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6 August 2007

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

Dear Sir

**Capricorn Mutual Limited  
Exclusive Dealing Notification**

We refer to the Exclusive Dealing Notification on behalf of Capricorn Mutual Limited (CML), which is enclosed together with a cheque for \$100 by way of lodgement fee.

CML is an AFS licensee and provides its members with an affordable alternative to insurance cover. Membership of CML is only offered to members of CSL. This is because in 2003 CSL formed CML for the benefit of CSL members and CSL has provided significant levels of finance to CML during its start up phase.

CML lodged its initial exclusive dealing application with ACCC on 21 May 2003. Legal immunity granted by the ACCC commenced on 4<sup>th</sup> June 2003. This application reflects the changed status of CSL and modifications made to the financial product since the time of the initial application. The consumer is not required to obtain any form of insurance from the nominated company Capricorn Insurance New Zealand as a condition of obtaining membership benefits with CML.

CML is of the view that this arrangement is of a type that is beneficial to the members of CSL and the public generally. CML assists the members of CSL by providing a commercially viable alternative to insurance to a specific industry group and in doing so provides a benefit to the members and the public generally. CML believes that this arrangement reduces the costs of the financial risks affecting the business operations of CML's members and makes available a financial risk facility that fills a gap in the difficult professional indemnity market.

If there is any detriment from the proposed conduct, our client believes that it would be far outweighed by the benefits to the public.

Yours sincerely,

**Marianne Robinson**  
Manager – Compliance Solutions  
Direct +61 2 9286 8017  
marianne.robinson@dlaphillipsfox.com

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Form G

Commonwealth of Australia

*Trade Practices Act 1974 — 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 *Trade Practices Act 1974*, 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:**

Capricorn Mutual Limited ACN 104 601 194 (CML) N93096

**(b) Short description of business carried on by that person:**

CML is a mutual formed for the members of Capricorn Society Limited (CSL) for the provision of membership benefits which allow members to manage their business related financial risks. CSL is a corporatised trading co-operative which acts as an intermediary between members of the co-operative (being owners of automotive workshops, service stations and smash repairers) and their suppliers. CSL changed its status in 2006 when it incorporated under the Corporations Act, 2001 (Cth).

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

. C/- Marianne Robinson, DLA Phillips Fox, 201 Elizabeth Street Sydney 2001

**2. Notified arrangement**

**(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

Supply of membership services for the management of financial risks through a mutual formed for the specific benefit of members of a co-operative company.

**(b) Description of the conduct or proposed conduct:**

CML is an AFS licensee formed to provide membership benefits to members of CSL, as an alternative to the purchase of insurance cover from the traditional insurance market. CML offers members of CSL access to an affordable insurance alternative in areas such as professional indemnity at a more affordable cost than that which the member would pay for insurance cover in the traditional insurance market. Each CML member acquires a collection of rights known as "Protections" by which the member is able to manage the

financial consequences of risk to their personal belongings or business operations. CML members select their required Protections and the level of protection required.

CML membership and the benefits are only available to members of CSL.

CML considers its conduct is of benefit members of CSL and the public by:

- 1 Providing the members of CSL with an alternative means of managing the financial risks associated with their personal needs and business operations other than by the purchase of traditional insurance which members of CSL have experienced difficulties in obtaining.
- 2 Providing a more affordable alternative to insurance for members of CSL, many of whom are experiencing premium increases each new insurance year.
- 3 Extending the range of benefits provided by CSL to its members.
- 4 Providing a price competitive insurance alternative that recognises the unique business risks facing the members of CSL and is tailored to their specific needs.
- 5 Providing members with a choice of benefit and the level of benefit required.

**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:**

Registered automotive repairers, owners of automotive workshops, service stations, panel beaters, auto electricians and general workshops throughout Australia, who are members of CSL.

**(b) Number of those persons:**

**(i) At present time:**

There are currently 10,012 members of CSL and each has the ability to apply for membership of CML.

**(ii) Estimated within the next year:**

CSL has projected a total growth rate of member numbers of 4.3% for the coming year with 614 potential new CSL members waiting to join CSL as at the date of this notification.

**(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:**

The proposed conduct is a competitive and realistic response by CML to benefit CSL members who have traditionally had difficulty in obtaining affordable insurance specific to the needs of their industry.

There are a number of public benefits that result from CML offering its memberships benefits:

(a) Fostering business efficiency

Surveys identified that members of CSL were experiencing difficulty in obtaining certain types of insurance at an affordable price for their business operations, despite good claims history. Reports from members also suggest that even when traditional insurance was obtained it often excluded risks specific to the needs of CSL members and that even though this industry group has a good claims record the insurance premiums did not reflect this because of insurance company underwriting practices.

As many of the CSL members are small to medium business operators, many members do not have the time or the resources available to locate alternative insurers, particularly from the international insurance market. CML membership provided increased business efficiency for members, by offering access to protection that may not have always been affordable for small and medium businesses.

CML is able to use the good claims record of this industry group and their knowledge of their own industry to provide risk management information to members to further reduce the risks of potential claims and so keep the cost of this insurance alternative price competitive. CML provides members of CSL with a choice through their ability to choose between the traditional insurance market and CML's viable alternative and in doing this they are able to continue to increase the efficiency of their business operations.

All CML members have a pre-existing relationship with CSL as a member of the co-operative formed to meet their business needs. CSL is the financial sponsor of CML having provided it with start up capital and ongoing financial support in the form of subordinated loans. CSL and its members are fully cognisant of the issues facing the membership and the business advantages of CML being able to limit membership of the mutual to members of CSL. The protection made available to CML members and the price reflects the needs and claims record of the specific industry group from which they are drawn and the price does not subsidise other industries with higher claims.

(b) Complies with public policy

The Federal Government is aware of the present difficulties in the liability insurance market and has met with State and Territory governments to explore the means by which individuals in need of such insurance covers can obtain them. While recognising that this problem exists, there have been no solutions achieved.

CSL wishes to provide its members with a realistic and affordable alternative to insurance through membership of a member owned mutual namely CML. CML's conduct in limiting membership to members of CSL is not in breach of the third line forcing provisions as its effect is not to substantially lessen competition but to increase competition through the provision of an alternative to insurance.

(c) Expansion of consumer choice

Recent insurance company mergers have created concern and confusion within some areas of the industry and the number of global re-insurance providers are contracting in number, with the likely outcome of this being that there will be less than 5 major world wide reinsurers in the medium term. The impact of such structural change within Australia has

led to a significant reduction in the number of general insurance companies offering public liability and professional indemnity insurance to the public and as the industry consolidates through failure, merger or acquisition, there will be less sector affinity for insurance needs.

CML exists to provide members of CSL with an alternative to the traditional insurance market. Members of CSL are not compelled to join CML and still have the ability to choose the traditional market if they wish to do so. But as CML would not exist without CSL, the proposed conduct of limiting membership of CML to CSL allows CML to provide services that are tailor made for the specific needs of its members and to provide a feasible alternative which in turn fosters competition and encourages stable and competitive pricing.

(d) Cost control

CML provides members with an alternative means of managing the financial risks associated with their business and personal needs, by offering a substitute for insurance cover. By offering a commercial alternative to the traditional insurance market, CML is able to reduce the costs to its members in managing financial risks which in turn helps reduce the cost of automotive services to the public. It also provide an incentive for members to remain in the industry rather than closing down their business and in doing this fosters continuing competition in the automotive industry

(e) No Anti-competitive detriment

The conduct proposed does not give rise to any anti-competitive detriments, as members remain free to choose to purchase insurance from insurers in the traditional market or an insurance alternative from CML. This conduct enhances competition in the market for the supply of protection available against professional and public liability risk.

**(b) Facts and evidence relied upon in support of these claims:**

CML members are not obliged to join CML or to acquire the protection offered by CML. They are able to obtain insurance cover from any one of the insurers available in the traditional insurance market. A member may merely receive advantages from obtaining insurance cover through CML, in the form of cheaper fees.

**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):**

The relevant markets are the national market for the provision of membership in a member owned mutual which provides discretionary benefits as an alternative to insurance to business operators in a specific industry sector.

CSL members are registered trading businesses in the automotive and allied trades that purchase parts, products and services from automotive suppliers for exclusive use in the conduct of auto repair services and the re-sale of automotive parts. This is known as the automotive aftermarket and does not apply to products and services used in the manufacture of new motor vehicles. Members of CSL include smash repairers, panel beaters, motor vehicle body builders and auto electricians. Many of these are small to

medium size businesses. CSL members are located throughout Australia, New Zealand and South Africa.

## **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:**

We submit that there is no detriment associated with the proposed conduct. The offer of CML membership benefits to only CSL members enables the delivery of a cost competitive alternative to insurance and increases the level of competition in the insurance market. The tailor made nature of CML's services enables an efficient and cost effective delivery to its members.

CML is offering membership benefits in the form of a financial service that members can continue to acquire in the form of insurance if they choose to do so. CSL members have a choice between the CML product and traditionally insurance.

It is submitted that the proposed conduct is a initiative which has demonstrable public benefits for consumers and the wider community. The proposed conduct does not result in a substantial lessening of competition, nor any anti-competitive detriment.

**(b) Facts and evidence relevant to these detriments:** Not applicable

## **7. Further information**

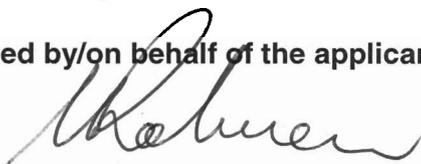
**(a) Name, postal address and contact telephone details of the person authorised**

**to provide additional information in relation to this notification:**

Marianne Robinson DLA Phillips Fox 201 Elizabeth Street Sydney 2001 Tel: (02) 9286 8017

**Dated** 6 August 2007

**Signed by/on behalf of the applicant**



**(Full Name)** Marianne Robinson

**(Organisation)** Manager Compliance Solutions DLA Phillips Fox

## **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 which 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 *Trade Practices Act 1974* 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.