

**Submission on A91556 – A91557 – Aioi Nissay Dowa Insurance Company Australia Pty Ltd & Ors**

The National Insurance Brokers Association of Australia (NIBA) appreciates the opportunity to make a brief submission to the ACCC in response to the application for authorisation by Aioi Nissay Dowa Insurance Company Australia Pty Ltd and others.

NIBA represents over 300 insurance broking firms across Australia, the majority of which are small to medium businesses. Insurance broking firms provide traditional insurance broking and risk management advice in the areas of property and liability insurance, and in many cases broking firms also provide advice in relation to life risk insurance. The customers of insurance brokers are the small, medium and large businesses of Australia, in all sectors of the economy. Insurance brokers operate under and in accordance with Australian Financial Services Licences, issued by ASIC.

Insurance intermediaries place around \$18.5 billion in insurance premiums each year, approximately half the annual general insurance premium pool in Australia.

**Is there a need for ACCC authorisation?**

NIBA notes the comments in the submission supporting the application for authorisation regarding the presence of so-called reverse competition in the market for add-on insurance products. We note that the current market environment was created by individual insurers acting unilaterally. We therefore feel that the assertion in section 6.2 of the submission needs to be carefully tested.

As has been noted in the submission, ASIC has recently released a report on add on insurance that is strongly critical of this aspect of the insurance market. Given the nature and extent of these concerns, it may well be that a unilateral reduction in commission by the market leading insurance companies could well lead to the remainder of the market reducing premiums by a similar extent. If this occurs, no authorisation by the ACCC would be required.

NIBA therefore submits the assertions regarding reverse competition should be carefully tested by the ACCC.

**Scope of the authorisation**

There are a number of references, on page 10 of the submission accompanying the application for authorisation, which explain the apparent scope of the application.

“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 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.....”

It would appear from these comments, and the comments in the submission overall, that the intention is to impose a 20% commission cap in relation to the sale of add on insurance

products by the motor dealer (or someone acting in conjunction with the motor dealer) to the purchaser of the motor vehicle.

NIBA is concerned that the proposed wording of the authorisation goes well beyond this intention, and could have unintended consequences in the broader insurance sector.

The key components of the insurance process are as follows:

- The provision of capital by the ultimate carrier of the risk;
- The underwriting of policies – determining whether to accept a risk and issue a policy, and the terms, conditions and price of the policies being issued – this could be done “in house” at the insurance company, but can and often is outsourced to an underwriting agency;
- The distribution process, which could be direct from the insurance company to the ultimate consumer, or the insurance company may choose to distribute their product via appointed agents, or through intermediaries such as insurance brokers who act on behalf of the purchaser of the insurance cover;
- The assessment and payment of claims.

In this case, the concern appears to relate to the level of commissions paid to appointed agents, being the motor vehicle dealers.

It is entirely feasible that an underwriting agency or an insurance broker could arrange and facilitate the distribution of add on insurance products by motor dealers on behalf of an insurance company. If this occurred, the underwriting agency and/or the insurance broker would seek to be remunerated for the work undertaken in this regard. Such remuneration could well be by way of commission. Please note that in this example, the underwriting agency and/or the insurance broker would be facilitating the distribution of insurance products from the insurance company to the motor dealer.

We note that in the world of commercial insurance, there are a large number of mechanisms whereby insurance cover is arranged and distributed for and on behalf of insurance companies by underwriting agencies and insurance brokers. These arrangements and mechanisms operate on commercial terms and conditions, with competitive forces providing pressure on all parties to provide appropriate products and services at a reasonable and competitive cost. The flexibility of these arrangements enables innovation, competition, and the development of new products and services for an ever changing economy.

Another example of the innovative and flexible operation of the commercial insurance market are situations where an insurance broker designs the nature and extent of cover that would be suitable for a group of individual clients, and then arranges for one or more insurers to underwrite those policies. This is known as a facility or scheme. The broker could distribute those policies themselves, or could also act as a wholesale broker and share the gross commission with the retail broker. Because the facility manager/wholesale broker takes responsibility for underwriting and distribution of the insurance, they would expect to be remunerated accordingly. While the commission structures in each of these cases would be negotiated by the parties involved, it might be that the wholesale broker receives gross commission of 30%, out of which they pay 20% to the retail broker or other distributing agent.

Attachment A to the application for authorisation defines “associated broker” as “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.”

Where an insurance broker arranges the distribution of policies by insurers to motor dealers, the insurance broker would be issuing or arranging the sale of insurance products pursuant to a contract, arrangement or understanding with a motor vehicle dealership. This activity would appear to be caught by the definition of “associated broker”.

As noted above, we do not believe actions of this nature were or are intended to be caught by this application for authorisation. We believe the intention of the application is to cap the commissions paid in relation to the sale of add on insurance products by the motor dealer to the purchaser of the motor vehicle.

Products similar to add on insurance sold by motor dealers can be acquired separately from insurance brokers, as can many other products. We are not aware of any detriment to consumers in these cases. The FOFA reforms specifically allowed commissions to be paid in these instances. It is important, therefore, that any authorisation is carefully and narrowly defined so as not to affect commission arrangements not involving add insurance products sold by motor dealers to motor vehicle owners.

NIBA therefore submits that the relevant definitions in the application for authorisation need to be amended to ensure that the proposed cap on commissions relate only to commissions paid in relation to products sold to the purchaser of the motor vehicle.

Please also note that regulating commissions as proposed in the application for authorisation is not the full solution. The letter from ASIC attached to the application notes that limiting commission is a necessary but not sufficient response. Further activity is clearly expected from insurers who supply add on insurance cover via motor dealers. It may be desirable to consider this application for authorisation in the context of the wider range of activity that insurers may be preparing.

In summary, we do not object to the principle of restricting commission to 20% for add on insurance products sold by motor dealers to motor vehicle owners, but there are a number of important considerations, outlined above, that need very careful review as part of the authorisation process.

We would be pleased to meet with the ACCC or any other party to further explain these concerns and the need for changes to the proposed authorisation.

Thank you for the opportunity to provide these brief comments.

13 October 2016