in response to the ACCC's draft determination. Written submissions should be lodged by **cob 25 May 2006** at the following address:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions can also be lodged by e-mail to adjudication@acc.gov.au or by facsimile on (02) 6243 1211.

Any submission you make will be placed on the ACCC's Public Register. You may request that information you provide in a submission to the ACCC be treated as confidential and not placed on the Public Register. Information excluded from the Public Register for reasons of confidentiality will still be considered by the ACCC when reaching its decision. Guidelines for seeking confidentiality are attached for your information.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-determination conference be called, and will then release a final determination in relation to these applications.

If you require further information, please contact Carl Toohey on (03) 9290 1480.
Application for review

Yours sincerely

Gavin Jones
Director
Adjudication Branch

Aged and Community Services
Australia
Agricultural Societies Council of NSW
Association of Childrens Welfare
Agencies
Association of Independent Schools of
Australian Capital Territory Consumer
Australian Charities
Australian Red Cross NSW
Community Information Strategies
Australia Inc.
Council of Australian Museum
Directors
Council of Social Service of New South
Wales
Country Women's Association of
Australia
Country Women's Association of NSW
Federation of Australian Historical
Societies Inc
Fundraising Institute – Australia
Gerling Australia Insurance
Insurance Brokers Disputes Limited
Lumley General Insurance Ltd
National Association of Community
Legal Centres
Our Community Pty Ltd
Queensland Council of Parents' &
Citizens' Associations Incorporated
Queensland Council of Social Service
Royal Agricultural Society of Tasmania
SA Tourism Alliance
The Association of Apex Clubs of
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Victorian Council of Social Service
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Ltd
Combined Insurance Company of
Australia
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Department of Communications,
Information Technology and the Arts
Department of Consumer and
Employment Protection
Jardine Lloyd Thompson Australia
Level 8
Lions Australia
Lloyd's Australia Limited
Local Government Association of
Tasmania
Local Government Association of the
Northern Territory
Local Government Association
of South Australia
Marsh Pty Ltd
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NSW Sport and Recreation
Queensland Office of Fair Trading
Queensland Tourism Industry Council
RACQ Insurance Ltd
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Suncorp Metway Insurance Ltd
Department of Justice
The Institute of Actuaries of Australia
Western Australian Local Government
Association
Westpac General Insurance
Endeavour House
Zurich Financial Services Australia Ltd
RDA Australia
Confederation of Australian Sport
Isolated Children's Parents Association
Australia Inc
Kiama and District Arts Council Inc
The Isolated Children's Parents
Association of NSW
Wesfarmers Federation Insurance
Wildlife Preservation Society of
Queensland
Rural and General Insurance Broking
QBE Insurance