

20 October 2016

Mr David Hatfield
Australian Competition & Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

By email: david.hatfield@accc.gov.au

Dear David,

RE: Aioi Nissay Dowa Insurance Company Australia Pty Ltd & Ors A91556 - A91557

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

1. Background

- 1.1. UAC is an industry association with almost 100 Australian-based members representing the vast majority of Australian underwriting agencies.
- 1.2. Underwriting agencies manage insurance transactions on behalf of insurers acting as their agents pursuant to agency agreements.
- 1.3. UAC members act as agents for Australian and overseas insurers and Lloyds of London.
- 1.4. Underwriting agencies are appointed by insurers to issue policies and pay claims on their behalf.
- 1.5. UAC members play a unique role in the placement of insurance in Australia and are involved in the placement of insurance attracting more than \$3 billion of insurance premiums spent by Australian businesses and consumers annually.
- 1.6. Underwriting agencies are involved in dealings in add-on insurance, as well as other insurances via distribution channels, including motor vehicle dealers.
- 1.7. Underwriting agencies also enter into arrangements with distributors to deal with add-on insurance products.
- 1.8. The ACCC has received an application 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)

- 1.9. A key objective of the Act is to prevent anti-competitive conduct, to encourage competition and efficiency in business and enhance the welfare of Australians.
- 1.10. Businesses may obtain protection from legal action for conduct that might otherwise raise concerns under the competition provisions of the Act by an application for an 'authorisation' from the ACCC and subsequent authorisation.
- 1.11. The application for authorisation is made under subsection(s) 88 (1A)/88 (1) of the Act for an authorisation:
- (a) 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.
 - (b) 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.
 - (c) 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.
 - (d) 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.
- 1.12. The application has been received from:
- (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 Ltd and Hallmark Life Insurance Company Ltd;
 - (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.
- 1.13. 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.

- 1.14. The arrangement proposed seeks to implement a voluntary regime that participants in the insurance industry may seek to adopt.
- 1.15. Authorisation is being sought for ten years or until such earlier time as the arrangement is superseded by another mechanism.
- 1.16. UAC does not support the authorisation of the present application. The reasons for that position are as follows:
 - (a) The applicants are members of the insurance industry but their views do not represent the industry as a whole;
 - (b) The regime may not be followed by participants in the insurance industry other than the applicants;
 - (c) The proposal seeks to implement a regime that is better left for legislation and consultation across the insurance sector as a whole;
 - (d) Any approval may deliver to the applicants the ability to regulate the market and the pricing of add on insurance;
 - (e) The applicants do not demonstrate that financial services licencees (FSL) and other life and general insurers other than the applicants 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. The application for authorisation is limited to a restricted number of applicants.
 - (f) Life and general insurers including members of the Insurance Council of Australia (ICA) and Financial Services Council (FSC) other than the applicants will not necessarily adopt the arrangements;
 - (g) The views of the ICA and FSC are not provided with the application. Their comments should be sought and considered by the ACCC.
 - (h) The views of NIBA that represents in excess of 300 insurance brokers in Australia should be sought and considered by the ACCC.
 - (i) The applicants seek to implement a regime in relation to add-on insurance that has the potential to regulate the insurance industry as a whole and the commissions payable to distributors for add-on insurance which is anti competitive.
 - (j) A voluntary reduction in commission by the market leading insurance companies that participate in add on insurance could lead to the remainder of the market reducing premiums by a similar extent. This step could be taken by the major insurers without any ACCC authorisation.
 - (k) Authorisation has the potential to deliver control of add-on insurance offered to the public to the applicants;
 - (l) Authorisation has the potential to detrimentally effect businesses that deal in add-on insurance and the public as:

- (i) add on insurance provides valuable benefits for members of the public;
- (ii) authorisation will permit the applicants to limit remuneration paid for the distribution of add on insurance;
- (iii) a reduction in commission will not necessarily result in a reduction in premiums. The savings to insurers will not necessarily be passed on to consumers through reduced premiums;
- (iv) there is no evidence that a reduction in commissions will lead to enhanced insurance benefits for members of the public;
- (v) if remuneration to distributors is reduced this may lead to a reduction in the number of distributors that are prepared to distribute add-on insurance with an impact on the availability of add on insurance at the time of purchase of a motor vehicle;
- (vi) if remuneration to intermediaries is reduced this may lead to:
 - (A) a reduction in Underwriting Agencies that distribute add on insurance for insurers;
 - (B) a reduction in the number of distributors that Underwriting Agencies appoint to distribute add on insurance;
- (vii) reduced remuneration has the potential to reduce the efforts of distributors dealing in add-on insurance which may be detrimental to the public;
- (viii) reduced commissions could lead to reduced product awareness where it is offered by fewer distributors;
- (ix) approval of the arrangements could lead to a reduction on the number of insurers that offer add-on insurance;
- (x) insurers that compete with the applicants and offer add on insurance who do not adopt a similar commission structure will have higher distribution costs than the applicants and to compete may reduce benefits under the insurance products so that they may remain competitive;
- (xi) reducing the number of participants that sell add on insurance has the potential to reduce the distribution of add-on insurance products to members of the public;
- (m) The Corporations Act and ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682 adequately regulate the role of distributors dealing with general insurance products and the financial service licensee that appoints a distributor;

1.17. Authorisation has the potential to:

- (a) reduce the number of insurers that can compete in the add-on insurance market unless they adopt the voluntary Code of Conduct;

- (b) increase the concentration of add-on insurance business with the applicants;
 - (c) inhibit new entrants to the market offering and distributing add-on insurance as new entrants will be at a financial disadvantage to established businesses that have created distributor relationships and developed infrastructure through remuneration at levels where commissions were not capped;
 - (d) create a voluntary Code of Conduct which is not adopted by the general insurance industry as a whole leading to the development of a second Code of Conduct by the industry creating confusion for the public as well as participants in the provision, sale and distribution of add-on insurance;
 - (e) cause a price rise in add-on insurance if sales of add-on insurance decrease;
- 1.18. The likely future without authorisation is the development of a Code of Conduct by the industry rather than individual participants in the industry. For example, the General Insurance Code of Practice could be amended to address the issues raised by ASIC in its investigation concerning add-on insurance. The future may also see legislative regulation imposing obligations similar to those found in the applicant's proposed Code of Conduct. The public benefit identified by the applicants must be considered in light of the likely future.
- 1.19. The submission does not provide sufficient evidence to substantiate that the authorisation will result or is likely to result in the public benefits suggested and the ACCC should not accept that the applicants at this stage have demonstrated the necessary public benefit will result.
- 1.20. Introducing a voluntary Code of Conduct in addition to the existing General Insurance Code of Practice will:
- (a) limit the opportunity for the General Insurance Code of Practice to respond to and address the issues raised by ASIC concerning add-on insurance;
 - (b) create a second Code of Conduct in the general insurance industry albeit limited to add-on insurance products;
 - (c) deliver effective regulation of add-on insurance to the applicants and those that subscribe to the Code of Conduct .
- 1.21. A Code of Conduct should be developed by the insurance industry as a whole by representatives of insurers, insurance brokers, underwriting agencies and distributors of add-on insurance rather than the applicants.
- 1.22. The proposed period sought is excessive.
- 1.23. UAC does not object to the publication of this submission on the Public register.
- 1.24. After a draft decision is issued by the ACCC, UAC would welcome the opportunity for a conference.

The Board of the Underwriting Agencies Council



Lyndon Turner
Chairman

cc: Luke Griffin, ACCC - luke.griffin@accc.gov.au