

Form A

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

1. Applicant

(a) Name of Applicants:

A91556

- Aioi Nissay Dowa Insurance Company Australia Pty Ltd;
- Allianz Australia Insurance Limited and Allianz Australia Life Insurance Limited;
- Eric Insurance Limited;
- Hallmark General Insurance Company Ltd and Hallmark Life Insurance Company Ltd;
- Insurance Australia Group Limited, CGU Insurance Limited, Swann Insurance (Aust) Pty Limited and Insurance Australia Limited;
- QBE Insurance (Australia) Limited;
- St Andrew's Life Insurance Pty Limited;
- Suncorp Life & Superannuation Limited, MTA Insurance Limited and AAI Limited; and
- Virginia Surety Company Inc.

This application is to be read and determined together with the submission supporting this application (**Submission**), which is lodged with this form.

(b) Description of business carried on by applicants:

The provision of life insurance and/or general insurance including to retail customers.

(c) Address in Australia for service of documents on the applicant:

Gilbert + Tobin

L35, Tower Two, International Towers Sydney

200 Barangaroo Ave

Barangaroo NSW 2000.

Attention: Gina Cass-Gottlieb
Tel: 02 9263 4006
Fax: 02 9263 4111
Email: gcass-gottlieb@gtlaw.com.au

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

The applicants seek authorisation on behalf of themselves and potentially other insurers to implement a proposal that will limit the commissions and other payments or benefits paid to distributors of “add-on” insurance products through the motor vehicle dealership channel.

For more detail, please refer to the Submission.

(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:

The agreement between insurers to limit the amounts paid to distributors might be considered to be exclusionary provisions to the extent that they have the purpose of preventing, restricting or limiting the acquisition of insurance distribution services in particular circumstances or on particular conditions; and might be considered to be cartel provisions to the extent that they have the purpose or effect of directly or indirectly fixing, controlling or maintaining the price of insurance distribution services acquired by the insurers.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Distribution services relating to “add-on” insurance products distributed through the motor vehicle dealership channel.

(d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation is being sought for ten years or until such earlier time as the arrangement is superseded by another mechanism.

The grounds supporting this period of authorisation are set out in the Submission.

3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

The arrangements may be extended to other life and general insurers who wish to participate in the proposal. All parties or proposed parties engage in businesses that include the issuing of life and/or general insurance products including to retail customers.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

- Aioi Nissay Dowa Insurance Company Australia Pty Ltd, Level 8, 390 St Kilda Road, Melbourne VIC 3004;
- Allianz Australia Insurance Limited and Allianz Australia Life Insurance Limited, 2 Market Street, Sydney NSW 2000;
- Eric Insurance Limited, Ground Floor, 35 Dalmore Drive, Scoresby VIC 3179;
- Hallmark General Insurance Company Ltd and Hallmark Life Insurance Company Ltd, 572 Swann St, Burnley VIC 3121;
- Insurance Australia Group Limited, CGU Insurance Limited, Swann Insurance (Aust) Pty Limited and Insurance Australia Limited, Level 26, NRMA Centre, 388 George Street, Sydney New South Wales 2000;
- QBE Insurance (Australia) Limited, Level 27, 8 Chifley Square, Sydney NSW 2000;
- St Andrew's Life Insurance Pty Limited, PO Box 7395, Cloisters Square WA 6850;
- Suncorp Life & Superannuation Limited, MTA Insurance Limited and AAI Limited, Level 19, Suncorp Place, 18 Jamison Street, Sydney, NSW 2000; and
- Virginia Surety Company Inc, Level 2, 693 Burke Rd Camberwell Vic 3124.

The arrangements may be extended to other life and general insurers who wish to participate in the proposal. All parties or proposed parties engage in businesses that include the issuing of life and/or general insurance products including to retail customers.

4. Public benefit claims

(a) Arguments in support of application for authorisation:

Please see Submission.

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

Please see Submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) 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):

Please see Submission.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

Please see Submission.

- (b) Facts and evidence relevant to these detriments:

Please see Submission.

7. Contracts, arrangements or understandings in similar terms

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

- (b) Is this application to be so expressed?

No.

- (c) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

N/A

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

N/A

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

N/A

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

9. Further information

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Gilbert + Tobin
L35, Tower Two, International Towers Sydney
200 Barangaroo Ave
Barangaroo NSW 2000.

Attention: Gina Cass-Gottlieb
Tel: 02 9263 4006
Fax: 02 9263 4111
Email: gcass-gottlieb@gtlaw.com.au

Dated 12 September 2016

Signed on behalf of the applicant

A handwritten signature in black ink that reads "G Cass-Gottlieb". The signature is written in a cursive, flowing style.

Gina Cass-Gottlieb
Gilbert + Tobin
Partner

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

1. Applicant

(a) Name of Applicants:

A91557

- Aioi Nissay Dowa Insurance Company Australia Pty Ltd;
- Allianz Australia Insurance Limited and Allianz Australia Life Insurance Limited;
- Eric Insurance Limited;
- Hallmark General Insurance Company Ltd and Hallmark Life Insurance Company Ltd;
- Insurance Australia Group Limited, CGU Insurance Limited, Swann Insurance (Aust) Pty Limited and Insurance Australia Limited;
- QBE Insurance (Australia) Limited;
- St Andrew's Life Insurance Pty Limited;
- Suncorp Life & Superannuation Limited, MTA Insurance Limited and AAI Limited; and
- Virginia Surety Company Inc.

This application is to be read and determined together with the submission supporting this application (**Submission**), which is lodged with this form.

(b) Description of business carried on by applicants:

The provision of life insurance and/or general insurance including to retail customers.

(c) Address in Australia for service of documents on the applicant:

Gilbert + Tobin
L35, Tower Two, International Towers Sydney
200 Barangaroo Ave
Barangaroo NSW 2000.

Attention: Gina Cass-Gottlieb
Tel: 02 9263 4006
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Email: gcass-gottlieb@gtlaw.com.au

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

The applicants seek authorisation on behalf of themselves and potentially other insurers to implement a proposal that will limit the commissions and other payments or benefits paid to distributors of “add-on” insurance products through the motor vehicle dealership channel.

For more detail, please refer to the Submission.

(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:

The agreement between insurers to limit the amounts paid to distributors might be considered to have the purpose, effect or likely effect of substantially lessening competition to the extent that they affect the markets for the acquisition of insurance distribution services, the supply of “add-on” insurance services or the sale of motor vehicles; and might be considered to be cartel provisions to the extent that they have the purpose or effect of directly or indirectly fixing, controlling or maintaining the price of insurance distribution services acquired by the insurers.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Insurance distribution services relating to “add-on” insurance products through the motor vehicle dealership channel.

(d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation is being sought for ten years or until such earlier time as the arrangement is superseded by another mechanism.

The grounds supporting this period of authorisation are set out in the Submission.

3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

The arrangements may be extended to other life and general insurers who wish to participate in the proposal. All parties or proposed parties engage in businesses that include the issuing of life and/or general insurance products including to retail customers.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

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- Allianz Australia Insurance Limited and Allianz Australia Life Insurance Limited, 2 Market Street, Sydney NSW 2000;
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- Hallmark General Insurance Company Ltd and Hallmark Life Insurance Company Ltd, 572 Swann St, Burnley VIC 3121;
- Insurance Australia Group Limited, CGU Insurance Limited, Swann Insurance (Aust) Pty Limited and Insurance Australia Limited, Level 26, NRMA Centre, 388 George Street, Sydney New South Wales 2000;
- QBE Insurance (Australia) Limited, Level 27, 8 Chifley Square, Sydney NSW 2000;
- St Andrew's Life Insurance Pty Limited, PO Box 7395, Cloisters Square WA 6850;
- Suncorp Life & Superannuation Limited, MTA Insurance Limited and AAI Limited, Level 19, Suncorp Place, 18 Jamison Street, Sydney, NSW 2000; and
- Virginia Surety Company Inc, Level 2, 693 Burke Rd Camberwell Vic 3124.

The arrangements may be extended to other life and general insurers who wish to participate in the proposal. All parties or proposed parties engage in businesses that include the issuing of life and/or general insurance products including to retail customers.

4. Public benefit claims

(a) Arguments in support of application for authorisation:

Please see Submission.

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

Please see Submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) 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):

Please see Submission.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

Please see Submission.

(b) Facts and evidence relevant to these detriments:

Please see Submission.

7. Contracts, arrangements or understandings in similar terms

(a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

(b) Is this application to be so expressed?

No.

(c) If so, the following information is to be furnished:

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

N/A

(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

N/A

(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

N/A

8. Joint Ventures

(a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

(c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

9. Further information

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Gilbert + Tobin

L35, Tower Two, International Towers Sydney

200 Barangaroo Ave

Barangaroo NSW 2000.

Attention: Gina Cass-Gottlieb
Tel: 02 9263 4006
Fax: 02 9263 4111
Email: gcass-gottlieb@gtlaw.com.au

Dated 12 September 2016

Signed on behalf of the applicant

A handwritten signature in black ink, reading "Gina Cass-Gottlieb". The signature is written in a cursive, flowing style.

Gina Cass-Gottlieb
Gilbert + Tobin
Partner

Motor vehicle dealership add-on insurance reform Application for authorisation

12 September 2016

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1 Executive summary

The applicants and other life and general insurers including members of the Insurance Council of Australia (**ICA**) and Financial Services Council (**FSC**) propose to enter into a contract, arrangement or understanding to limit the commissions that they each pay in respect of add-on insurance products sold through the motor vehicle dealership channel to 20% of premiums (**Proposal**).

Add-on life insurance and general insurance products sold through the motor vehicle dealership channel provide customers with a valuable opportunity to consider and purchase the products they choose to protect their vehicle and their financial position at the time that they purchase, finance or service the motor vehicle.

ASIC has recently raised a set of concerns which it requires to be addressed in relation to add-on insurance products sold through the motor vehicle dealership channel. The insurance industry wishes to ensure that add-on insurance products sold in connection with the motor vehicle dealership channel continue to provide convenience and peace of mind to customers while promoting informed choice, improving value for money and removing any incentives that may result in inappropriate sales practices.

Regulators have identified that structural and behavioural features of the motor vehicle dealership channel have resulted in consumer detriments. First, they have found that the structure of the channel has resulted in insurers competing to access the channel and paying higher distribution charges (in the form of substantially higher commissions or other payments) to do so, reducing their capacity to compete on pricing or product features for the consumers who access products through the channel.

Secondly, high commission payments (which are higher, and in some cases substantially higher, in this channel than in other distribution channels) have been identified as leading to a higher risk of inappropriate sales practices.

The Proposal seeks to address these consumer detriments by extending the legislative 20% cap on consumer credit insurance (**CCI**) products under section 145 of the National Credit Code to all add-on general and life insurance products distributed through the motor vehicle dealership channel. ASIC has found that current commissions on these products can be as high as 79%, significantly higher than the proposed 20% cap.

Limiting commissions on all add-on products sold through the motor vehicle dealership channel will allow a reduction in premiums and a better balance in favour of customers in terms of the benefits they receive from their purchase of these insurance products. It will also mitigate the risk of inappropriate sales practices and the selling of add-on insurance products to customers who may receive little benefit from them.

In this respect the Proposal complements the measures being developed separately by the FSC and the ICA, which will consider product design and systems validation, sales practices and monitoring, customer education and choice in payment methods. These measures will further support the value received by customers for all add-on insurance products, whether currently capped or uncapped.

The Proposal will initially be incorporated into a code of conduct, and the applicants and ASIC will explore options for including the Proposal in a regulatory or legislative instrument in the future. The Proposal will include an obligation for insurers to regularly report their prices, claims payouts and loss ratios so that ASIC can monitor the effectiveness of the Proposal in reducing prices and increasing value.

The Proposal provides tangible public benefits in addressing the issues of reverse competition, relatively high prices and low loss ratios, and incentives to engage in inappropriate sales practices that have been identified in the past by the Australian Competition and Consumer Commission (**ACCC**) and more recently by ASIC, while allowing customers to continue to benefit from the ease, convenience and peace of mind provided by add-on insurance products sold through the motor vehicle dealership channel. Any detriments are likely to be private rather than public detriments and in any case are outweighed by the public benefits identified.

ASIC has advised that it supports the Proposal as a necessary component of the package of measures required of the industry to improve consumer outcomes, though further measures will also be necessary.

2 Applicants

The applicants represent life insurance and general insurance providers, including providers who together account for the bulk of add-on insurance products sold through the motor vehicle dealership channel:

- (a) Aioi Nissay Dowa Insurance Company Australia Pty Ltd;
- (b) Allianz Australia Insurance Limited and Allianz Australia Life Insurance Limited;
- (c) Eric Insurance Limited;
- (d) Hallmark General Insurance Company Limited and Hallmark Life Insurance Company Limited;
- (e) Insurance Australia Group Limited, CGU Insurance Limited, Swann Insurance (Aust) Pty Limited and Insurance Australia Limited;
- (f) QBE Insurance (Australia) Limited;
- (g) St Andrew's Life Insurance Pty Limited;
- (h) Suncorp Life & Superannuation Limited, MTA Insurance Limited and AAI Limited; and
- (i) Virginia Surety Company Inc.

It is anticipated that all members of the ICA and FSC and any other insurer who wishes to do so will agree to be bound by the Proposal. Authorisation is accordingly sought on behalf of the applicants and all life and general insurers who agree to be bound by the Proposal in the future.

3 Conduct to be authorised

3.1 Description of conduct to be authorised

The applicants and other life and general insurers who are members of the ICA and FSC propose to enter into a contract, arrangement or understanding that would limit the level of commission that they pay in respect of add-on insurance products sold through the motor vehicle dealership channel.

The form of this Proposal is yet to be finalised but would likely be a code of conduct that insurers would be invited and encouraged to agree to, particularly where they sold add-on insurance products through the motor vehicle dealership channel.

A voluntary code of conduct would have a number of limitations, most obviously that it would not be binding on entities who choose not to sign up to it, including entities who might be formed specifically to avoid the cap on commissions.

In order to avoid these possibilities it may in time be necessary to implement a more formal regulatory or legislative solution, but this voluntary approach is provided in the meantime to allow a more immediate response to ASIC's concerns. ASIC has asked the insurers to keep it informed of any insurers who may operate in the motor vehicle dealership channel without singing up to the proposal.

The operative sections of the Proposal provide that total commissions paid in connection with each sale of an insurance product through the motor vehicle dealership channel must not exceed 20% of the premium paid (excluding government charges).

The cap would apply to all insurance products sold through the channel with the exception of compulsory third party (**CTP**) insurance, which is separately regulated by state and territory legislation. The channel is defined broadly to include:

- (a) a motor vehicle dealership, or any related entity;
- (b) a credit provider or broker that operates under an arrangement with a motor vehicle dealership or pursuant to a referral from a motor vehicle dealership;
- (c) an independent finance broker, other than an authorised deposit-taking institution (**ADI**); and
- (d) any of their agents,

Commission is also defined broadly to include any financial or other benefit in the nature of a commission, and any form of monetary consideration or any form of non-monetary consideration to which a monetary value can be assigned.

It would include not only payments described as commissions but also payments and benefits that may be described as marketing or advertising subsidies or management fees but are in reality connected with the volume or value of sales of add-on insurance products. However, it would not apply to genuine reimbursements of legitimate expenses such as education and staff training.

Insurers will report to ASIC on a number of metrics designed to quantify the effectiveness of the cap on reducing premiums and increasing loss ratios for insurance products sold through the motor vehicle dealership channel (excluding comprehensive car insurance). Insurance Statistics Australia Limited has been engaged to assist in the collection and presentation of this data in a form that will be of most use to ASIC and will engage with ASIC in developing templates and processes.

The current draft of the Proposal is provided with this submission as Attachment A.

3.2 Rationale for the conduct

The Proposal is a key element of the insurance industry's response to serious concerns raised by ASIC in relation to the value of add-on insurance products sold through the motor vehicle dealership channel.

Central to ASIC's findings, and consistent with previous findings by the Trade Practices Commission (**TPC**) and the ACCC, is that certain insurance distribution channels including the motor vehicle dealership channel are characterised by "reverse competition", which sees insurers compete on the basis of commissions or other benefits provided to dealerships for access to the dealership's customers, rather than competing directly for those end-customers on the basis of price and service.

ASIC and the TPC and ACCC have found that this reverse competition drives up commissions, with a corresponding effect on premiums, and can provide incentives to distributors in the motor vehicle dealership channel to use inappropriate sales practices, or sell products on the basis of the commissions they might receive rather than the benefits they might provide for the customer. ASIC has made it clear that it expects the industry to find a solution to the issues raised by the levels of commission in the channel.

Responding to these concerns, the Proposal intends to limit commissions in respect of all insurance products sold through the motor vehicle dealership channel in order to remove this element of reverse competition and reduce the consumer detriments it can cause. This will not only allow for a reduction in premiums but will encourage competition on the basis of price and service, which together will improve value for customers. This measure will supplement other measures proposed by the ICA and FSC, and the effectiveness of all of these measures will be assessed through the ongoing reporting of prices and loss ratios to ASIC.

3.3 Term of authorisation

The Proposal is designed to be an immediate response to the concerns raised by ASIC. It has obvious limitations in that as a voluntary code it is only binding on insurers and cannot directly bind any third party including motor vehicle dealerships. For these reasons, in the long term a regulatory or legislative mechanism may be more appropriate. Given the length of time that these processes may take, the applicants seek authorisation for 10 years or until such earlier time as the Proposal is superseded by another mechanism.

3.4 Transition

In order to provide certainty to the industry and avoid circumvention of the Proposal while recognising their obligations under the *Competition and Consumer Act 2010* (**CCA**), the applicants propose to enter into an agreement to adhere to the terms of the Proposal that is subject to the condition that the agreement will not come into force unless and until authorisation is granted, and provides that:

- (a) from three months after the date that final authorisation is granted (**Transition Date**), insurers will limit all commissions, and other payments and benefits in the nature of commissions, paid in connection with add-on insurance products to a total of 20% of premiums (excluding government charges) under all arrangements, regardless of whether they are new, renewed, varied or existing arrangements;
- (b) any up-front payments or sign-on fees paid by insurers in connection with add-on insurance products under arrangements entered into, renewed or varied after 7 September 2016 and before the Transition Date must be recovered by the insurer following the Transition Date; and
- (c) any new, renewed or varied arrangement that increases commissions (other than up-front payments or sign-on fees) above the level that applied at 7 September 2016 will be subject to the cap, and any commissions (other than up-front payments or sign-on fees) paid under any such arrangement that exceed 20% of

premiums (excluding government charges) must be recovered by the insurer following the Transition Date.

The applicants understand that sections 44ZZRM and 45(9) of the CCA provide that the making of contract under these circumstances would not breach sections 44ZZRF, 44ZZRJ or 45 of the CCA, acknowledging that they are not permitted to give effect to any such contract until the ACCC has granted authorisation.

3.5 Non-admission

While recognising that the conduct for which authorisation is sought might be argued to constitute a contract, arrangement or understanding that includes an exclusionary provision and/or a cartel provision or that may have the purpose, effect or likely effect of substantially lessening competition in a market, no admission is made that the conduct for which authorisation is sought constitutes a contract, arrangement or understanding that includes an exclusionary provision or a cartel provision or that may have the purpose, effect or likely effect of substantially lessening competition in breach of the *Competition and Consumer Act 2010*, and this application for authorisation should be regarded as precautionary only.

4 Motor vehicle dealership add-on insurance

4.1 Description of motor vehicle dealership “add-on” insurance

When customers purchase a new or used motor vehicle from a motor vehicle dealership, they may be offered a number of related financial products. For example, the customer may be offered a loan for the purchase of the motor vehicle. Many customers will have arranged authorisation for a loan prior to the purchase of the motor vehicle, but others will find it convenient to purchase finance offered at the motor vehicle dealership.

Where customers take out a loan for the purchase of the motor vehicle, they may be offered insurance products relating to that loan, for example:

- **consumer credit insurance (CCI)**, which covers the insured's loan in the event that they are unable to meet their loan repayment obligations due to illness, injury, unemployment or death;
- **gap insurance**, which covers any difference between the insured value of the motor vehicle under a comprehensive motor vehicle insurance policy and the balance of the car loan, to ensure that the loan will be repaid if the motor vehicle is written off and in some cases to provide a cash benefit to assist with the expenses of purchasing a new vehicle;
- **walkaway insurance**, which provides a lump sum covering some or all of the outstanding payments on a motor vehicle loan in certain circumstances, typically including accidental death, involuntary unemployment, international job transfer, disability or trauma; and
- **trauma insurance**, which covers the outstanding payments on a motor vehicle loan in the event of a serious or traumatic illness, typically including heart disease, heart attacks, cancer and strokes, and may be included as part of a CCI policy or offered on a standalone basis.

Customers may also be offered insurance products relating to the motor vehicle itself, such as:

- **comprehensive car insurance**, which covers damage caused by collisions or accidents, severe weather or vandalism as well as theft;
- **extended warranty insurance**, which covers some or all expenses relating to repairs, towing, temporary car rental and emergency accommodation that may not be covered by the manufacturer warranty or are incurred after the manufacturer warranty has expired; and
- **tyre and rim insurance**, which covers damage to tyres and rims arising from punctures, blowouts or road hazards such as kerbs, potholes or debris, which is typically not covered under a comprehensive motor vehicle insurance policy.

These products are together described as “add-on” insurance products since they are typically ancillary to other products, in this case a motor vehicle or a motor vehicle loan.

4.2 Concerns with motor vehicle dealership “add-on” insurance

Add-on insurance provides customers with the convenience of purchasing insurance together with the product that may need protection. Some customers prefer to negotiate the purchase of a motor vehicle, the financing for that motor vehicle and any insurance products at the same time and in the same place, and to be assured that their new purchase is covered immediately, the moment they drive out of the dealership. For example, in the majority of cases a financier will require comprehensive motor vehicle insurance to be in place before it will release the secured asset to the customer, making it convenient for that insurance to be offered at the dealership.

Motor vehicle dealerships also provide a convenient opportunity for customers to purchase insurance products at a time when their focus is on the risks associated with the purchase and financing of a motor vehicle and they are most likely to contemplate appropriate insurance protection. As ASIC has recognised, add-on products are rarely “front of mind” for customers and will usually need to be brought to the customer’s attention at the relevant time.¹

However, the limited opportunities provided to general and life insurers to sell relevant add-on insurance products to customers – outside the context of a motor vehicle purchase – gives motor vehicle dealerships significant bargaining power in negotiating distribution arrangements with general and life insurers.

Accordingly, insurers may pay higher commissions or other benefits to motor vehicle dealerships than they pay to agents, representatives or brokers in other channels, in order to ensure that their products are not placed at a competitive disadvantage relative to the products of their competitors. This phenomenon has been described by ASIC and the ACCC as “reverse competition” and may be a feature of a number of insurance distribution channels worldwide.

The TPC and ACCC have both investigated the sale of CCI, an insurance product often sold in connection with a finance loan in the motor vehicle dealership channel or elsewhere. Following the TPC’s report in 1991, Australian governments introduced a 20% cap on commissions in respect of CCI through the Uniform Consumer Credit Code (UCCC). The 20% cap was retained when the UCCC was replaced in 2009 by the

¹ ASIC Report 470 at para [1].

National Credit Code (**NCC**), now Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cth). The Explanatory Memorandum to the new legislation observed that:

The cap was imposed in response to the unnecessary or forced “packing” of loan contracts with insurance premiums where high commissions are offered to encourage intermediaries to distribute their products. An increase in the percentage of commission correspondingly reduces the benefits that can be offered under the policy to the insured.²

The ACCC had also recognised the contribution of high commissions to high premiums relative to value:

A major factor contributing to the high costs associated with CCI has been the need for insurers to obtain access to agents. The use of agents as an outlet for CCI has led to increased costs through higher commissions and greater delivery costs.

Commissions for agents selling CCI were increased by “reverse competition” as insurers bid against each other for access to agents. An example of “reverse competition” may be seen in the difficulties encountered by one large multi-product insurance company in obtaining access to motor vehicle distribution outlets... Although that insurer offered an attractive product from a consumer perspective with a lower premium than some other insurers, it was unable to sell CCI through most motor vehicle dealers.³

The higher commissions paid to motor vehicle dealerships on some products may result in increased premiums payable by customers. Regulators have raised concerns that these higher commissions may also provide incentives that do not align with the best interests of customers. These concerns include that high commissions may encourage the sale of particular products without sufficient regard to the needs of the customer, may lead to inappropriate sales practices even where there are comprehensive training and competence programs in place, and may result in low claim payouts.

High premiums and low claims payouts combine into low loss ratios, where a loss ratio is a measure of claims payouts divided by premiums earned by insurers.

4.3 Recent ASIC investigations

In February 2016, ASIC released two reports on the sale of add-on insurance products through motor vehicle dealerships, which raised concerns about the price and value of some of these products and some of the circumstances in which they are sold to customers.⁴

The first report, *Buying Add-on Insurance in Car Yards: Why it Can be Hard to Say No*,⁵ qualitatively analysed sales practices and consumer experiences, drawing on behavioural economics to examine why some customers might purchase add-on insurance from a motor vehicle dealership that they might not purchase under other circumstances.

The second report, *The Sale of Life Insurance through Car Dealers: Taking Consumers for a Ride*,⁶ drew on the findings of the first report and additional data from life insurers to

² Explanatory Memorandum, at [8.252]-[8.253].

³ ACCC, *Consumer Credit Review: Final Report*, July 1998.

⁴ ASIC Report 470, *Buying Add-on Insurance in Car Yards: Why it Can be Hard to Say No*, February 2016; ASIC Report 471, *The Sale of Life Insurance through Car Dealers: Taking Consumers for a Ride*, February 2016

⁵ ASIC Report 470, *Buying Add-on Insurance in Car Yards: Why it Can be Hard to Say No*, February 2016.

⁶ ASIC Report 471, *The Sale of Life Insurance through Car Dealers: Taking Consumers for a Ride*, February 2016.

conclude that customers appeared to be paying higher prices for life insurance purchased through the motor vehicle dealership channel as a result of two factors:

- for consumers, the sales context limits their capacity to assess the value of products or seek out alternative products, including because the consumer is focused on the purchase of the car rather than associated insurance; and
- for insurers, high prices may be due to reverse competition, where insurers compete on the price they pay to car dealers in commissions to access distribution channels, rather than on the price charged to the consumer.

The reports illustrate the care that must be taken to ensure that customers are fully informed of the products on offer, but also recognise the important role of the motor dealership channel in providing customers with the information and choice of cover they may need, along with assurance of protection, at the time and the place they purchase and finance a motor vehicle.

ASIC's second report concludes that insurers will need to review and make positive changes to the design and value of card yard life insurance, and that it will continue to monitor the practices of individual insurers and take further action if necessary to improve customer outcomes. That action could include enforcement action against insurers or their representatives, requiring more detailed disclosure of price and comparative value measures, and changing training standards.⁷

Communications between ASIC, the ICA and FSC and individual insurers have confirmed that ASIC expects the industry to respond definitively to the concerns raised in its reports. ASIC has also advised that it is preparing a report relating to the general insurance products sold through the motor vehicle dealership channel and that it has similar concerns with those products that it expects the industry to address.

4.4 Development of the proposal

In March 2016 a group of life and general insurers engaged Gilbert + Tobin to facilitate discussions relating to ASIC's concerns and the extent to which they might be addressed by changes to the level of commissions paid in respect of add-on insurance products sold through the motor vehicle dealership channels.

Discussions were conducted according to strict communication protocols to ensure that no competitively sensitive information would be disclosed, no contract, arrangement or understanding between industry participants would be reached in the absence of ACCC authorisation, and discussions would be limited to identifying a proposal that would be presented to ASIC for its endorsement and subject to authorisation by the ACCC.

On 22 August 2016 ASIC wrote to Gilbert + Tobin confirming its support for the 20% cap on commissions:

In principle, ASIC supports the introduction of the cap to help address concerns identified in our review that consumers are paying too much for add-on insurance products sold through this channel, in part due to very high commissions.

⁷ ASIC Report 471, *The Sale of Life Insurance through Car Dealers: Taking Consumers for a Ride*, February 2016 at p 12.

As we noted at our meeting of 10 August, we consider a cap is a *necessary* but not a *sufficient* component of the package of measures required of the industry to improve consumer outcomes.

As discussed, ASIC will approach insurers individually to further discuss our expectations with regard to pricing and other value based initiatives to ensure the introduction of the cap results in reduced premiums for consumers.

ASIC specifically supported the inclusion of the 20% cap in a voluntary code to be subscribed to by industry members and authorised by the ACCC. ASIC's letter is provided with this submission as Attachment B.

On 12 September 2016, ASIC released its report into the sale of general insurance add-on products through the motor vehicle dealership channel. ASIC's media release describing its report is provided with this submission as Attachment C.

5 Relevant markets affected by the proposed conduct

5.1 Markets affected

The applicants consider that the proposed conduct will primarily affect markets that may be most narrowly defined as markets for:

- (a) the distribution of add-on insurance products through motor vehicle dealerships;
- (b) the sale of add-on insurance products; and
- (c) the sale of motor vehicles.

5.2 The distribution of add-on insurance products through motor vehicle dealerships

In 2015 the ACCC considered the potential markets for the distribution of motor cycle and marine insurance products in an assessment that is relevant to the distribution of add-on insurance products sold through motor vehicle dealerships:

In relation to insurance distribution, if a significant group of end customers do not consider alternative insurance channels beyond the [point of sale], then those customers can only be reached by insurance companies through distribution by dealerships at the POS. If this were the case, then insurers may not consider other distribution channels, such as through brokers or self-distributing directly online, to be substitutable for distribution via motorcycle or marine dealerships. In this case, the relevant markets may be as narrow as distribution of insurance for motorcycle or marine products at the POS...

Given the uncertainty regarding consumer behaviour discussed earlier, however, the relevant market may well include the distribution of insurance other than at the point of sale. The ACCC did not consider it necessary to reach a concluded view, and has examined the competition effects in both of these markets.⁸

⁸ Statement of Reasons in respect of an exclusive dealing notification lodged by Yamaha Motor Australia Pty Ltd in relation to finance and insurance for new Yamaha motorcycle and marine products, N97423, 7 July 2015

The industry considers that in relation to a number of add-on insurance products, customers can only be reached in a practical sense through distribution by dealerships at the point of sale. Although there are exceptions, notably comprehensive car insurance, it seems appropriate to consider the effect of the conduct in relation to one or more markets for the distribution of add-on insurance products through motor vehicle dealerships.

As has been found by the TPC and ACCC, competition in this market predominantly takes the form of competition between insurers to secure exclusive or preferential access to the motor vehicle dealership's customers. Substantial prices are paid for this access in the form of commissions and other benefits provided to motor vehicle dealerships.

By limiting the commissions and other benefits paid to motor vehicle dealerships to 20% of premiums, the Proposal would have a significant impact on competition in this market. From a motor vehicle dealership's perspective, it may appear to eliminate price competition between insurers as acquirers of distribution services. However, insurers will continue to compete on the basis of other factors such as service and training as well as the attractiveness of products to end-customers and the resulting ease of selling those products.

5.3 The sale of add-on insurance products

In 2007, the ACCC considered that there were separate national markets for the manufacture and supply of financial products and services such as life insurance, disability insurance, and income protection insurance, but that:

Given evidence of strong and increasing supply substitutability, the separate markets for different personal insurance lines appear to be in transition towards being a single national market for personal insurance lines.⁹

The ACCC has also found that there were national or state markets for domestic motor vehicle insurance products,¹⁰ a national market for the provision of life insurance,¹¹ and a national market for the supply of credit insurance services.¹²

Although the industry agrees that there is a transition towards a single national market for personal insurance lines, and that this transition may already be complete, for the purposes of this submission it will examine the effect of the Proposal on separate national markets for the provision of add-on insurance products. The industry considers that the Proposal will affect each of these markets in similar ways.

The Proposal is intended to shift competition in the motor vehicle distribution channel away from "reverse competition" for access to customers on the basis of commissions paid to motor vehicle dealerships, and towards direct competition for customers on the basis of price and service. Although access to customers will continue to be mediated by the dealerships as distributors, the 20% cap on commissions will bring the interests of customers and distributors into closer alignment.

⁹ Suncorp Metway Limited - proposed acquisition of Promina Group Ltd, <http://registers.accc.gov.au/content/index.phtml/itemId/773639/>

¹⁰ Insurance Australia Group Ltd – Proposed acquisition of Wesfarmers' insurance underwriting business, <http://registers.accc.gov.au/content/index.phtml/itemId/1160307/>

¹¹ National Australia Bank Limited - proposed acquisition of Aviva Australia Holdings Limited, <http://registers.accc.gov.au/content/index.phtml/itemId/885468/>

¹² QBE Insurance (Australia) Limited - proposed acquisition of the credit insurance broking business of National Credit Insurance (Brokers) Pty Limited, <http://registers.accc.gov.au/content/index.phtml/itemId/725385/>

In particular, if dealerships receive the same maximum commission across all products from all insurers, they can be expected to focus on the insurance products that are most attractive to customers and easiest to sell. Dealerships should also have less incentive to align themselves exclusively with one insurer, increasing competition between insurers through each dealership as well as across the entire channel.

5.4 The sale of motor vehicles

The industry considers that there is a national market for the retail sale of motor vehicles, though if there were separate state and territory markets they would be affected by the Proposal in the same way as a national market.

It has been reported that some motor vehicle dealerships make little or no profit – or even a loss – on the sale of a motor vehicle alone and rely on commissions and payments from the sale of finance and insurance (**F&I**) to maintain their profitability.¹³ If dealerships receive less in commissions and other benefits for the sale of insurance then they may need to increase prices or reduce discounts on motor vehicles in order to remain viable.

6 Future with and without

6.1 Future with the Proposal

The future with the Proposal is likely to see an industry-led transition away from reverse competition characterised by high commissions, high premiums and reduced value for money for customers, and towards direct competition for customers on the basis of price and service accompanied by lower premiums and greater value for money.

This transition will allow customers to continue to benefit from the ease and convenience of purchasing add-on insurance products at the point at which they purchase a motor vehicle or a motor vehicle loan, while reducing the incentives for improper sales practices and helping to ensure that add-on insurance products are sold to customers who want them and can benefit from them.

6.2 Future without the Proposal

The future without the Proposal is likely to see reverse competition, relatively high premiums and relatively low value for customers to continue in the short to medium term. It is not commercially possible for insurers to act unilaterally to reduce commissions and other payments to motor vehicle dealerships, as to do so would result in the dealer distribution moving to other insurers who are prepared to pay the current market rates.

In the longer term, in the absence of the Proposal there is a real chance that ASIC or the government will intervene with regulatory or legislative action, as has taken place in relation to similar insurance products in other jurisdictions.

This regulatory or legislative response would not be led by the industry and would have unpredictable results. It could well prohibit the sale of insurance products at the point of sale of a motor vehicle or a loan, as the United Kingdom has prohibited the sale of payment protection insurance (**PPI**) until 7 days after a loan has been taken out. This would deny customers the convenience and peace of mind of purchasing insurance at the point of sale and could lead to under-insurance.

¹³ Motor Trade Association of WA, “F&I shock for dealers in ASIC proposal”, 15 December 2015.

A regulatory response could also prohibit commissions altogether, as commissions for many financial products have been prohibited under the Future of Financial Advice (FOFA) reforms. This would have a severe impact on motor vehicle dealerships and would be likely to lead to the withdrawal of add-on products from the channel, again resulting in inconvenience and under-insurance.

Whatever the eventual regulatory response, the future without the Proposal would involve considerable delay and uncertainty around the resolution of these issues.

7 Public benefits

7.1 Lower prices and better value for consumers of add-on insurance products

ASIC reports confirm that many consumers value the convenience and peace of mind that add-on insurance products purchased through the motor vehicle dealership channel can provide. However, ASIC has also found that these products can be more expensive than similar products sold through other channels and can provide poor value for money compared to other products when measured by loss ratios. Reverse competition and high levels of commission and other payments to motor vehicle dealerships have been identified as key contributors to these high prices and low loss ratios.

The Proposal is designed to address ASIC's concerns by limiting commissions and other payments across all add-on insurance products in the motor vehicle channel to a maximum of 20% of premiums. This cap on commissions is expected to reduce prices and increase loss ratios in a number of ways.

(a) Allowing insurers to reduce prices

The removal of all commissions, and all other payments or benefits in the nature of commissions, above the 20% cap would allow insurers to make material changes to the price of add-on insurance products, since their costs in providing these products will be reduced by the value of any current commissions or other payments above 20% of premiums.

Individual insurers are meeting with ASIC to discuss their pricing intentions, and ongoing reporting of premiums and loss ratio data will allow ASIC to monitor the effect of the Proposal over time and follow up with any insurers who do not demonstrate an appropriate reduction in prices and increase in loss ratios.

This reporting and oversight mechanism will require the insurers to report at least every six months on their product pricing as well as suitable information relevant to the calculation of measures of value such as loss ratios. It is proposed that this information will be collated by Insurance Statistics Australia Limited and provided to ASIC on at least a six-monthly basis, and will show the changes that insurers have made in implementing the Proposal by comparing data before and after the Proposal comes into effect. ASIC will be able to confirm the extent to which insurers have reduced their prices following the Proposal, and the extent to which overall value has been improved by the Proposal and the other measures being introduced by the ICA and FSC.

(b) Increasing competition on price and service

Extending the cap to all add-on insurance products under this proposal will remove the reverse competition not only on the basis of commissions but also on the basis of upfront and sign-on payments, marketing and advertising subsidies and other benefits that will now be considered to be additional commissions where they are not a genuine advance

payment of expected transactional commissions or a genuine reimbursement of reasonable expenses.

Removing reverse competition in relation to commissions would still allow insurers to compete for the dealership channel based on service, including genuine training and advertising support, and on the quality and price of products. Those products that provide the optimum combination of coverage and price will be most attractive to consumers and easiest to sell. While sales representatives may still have incentives to sell more expensive products, consumers will know that those incentives will apply consistently to all add-on insurance products and can make their own informed decisions about the value of a particular product.

(c) Reduced risk of circumvention

The Proposal provides a simple and effective arrangement that will minimise the risk of non-compliance and circumvention.

Applying the cap to all products sold through the motor vehicle dealership channel will ensure that not only commissions but all other payments, however described, that are made in connection with the sale of an add-on insurance product will be limited to 20% of premiums. This will contrast with the present situation where only CCI is subject to a cap and there have been concerns that some payments to motor vehicle dealerships have not been directly attributable to CCI and so have not been subject to any cap.

Under the Proposal, the cap will apply to any payment or benefit provided *in connection with* an add-on insurance product. “In connection with” is understood to have a wide meaning under section 145 of the NCC. The phrase was also used in the former uniform *Credit Acts* along with the phrase “in respect of”, and it is likely that two phrases have the same meaning.¹⁴

Judicial consideration suggests that a payment or benefit provided “in respect of” or “in connection with” an insurance product may include any benefit described as the reimbursement of expenses, or the provision of training, administration or marketing support, where those benefits are not commercially reasonable and verifiable.

For example, in *Sampey v United Credit Union Limited* it was held that payment of an “advertising subsidy”, where there was little evidence of actual advertising and the amount of the subsidy was associated with the sale of vehicle finance products, was “in reality” a commission:

Even though the defendant’s stated object was to pay a subsidy for advertising, the means adopted proceeded on a commission basis: the amounts payable were of the nature of a commission.¹⁵

In *Canham v Australian Guarantee Corporation* the court similarly found that a payment described as a “management fee” was in reality a commission in respect of the introduction of a customer:

¹⁴ While section 145 itself provides that “This section applies to commission paid by an insurer *in connection with* consumer credit insurance”, the Explanatory Memorandum relating to section 145 provides that “Section 145 limits commissions payable by the insurer *in respect of* consumer credit insurance to 20 per cent of the premium.”

¹⁵ At 57,767.

Thus, in *Technical Products Pty Limited v State Government Insurance Office (Queensland)* (1989) 167 CLR 45 at 47, Brennan, Deane and Gaudron JJ characterised the phrase in the following terms:

“The words ‘in respect of’ have a very wide meaning. Indeed, they have a chameleon-like quality in that they commonly reflect the context in which they appear. The nexus between the legal liability and the motor vehicle which their use introduces... is a broad one which is not susceptible of precise definition. That nexus will not, however, exist unless there is some discernible and rational link between the basis of liability and the particular motor vehicle.”

If the real and only explanation of the payment made were a reimbursement for facilities and personnel, it might have been expected that a different formula would have been provided from that which appears. At the least, it cannot be denied that there is a discernible and rational link between the payment to Westpac and the introduction by Westpac of its customers to AGC...

This statute is designed to apply quite simply to the fact of putting credit business with a particular credit provider who pays (or arranges to be paid) moneys as a consequence. So viewed, this was undoubtedly a “commission”. It was so although indirectly paid and although described as a “management fee”.¹⁶

Commentary on section 145 of the NCC has examined these cases and suggested that:

If this approach were applied to the NCC, it would mean that if the real and only explanation for a payment was, for example, the reimbursement for facilities, personnel and other services provided, it would not be a commission. However, it would also mean that it would be a commission if objectively there was a discernible and rational link between the fee and the introduction of an insured to an insurer.¹⁷

It follows from this case law that the proposed cap on commissions would capture any payments or other benefits that have a discernible and rational link with sales of an insurance product. It would not apply where the real and only explanation for the payment or benefit is a commercially reasonable and verifiable reimbursement or subsidy, for example of fixed costs or expenses that must be incurred regardless of the sale of a policy, but it could apply to any other payments or benefits.

The applicants will continue to monitor and report to ASIC any further opportunities for circumvention that may arise, whether through the formation of new entities that are not bound by the Proposal or through payments or other benefits that are in the nature of commissions but are paid in excess of the cap, which will be reflected in the premiums reported to ASIC. ASIC have indicated that they will investigate and pursue potential circumventions of the Proposal.

7.2 Continued availability of add-on insurance products

Appropriately priced and sold to informed customers, add-on insurance products provide real benefits to customers in terms of convenience and peace of mind, protecting their major purchases and financial obligations against a range of risks. ASIC reports that:

¹⁶ *Canham v Australian Guarantee Corporation* (1993) 31 NSWLR 246

¹⁷ Steven Klimt. “Consumer Credit Law Commissions”, *Australian Consumer Credit Law Commentary*. CCH Intelliconnect.

When consumers were asked to reflect on what they valued about the add-on insurance products they had purchased, two key values emerged:

- peace of mind; and
- ease and convenience...

Few consumers regretted their decision to purchase add-on insurance, and some valued it for giving peace of mind and for the ease and convenience of the purchase.¹⁸

As discussed above, in the absence of the Proposal there is a real chance that regulatory or legislative intervention would prevent the sale of add-on insurance products through the motor vehicle dealership channel, either through an outright prohibition as in the United Kingdom's treatment of PPI, or through a ban on commissions that would make continued distribution through the channel unsustainable.

This outcome would reduce customer convenience and peace of mind and could lead to under-insurance. By contrast, the Proposal is designed to preserve the benefits of add-on insurance products while reducing prices and improving value for customers. In this regard it is consistent with the approach of the United Kingdom's Financial Conduct Authority, whose recent review of general insurance add-on products concluded:

Our provisional findings report recognises that not all add-ons offer poor value for consumers and that the add-on mechanism can be a convenient and efficient way for consumers to buy the products they want and need... As a result, our proposed interventions do not seek to impede add-on sales in general, but instead focus on helping consumers to make informed and engaged purchase decisions, and to help consumers seek out good value products, be that add-on or standalone, in markets where prices are constrained by competitive pressures from other suppliers. Peace of mind matters and consumers should still be able to secure this benefit as a result of an informed and engaged decision to buy.¹⁹

It is not clear that the regulatory or legislative intervention that would likely follow any failure of an industry response such as the Proposal would have the same focus.

7.3 Benefits for motor vehicle dealerships

Although the Proposal may result in reduced payments to motor vehicle dealerships, it recognises the value and convenience provided by the motor vehicle dealership channel and maintains a level of commission that should make it worthwhile for dealerships to continue to offer these products to their customers.

As discussed above, the alternative may be the outright prohibition of add-on insurance products sold through the motor vehicle dealership channel, or a ban on commissions that would make the continued distribution of add-on insurance products unsustainable for the channel.

¹⁸ ASIC Report 470, *Buying add-on insurance in car yards: Why it can be hard to say no*, February 2016.

¹⁹ Financial Conduct Authority, *General Insurance Add-Ons: Final Report – Confirmed Findings of the Market Study*, July 2014.

8 Public detriments

8.1 Impact on motor vehicle distributors

The Proposal may result in reduced payments to motor vehicle dealerships and may be considered a detriment by individual dealerships and their trade associations. The Proposal would reduce or eliminate the reverse competition between insurers for access to the motor vehicle dealership channel, which is likely to have a negative impact on some motor vehicle dealerships.

However, it is not clear that this reverse competition is a source of any efficiency or that it provides benefits beyond the motor vehicle dealership channel. Instead, it appears to supplant the competition for customers on the basis of price and service that characterises other channels and that provides clear efficiencies. As a result, while insurers will work with motor vehicle dealerships to mitigate any detriment to motor vehicle dealerships resulting from the Proposal, it is not clear that any such detriment would be regarded as a *public* detriment.

8.2 Impact on motor vehicle sales

As noted above, it has been reported that motor vehicle dealerships may make little or no profit – or even a loss – on the sale of a motor vehicle alone and rely on commissions and payments from the sale of finance and insurance (**F&I**) to maintain their profitability.²⁰

Where this is the case, there is a chance that the proposed cap on commissions – combined with the possible changes to commissions for motor vehicle financing reportedly being considered by ASIC – will result in motor vehicle dealerships charging higher prices for the sale of motor vehicles (including by being less flexible in negotiating prices) in order to remain profitable.

While this may increase the price of motor vehicles for some customers it would also be likely to increase transparency and efficiency, as cross-subsidies between sales of motor vehicles and of finance and insurance would be reduced. As a result, it is not clear that any such increase in the price of motor vehicles would necessarily be a public detriment.

9 Conclusions

Weighing the public benefits against the possible public detriments identified above, the applicants submit that the conduct should be authorised.

Authorisation would allow customers to continue to benefit from the ease, convenience and peace of mind provided by add-on insurance products sold through the motor vehicle dealership channel while paying lower premiums and receiving greater value for these products. The ACCC and the TPC before it have identified problems with reverse competition in relation to add-on products and the impact that high commissions can have on premiums, loss ratios and sales practices. ASIC has also expressed its concern over these issues and supports the Proposal as a key element of addressing these concerns.

Without authorisation, the problems associated with reverse competition and high commissions would be likely to continue until a regulatory or legislative response was put

²⁰ Motor Trade Association of WA, “F&I shock for dealers in ASIC proposal”, 15 December 2015.

into place. Any such response would take time and considerable expense, and could result in the removal of motor vehicle dealerships as a channel for add-on insurance products, whether through a direct prohibition or by removing commissions altogether and jeopardising the viability of the channel. This would deny customers the ease, convenience and peace of mind provided by these products and would be likely to result in under-insurance. Any such response would involve delay and uncertainty.

Any detriments associated with the Proposal would be limited to the impact on motor vehicle dealerships from removing reverse competition and reducing the commissions paid, and a possible impact on the price of motor vehicles from removing cross-subsidisation by finance and insurance sales. It is not clear that these are public detriments, and if they are, they are outweighed by the public benefits of the Proposal.

Attachment A

Add-on Insurance Reform

Proposal

1 Background

- Customers may be offered a range of insurance products that help protect against risks to their motor vehicle or to their ability to repay a loan associated with the purchase of a vehicle. These “add-on insurance” products provide convenience and certainty to customers, and many customers are satisfied with their purchase and glad that their investments and their finance obligations are covered by this insurance.
- Regulators have raised concerns that some add-on insurance products do not always represent value for money due to the design of the products, the customers to whom they are sold or the way they are sold. Regulators consider that the level of commissions paid to the motor vehicle dealership channel may increase prices and encourage inappropriate sales practices.
- General and life insurance providers are developing a range of measures to address these concerns. This Code will complement those measures but is specifically aimed at addressing the value of add-on insurance products by limiting the commissions paid in respect of these products, which will flow through to reduced premiums, and providing for comprehensive data reporting to ensure accountability for improvement in the value of these products.

2 Definitions

“**ADI**” means an authorised deposit-taking institution authorised under the *Banking Act 1959*;

“**add-on insurance**” means all general and life insurance products issued or arranged:

- (a) by a **motor vehicle dealership**, an **associated credit provider**, an **associated broker** or an **independent finance broker**, or by any of their agents; and
- (b) in connection with a **motor vehicle** or a loan associated with the purchase of a **motor vehicle**,

but does not include compulsory third party insurance;

“**associated broker**” means any broker, adviser or other person or entity who issues or arranges insurance products pursuant to:

- (a) a contract, arrangement or understanding with a **motor vehicle dealership**, an **associated credit provider** or an **independent finance broker**; or
- (b) a referral from a **motor vehicle dealership**, **associated credit provider** or **independent finance broker**,

and includes a prospective **associated broker**;

“**associated credit provider**” means a person that provides credit in connection with the financing of a **motor vehicle** pursuant to:

- (a) a contract, arrangement or understanding with a **motor vehicle dealership**; or
- (b) a referral from a **motor vehicle dealership**;

and includes a prospective **associated credit provider**;

“**commission**” includes:

- (a) any financial or other benefit in the nature of a commission; and
- (b) any form of monetary consideration or any form of non-monetary consideration to which a monetary value can be assigned;

“**data reporting entity**” means an entity nominated by the insurers and notified to ASIC from time to time to report data under clause 4 of this Code;

“**data reporting period**” means, in each year:

- (a) 1 January to 30 June; and
- (b) 1 July to 31 December.

“**independent finance broker**” means a person that provides or arranges credit in connection with the financing of a **motor vehicle** purchased from a **motor vehicle dealership** but is not an **associated credit provider** or an **ADI**, and includes a prospective **independent finance broker**;

“**insurer reporting period**” means, in each year and in respect of each insurer:

- (a) the three-month period commencing on the date on which the insurer’s financial year begins; and
- (b) each subsequent three-month period.

“**motor vehicle**” means a road vehicle driven by a motor, and includes a passenger car, utility vehicle, van, truck or motorcycle;

“**motor vehicle dealership**” means any person or entity that:

- (a) carries on the business of dealing in motor vehicles as a retailer or wholesaler; or
- (b) is an associated entity, as that term is defined under the *Corporations Act 2001*, of a **motor vehicle dealership**;

“**transition date**” means the date three months after the ACCC grants final authorisation to this proposal; and

“**transition period**” means the period that began on 7 September 2016 and ends on the transition date.

3 Cap on commissions for add-on insurance products

- (1) This section applies to **commission** paid to a **motor vehicle dealership**, an **associated credit provider**, an **associated broker**, an **independent finance broker**, or any of their agents, in connection with an **add-on insurance product** on or after the **transition date**.
- (2) The total of any such **commission** accepted by all or any of the following—
 - (a) a **motor vehicle dealership**;
 - (b) an **associated credit provider**;

- (c) an **associated broker**;
- (d) an **independent finance broker**; and
- (e) any agent of a **motor vehicle dealership, associated credit provider, associated broker or independent finance broker**;

must not exceed, in amount or value, 20% of the premium (excluding government charges).

- (3) A **motor vehicle dealership, associated credit provider, associated broker, independent finance broker** or any such agent must not accept, and an insurer must not pay, a **commission** exceeding, in amount or value, the maximum allowed under this section on or after the **transition date**.

4 Transition

- (1) Any up-front payment or sign-on fee paid by an insurer in connection with an **add-on insurance** product under arrangements entered into, renewed or varied during the **transition period** must be recovered by the insurer within 30 days of the **transition date**.
- (2) Where any new, renewed or varied arrangement increases **commissions** above the level that applied immediately before the **transition period**, all **commissions** paid in connection with **add-on insurance** products under any such arrangement that exceed 20% of premiums (excluding government charges) must be recovered by the insurer within 30 days of the **transition date**.
- (3) For the avoidance of doubt:
 - (a) where an insurer can demonstrate that the key elements of an arrangement had been agreed before the **transition period**, that arrangement is not an arrangement entered into, renewed or varied during the **transition period** notwithstanding that the arrangement had not been formalised before the **transition period**; and
 - (b) any payment or benefit in the nature of an upfront payment or sign-on fee will be considered to be an upfront payment or sign-on fee, whether it is described as such or as a marketing fee, periodic payment, volume bonus or other description.

5 Data reporting

- (1) Within 30 days of the end of each **insurer reporting period**, each insurer will provide data to the nominated **data reporting entity** relating to add-on insurance products that fall into or are similar in nature to the following categories:
 - (a) consumer credit insurance, separately where issued for:
 - (i) personal or consumer use; and
 - (ii) business use;
 - (b) gap insurance;
 - (c) warranty or mechanical breakdown insurance;
 - (d) tyre and rim insurance;
 - (e) loan termination or walkaway insurance;

- (f) guaranteed buyback insurance;
 - (g) trauma insurance (if provided separately to consumer credit insurance).
- (2) Each insurer will provide details of the name and product category of each product and will separately provide the following data in relation to policies incepted:
- (a) in the three months before; and
 - (b) after,
- the **transition date**:
- (c) details of pricing (including details of government charges);
 - (d) number of policies in force;
 - (e) number of new policies issued;
 - (f) average age of policies;
 - (g) cancellation rate;
 - (h) product split;
 - (i) net earned premiums;
 - (j) gross written premiums;
 - (k) incurred losses; and
 - (l) number of claims paid,
- in respect of each product within each product category.
- (3) The nominated **data reporting entity** will provide data received from each insurer during each **data reporting period** to ASIC within 30 days of the end of each **data reporting period**.

Data reporting is intended to provide transparency and accountability and to allow ASIC to monitor the effect of the package of changes that have been proposed. The exact process and the form of data to be provided will be finalised in conjunction with ASIC and any nominated data reporting entity.

6 Compliance

The proposal will initially be implemented as a voluntary code subject to authorisation by the ACCC and an appropriate compliance framework to be finalised by the industry in conjunction with ASIC.

22 August 2016

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Dear Ms Cass-Gottlieb,

General insurance industry response to ASIC's concerns about add-on insurance distributed through motor vehicle dealerships

We refer to your letter dated 2 August 2016 and our subsequent meeting of 10 August 2016. Thank you for setting out the voluntary industry initiatives proposed by life and general insurers in response to concerns relating to value and remuneration practices identified by ASIC as part of our review into the sale of add-on insurance products sold through motor vehicle dealerships.

The purpose of this letter is to provide ASIC's response to the central initiative of a voluntary 20% cap on commissions (the cap) to assist with the requirement to obtain Australian Consumer and Competition Commission (ACCC) interim authorisation of the cap's implementation before the proposed commencement date of 1 October 2016 (commencement date).

Support for the cap

In principle, ASIC supports the introduction of the cap to help address concerns identified in our review that consumers are paying too much for add-on insurance products sold through this channel, in part due to very high commissions.

As we noted at our meeting of 10 August, we consider a cap is a *necessary* but not a *sufficient* component of the package of measures required of the industry to improve consumer outcomes.

As discussed, ASIC will approach insurers individually to further discuss our expectations with regard to pricing and other value based initiatives to ensure the introduction of the cap results in reduced premiums for consumers.

Background

The intended purpose and operation of the cap

We note industry's intention that the purpose of the cap is to address ASIC's concerns that add-on insurance products distributed through motor vehicle dealerships do not represent value for money, in part due to the high level of commissions paid to the motor vehicle dealership channel to distribute these products, which results in increased premiums and encourages inappropriate sales practices.

We further note that the cap is intended to operate broadly and will apply to all general and life insurance products issued or arranged by a motor vehicle dealership and any associated third party in connection with a motor vehicle or a loan associated with the purchase of a motor vehicle, but does not include compulsory third party insurance.

The cap will cover a broad range of remuneration structures including any financial or other benefit in the nature of a commission and any form of monetary consideration or any form of non-monetary consideration to which a monetary value can be assigned.

Mechanisms to implement and enforce the cap

As an interim measure, the cap is intended to be implemented through inclusion in a new industry Code which would be subscribed to by ICA and FSC members, subject to authorisation by the ACCC.

As discussed, ASIC will consider other regulatory approaches which could be implemented in conjunction with other initiatives being undertaken by industry to address our broader concerns. The need for any other such actions by ASIC can be considered further in the context of our continuing discussions about those industry initiatives.

In the meantime, we consider that implementing the cap via an industry code of conduct, with the appropriate enforcement mechanisms, is an appropriate way to progress this initiative.

Data reporting

We note that industry also intends to report data regularly to ASIC to provide assurance that the cap is achieving its desired outcomes. We note that the details around the exact process and form of this initiative have yet to be finalised, and we look forward to continued engagement as this work progresses.

If you have any questions or comments in relation to this letter, please contact me or Jennifer Knox on (02) 9911 5256 or jennifer.knox@asic.gov.au.

Yours sincerely



Michael Saadat
Senior Executive Leader
Deposit Takers, Credit and Insurers



ASIC

Australian Securities & Investments Commission

Attachment C

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> 16-301MR ASIC puts insurers on notice to address serious failures in the sale of add-on insurance through car dealers

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Monday 12 September 2016

16-301MR ASIC puts insurers on notice to address serious failures in the sale of add-on insurance through car dealers

ASIC has reviewed the sale of add-on general insurance policies through car dealers and found that the market is failing consumers.

Our report released today ([REP 492](#)) finds that consumers are being sold expensive, poor value products; products that provide consumers very little to no benefit; and a sales environment with pressure selling, very high commissions and conflicts of interest.

These products are sold to consumers when they purchase a new or used car, and cover risks relating to the car itself or relating to the loan that the consumer takes out to purchase the car. Examples include consumer credit insurance and tyre and rim insurance.

ASIC Deputy Chairman Peter Kell said, 'There are serious problems in this market that need to be immediately and comprehensively addressed by insurers.'

'ASIC will be undertaking further work, including potential enforcement action, to ensure that this market delivers acceptable outcomes for consumers. We will also be looking at how insurers can refund consumers who have been sold inappropriate products,' said Mr Kell.

For the three year period that we reviewed, we found that:

- Consumers obtained little financial benefit from buying add-on insurance, with consumers paying \$1.6 billion in premiums and receiving only \$144 million in successful insurance claims - representing a very low claims payout of nine per cent. For some major add-on products, the benefit to consumers was even lower, with consumer credit insurance claims payouts representing just five cents for each dollar of premium
- Car dealers earned \$602 million in commissions - over four times more than consumers received in claims, with commissions paid to car dealers as high as 79 per cent
- Payment for these insurance products is commonly packaged into the consumer's car loan as a single upfront premium. This can substantially increase the cost of the product by increasing the loan amount and interest paid. Research shows that consumers are often unaware that they even have the policy when it is paid upfront as a single premium, and they may not get a premium refund if they repay their car loan early. Policies have been sold where it is impossible for the consumer to receive a claim payout that is greater than the cost of the insurance
- The car sales environment inhibits good decision making about these products because of the conflicts of

interest and pressure sales built into the distribution model. The consumer is focussed on purchasing a car and financing that purchase - not on the details of the complex insurance policy

Today's report follows ASIC's release of two reports in February this year about the sale of add-on life insurance by car dealers. ASIC stressed the need for insurers to address the high costs, poor value and poor claim outcomes of life insurance products sold this way.

ASIC is putting general insurers on notice that they need to improve consumer outcomes by making substantial changes to the pricing, design and sale of add-on insurance products or face additional regulatory action. The key commitments we are seeking from insurers are:

- A significant reduction in the amount of commissions paid to anyone who sells an add-on insurance product through car dealers
- A significant improvement in the value offered by these products, through substantial reductions in price and better product design and cover
- A move away from single upfront premiums that are financed through the loan contract, given the adverse financial impact this has on consumers
- Providing refunds to consumers who have been sold policies in circumstances that were unfair, such as where a policy has been sold to a consumer who was never eligible to claim under the policy

Insurers have notified ASIC that they intend to implement a 20 per cent cap on commissions, which is a positive step. Insurers in this market will be also providing ASIC with data on prices, premiums and claims on a regular basis so that we can monitor the impact of changes on consumers.

ASIC Deputy Chairman Peter Kell said, 'While we welcome the initial steps taken by the insurers to improve the value of these products for consumers, there is still a long way to go. If industry does not deliver swift improvements for consumers, ASIC will take further action, including enforcement action where appropriate.'

ASIC's review of these products is ongoing. ASIC will continue to work with insurers and consumer representatives to ensure that proposals for change deliver significantly improved value to consumers.

Download

[Report 492](#)

[Infographic - car dealers' commissions vs successful consumer claims](#)

[Listen to the ASIC podcast](#)

What not to buy

This new MoneySmart infographic shows why you shouldn't buy [mechanical breakdown insurance](#) when you purchase a car.



Background

ASIC reviewed seven general insurers, estimated to make up over 90 per cent of the car dealer add-on insurance market, and obtained detailed data about the way these products operate. The seven insurers are:

- Aioi Nissay Dowa Insurance Company Australia Pty Ltd
- Allianz Australia Insurance Limited
- Eric Insurance Limited (formerly known as AVEA Insurance Limited)
- Swann Insurance (Aust) Pty Ltd, part of Insurance Australia Group Limited

- MTA Insurance Limited, part of Suncorp Group Limited
- NM Insurance Pty Ltd (acting as agent for AAI Limited)
- QBE Insurance (Australia) Limited

ASIC reviewed five add-on insurance products which are commonly sold by car dealers:

- Consumer credit insurance - insures a consumer's capacity to make repayments under a credit contract, including insurance against the sickness, injury, disability, death or unemployment of the consumer
- Loan termination insurance or 'Walkaway' insurance - this is similar to CCI , but is more restrictive as the main benefit is payable only if the consumer returns the car to the dealer - it means the insurance doesn't help the consumer keep the car if they become disabled or sick
- GAP insurance - provides cover for the difference between what a consumer owes on their car loan, and the market value paid out under their comprehensive car insurance, if they write off their car
- Tyre and rim insurance - provides cover for the cost of repairing or replacing tyres and rims if they are damaged as a result of blowouts, punctures or other road damage
- Mechanical breakdown insurance - often referred to as an extended warranty. This typically covers the cost of repairing or replacing parts of the car as a result of mechanical failures after the manufacturer's or dealer's warranty has expired

This report follows two other reports about add-on insurance released in February this year - *REP 471 The sale of life insurance through car dealers: Taking consumers for a ride* and *REP 470 Buying add-on insurance in car yards: Why it can be hard to say no*.

As a result of ASIC's work in this area to date, all insurers have changed the pricing of consumer credit insurance so that small business customers are no longer charged more than personal use consumers for the same product.

For consumers who are buying a car, ASIC's MoneySmart website contains useful and unbiased information. Consumers can also download the [MoneySmart Cars app](#), which helps consumers understand the true cost of car ownership and what to look out for.