

Friday, 21 October 2016

Mr Luke Griffin
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Dear Luke,

NM Insurance Pty Ltd makes the following submission in response to Aioi Nissay Dowa Insurance Company Australia Pty Ltd & Ors applications for authorisation A91556 – A91557.

Submission

1. NM Insurance is a leading insurance agency operating across Australia and New Zealand.
2. NM Insurance offers, through a number of brands and corporate partners, insurance for leisure products, and insurance for the industries that supply to these products.
3. NM Insurance regularly deals in add on-insurance and the distribution of add-on insurance through distributors including motor dealers.
4. NM Insurance has been invited to make a submission in response to the application received by the ACCC from Aioi Nissay Dowa Insurance Company Australia Pty Ltd that seeks to approve a contract or arrangement that may be anti competitive and breach the cartel provisions in the Competition and Consumer Act 2010 (the Act).
5. The ACCC's role includes identification of conduct that is anticompetitive conduct and to encourage competition and efficiency in business.
6. An application may be made by businesses for protection from legal action for conduct that might otherwise raise concerns under the competition provisions of the Act.
7. Aioi Nissay Dowa Insurance Company Australia Pty Ltd and others seek authorisation to
 - (a) make a contract or arrangement, or arrive at an understanding which would or might breach a cartel provision in Act;
 - (b) 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 the Act.
- 1.2. The applicants seek authorisation on behalf of themselves and potentially other financial service licensees to implement a voluntary Code of Conduct that will limit the commissions and other payments or benefits paid to distributors of "add-on" insurance products through the motor vehicle dealership channel.

8. Authorisation is sought for ten years.
9. NM Insurance does not support the authorisation.
10. NM Insurance has for many years, and currently supports a 20% commission for specific add-on insurance products, including Gap, CCI and Tyre and Rim Insurance.
11. The applicants are members of the insurance industry but their views do not represent the industry as a whole.
12. The proposed regime may not be followed by participants in the insurance industry other than the applicants.
13. The regime has the potential to regulate the add-on insurance market as a whole and the commissions payable to distributors for add-on insurance which is anti competitive.
14. Approval may deliver to the applicants the ability to regulate the market and the pricing of add-on insurance.
15. Authorisation may deliver de-facto control of the add-on insurance market to the applicants.
16. The proposal seeks to implement a regime that is better left for legislation and consultation across the insurance sector as a whole.
17. Any voluntary reduction in commissions paid by the market leading insurance companies that participate in add-on insurance is likely to lead to the remainder of the market reducing commissions in a similar way. This is likely to occur without any ACCC authorisation of the proposal.
18. Authorisation has the potential to detrimentally effect businesses that deal in add-on insurance and the public as:
 - (a) add on insurance provides valuable benefits for members of the public;
 - (b) authorisation will permit the applicants to limit remuneration paid for add-on insurance;
 - (c) a reduction in commission will not necessarily result in a reduction in premiums;
 - (d) a reduction in commissions will not necessarily lead to enhanced insurance benefits for members of the public;
 - (e) reduced remuneration for distributors has the potential to reduce the number of distributors that are prepared to distribute add-on insurance as well as the level of services provided by distributors;
 - (f) unless the reduction of commissions occurs across the entire market ASIC's objectives will not be achieved and a voluntary Code of Conduct may not achieve the objective;
 - (g) any reduction in the availability of add on insurance at the time of purchase of a motor vehicle could be detrimental to the public;

- (h) approval of the arrangements could lead to a reduction in the number of insurers that offer add-on insurance;
 - (i) insurers that compete with the applicants and offer add-on insurance who do not adopt the voluntary Code of Conduct and a similar commission structure may have higher distribution costs and pay greater commissions with reduced benefits under the insurance products to allow them to compete at the same price point;
 - (j) it may cause an increase in the concentration of add-on insurance business with the applicants;
 - (k) it will create a voluntary Code of Conduct which may not be adopted by the general insurance industry as a whole;
 - (l) it will create confusion for the public as well as participants in the provision, sale and distribution of add-on insurance where there is a voluntary Code of Conduct in addition to the General Insurance Code of Practice.
 - (m) it may cause a price rise in add-on insurance if sales of add-on insurance decrease.
19. The Corporations Act and ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682 adequately regulates the role of distributors dealing with general insurance products and the financial service licensee that appoints a distributor.
20. The likely future without authorisation is the development of a Code of Conduct by the industry rather than individual participants in the industry. The future is also likely to see legislative regulation imposing obligations similar to those found in the applicant's proposed Code of Conduct. The public benefit gained from an authorisation must be considered in light of this future.
21. Authorisation should only be granted if ACCC is satisfied that the authorisation will result public benefit.
22. The proposed period is excessive.
23. NM Insurance does not object to the publication of this submission on the Public Register.

We look forward to working with your further in this matter.

Regards,



Lyndon Turner - Chief Executive Officer

NM Insurance Pty Ltd