

21 October 2016

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Mr Gavin Jones
Director
Adjudication Branch
Australian Competition and Consumer Commissioner
23 Marcus Clarke Street
CANBERRA ACT 2601

Attention: Mr Luke Griffin

By Email: adjudication@accc.gov.au

Dear Sirs

**Applications for Authorisation A91556 and A91557
Application by AIOI Nissay Dowa Insurance Company Australia Pty Ltd & Ors
Interested Party Submission by Yamaha Group**

Your Ref: 60880

Our Ref: DCC:4227870

We act for Yamaha Group (**Yamaha**) which comprises Yamaha Motor Australia Pty Ltd and Yamaha Motor Finance Australia Pty Ltd.

1. Yamaha Corporate Information

Yamaha Motor Australia Pty Ltd (**YMA**) distributes and sells Yamaha branded products, including motorcycles through motorcycle dealerships.

Yamaha is a joint venture partner with NM Insurance Pty Ltd to provide motorcycle insurance under brand names including Mi-Bike Insurance.

Yamaha Motor Finance Australia Pty Ltd (**YMF**) provide, amongst other things, motorcycle finance. YMF hold Australian Credit Licence No 394553.

YMF promotes the sale of insurance products issued by NM Insurance Pty Ltd under the brand names including Yamaha Motor Insurance (**YMI**).

YMF is a wholly owned subsidiary of YMA.

Yamaha is broadly supportive of the action taken by Australian Securities and Investments Commission (**ASIC**) in respect of the sale of add-on insurance products through motor dealerships from both the insurance and credit perspective¹.

YMF as the holder of an Australian Credit Licence, is bound by the responsible lending obligations imposed under the *National Credit Act (NCA)* and the requirements of the *National Credit Code (NCC)* in respect of the provision of credit and the payment and receipt of commissions in respect of credit and related insurance contracts².

Yamaha provides this submission in response to the matters contained in the Applications, Submission and draft Proposal prepared by the Applicants.

Capitalised and other terms used in this submission will correspond to the definitions and terms used in the Applications unless stated otherwise.

2. Conduct for which Authorisation is sought

2.1 Price Fixing

The Applicants seek authorisation to make or give effect to a contract, arrangement or understanding by entering into the Proposal that contains a cartel provision within the meaning of Division 1 of Part IV of the *Competition and Consumer Act 2010 (Act)*.

The cartel provision is that provision of the contract, arrangement or understanding (ie the Proposal) relating to the price fixing of commissions payable by the Applicants in respect of the sale of add-on insurance products.

The Proposal has the purpose of fixing, controlling or maintaining the price payable by insurers by way of commission in relation to the sale of add-on insurance through the motor vehicle dealership channel at 20% of the premium (**20% cap**).

2.2 Substantially Lessening Competition

The contract, arrangement or understanding proposed by the Applicants in the Proposal will have the purpose or effect of substantially lessening competition between the Applicants for access to consumers of add-on insurance products through the motor dealership channel within the meaning of that term in section 45 of the Act.

The Applicants state they currently compete by way of payment of commission to motor vehicle dealerships to enable them to obtain access to consumers to sell their add-on insurance products at the motor vehicle dealership point of sale.

¹ ASIC Report 470: Buying add-on insurance in car yards: Why it can be so hard to say no (**REP 470**); ASIC Report 471: The sale of life insurance through car dealers: Taking consumers for a ride (**REP 471**); and ASIC Report 492: A market that is failing consumers: The sale of add-on insurance through car dealers (**REP 492**)

² National Credit Code section 17(15) and Part 8 of the National Credit Code

This has been referred to in various parts of the Submission as being “reverse competition”.

By fixing the price of the commission payable by the Applicants at the 20% cap, this has the effect of substantially lessening (and essentially eliminating) price competition between the Applicants for access to consumers of add-on insurance products at the motor vehicle dealership point of sale.

If the authorisation were to be granted, the affect would be that the Applicants get access to the dealership customers at a price which is fixed at no greater than the 20% cap.

The direct and immediate beneficiary of the 20% cap is not the consumer nor the public, but the insurer.

3. Yamaha’s Submission on 20% cap in Proposal

3.1 ASIC Consideration

Yamaha acknowledge ASIC’s findings in REP 492 that consumers receive much less in claims than dealers receive in commissions³.

Yamaha also acknowledge that ASIC has given support for the cap as contained in Attachment B to the Applicants’ Submission, but that ASIC also state a cap is not a sufficient remedy for the broader issues facing the sale of add-on insurance as outlined in more detail in REP 492.

On a separate but related matter, Yamaha have been involved through its discussions with ASIC regarding “flex commissions” in the motor dealership industry and it has been acknowledged that one of the problems in addressing payment of commissions is there is a risk to the “first mover” in the market and, for that reason effecting industry change may be better achieved through either regulatory change, class order or industry code.

3.2 Yamaha Branded Insurance Products

Since October 2013 Yamaha, through the Yamaha Insurance branded products, have been operating on a voluntary basis of applying a self-imposed cap on commission payable of 20% of the premium. This has been noted in REP 492 at paragraph 58.

In comparison to the other insurers, this has placed Yamaha in a significantly disadvantaged position since other insurers have been operating at unlimited commission levels. Despite this, Yamaha has persisted with this model as it believes that the consumers’ best interests are served by this reasonable commission cap resulting in reasonable pricing.

Yamaha advises that it has been able to have lower premiums and higher loss ratios by reason of the 20% commission cap used under the YMI model.

³ REP 492 at paragraph 20

This appears to be consistent with ASIC's position in REP 492.

3.3 Parties subject to 20% cap

Yamaha is broadly supportive of a 20% cap on commissions payable to "motor vehicle dealerships", but not as that term is defined in the Proposal.

REP 492 and the arguments put by the Applicants in the Submission in support of the Authorisation, focus predominantly on motor vehicle dealerships which carry on the business of dealing in the sale of motor vehicles as a retailer and sell add-on insurance to consumers at point of sale (ie the dealership).

The cap on commission for add-on insurance products set out in section 3 of the draft Proposal is too wide in respect of the parties who are bound by the 20% cap as it extends to wholesalers and credit providers.

Yamaha submit the 20% cap should only apply to commissions payable to:

- (a) (i) a motor vehicle dealership, with the definition of motor vehicle dealership being any person or entity that carries on the business of dealing in motor vehicles as a retailer; and
- (ii) an associated entity, as that term is defined under the *Corporations Act 2001*, of a motor vehicle dealership;
- (b) an associated broker as that term is defined in the Proposal, including a prospective associated broker; and
- (c) an independent finance broker as that term is defined in the Proposal; and
- (d) any agent of a motor vehicle dealership (subject to Yamaha's redefinition), associated broker or independent finance broker.

Alternatively, adopting the model currently in place under section 145 of the NCC for consumer credit insurance, the 20% cap could apply to commissions for add-on insurance products to motor vehicle dealerships so that the total of any commission accepted by:

- (a) a motor vehicle dealership (subject to Yamaha's redefinition); and
- (b) the agent of the motor vehicle dealership,

must not exceed the 20% cap.

Accordingly, if ACCC is minded to grant the authorisation, Yamaha submits that the scope of the parties the subject of the 20% cap be redefined as outlined above or, alternatively, bring the 20% cap into alignment with the cap under section 145 of the NCC.

4. Public Detriment if Authorisation given for 20% cap in Proposal

4.1 Unintended Consequences – Insurance Agents and Underwriting Agents

The inclusion of all the parties named in the Proposal as being the subject to the 20% cap, would have the unintended consequence of potentially bringing into that 20% cap, insurance agents and underwriting agents involved in or connected with the supply of add-on insurance products.

The granting of the Authorisation would have the effect of removing the layer of intermediaries known as agencies from the distribution channel for add-on insurance.

(a) Role of Insurance Agents and Underwriting Agents

Agencies have the effect of increasing competition between insurers. Agencies often target niche areas that large insurers are reluctant to commit to particularly if there is an existing dominant player in that market. By way of example, Swann Insurance has a dominant position in motorcycle insurance and Allianz/Club Marine has a dominant position in marine insurance.

Agencies perform services and functions which are of value to both the insurers and the customer. Agencies perform rating and underwriting functions and claims functions that would otherwise be performed by the insurer.

In doing so they seek to find efficiencies in markets that the large insurers may have neglected.

By removing agencies from the distribution channel, this will have the effect of allowing those dominant players to operate in those markets with little to no competition.

(b) Services Provided by Insurance Agents and Underwriting Agents

Agencies perform services and functions which are of value to both the insurers and the customer. Agencies perform rating and underwriting functions and claims functions that would otherwise be performed by the insurer.

Agencies also perform a number of other services and functions which include but are not limited to:

- (i) Compliance requirements pursuant to all relevant laws;
- (ii) Placement of insurance and obtaining quotations;
- (iii) Maintenance of client files;
- (iv) Issue of cover notes and binding policies on behalf of insurers;
- (v) Claims handling and management services;
- (vi) Refer new business from motor dealers to insurers;

- (vii) Rating card creation and analysis
- (viii) Creating new products;
- (ix) Managing deferred payment service;
- (x) Handling monies in trust;
- (xi) Training including compliance training.

These services and functions are significantly different to the functions performed by motor vehicle dealerships or insurance brokers in the distribution of add-on insurance products.

(c) Income earned by Insurance Agents and Underwriting Agents

Income earned by insurance agents and underwriting agents operate predominantly as a fee for service rather than as a commission as they perform a role which is remunerated by reference to the roles they carry out in connection with the distribution of add-on insurance products.

From the income earned, the agents pay commission to dealers and retain the balance to cover costs and expenses incurred as part of providing the above services to the consumers and insurers.

The cost of the functions performed by agencies is accounted for in the payment they receive from the insurer, but the flow-on effect to the consumer is minimal given:

- (i) the cost of the functions carried out by the agencies which have been outsourced to them by the insurer are borne by the agencies;
- (ii) the efficiencies found by agencies in underwriting and claims;
- (iii) the niche rating cards which agencies develop in order to be competitive in the market.

For this reason agencies are not simply sales intermediaries that merely “clip the ticket” as part of the distribution channel, nor do they add an unwarranted price to the premium paid by the consumer.

(d) Consequence of Insurance Agents and Underwriting Agents being subject to the 20% cap

If the underwriting agents' and insurance agents' fees were to be included as part of the 20% cap, this would effectively eliminate insurance agents and underwriting agents from the distribution channel as it would not be financially viable for them to continue to carry out their services if their remuneration was included within the 20% cap.

That would lead to the insurers having to incur significant cost in relation to services and functions that it will require which would otherwise have been provided by an agency at a price commercially agreed between the insurer and the agency. That

incurred cost would be passed by the insurers onto the consumer which would result in zero price change to the consumer.

Additionally, it would cut the insurers' access to customers which it otherwise would have had through the agents.

Further, if underwriting agents and insurance agents are included in the 20% cap, there would be insufficient financial incentive to carry out their existing roles in addition to incurring costs for the implementation of the systems and controls necessary to comply with the terms of the Proposal.

(e) Yamaha's submission

Whilst Yamaha acknowledge the need for a broad definition of commission to avoid any potential circumvention of the 20% cap, Yamaha submits there should be specific exclusions for those roles applicable for insurance agents and underwriting agents.

Yamaha fully supports ASIC's investigations into the add-on insurance markets, but submits that creating a cartel which fixes the price of the commission for any party involved in the sale of an add-on insurance product at a 20% cap that has the impact of lessening competition by excluding niche markets in which agencies operate, is not ASIC's intended outcome, and would not be to the public benefit.

Yamaha submits that excluding the role of insurance agents and underwriting agents can be dealt with by either:

- (i) amending the definition of commission to exclude financial and other benefits and any form of monetary consideration or non-monetary consideration received by insurance agents and underwriting; or
- (ii) amending the wording in section 3 of the draft Proposal to specifically exclude insurance agents and underwriting agents from the parties the subject of the 20% cap.

4.2 Training and improvements to sales processes

Yamaha submit that, contrary to the position outlined in the submission, there may be unintended consequence that the training of sales staff and implementation of processes and procedures around the sale of add-on insurance products by motor vehicle dealerships may be diminished due to the imposition of the 20% cap.

The submission acknowledges the public detriment to motor vehicle dealers at 8.1 of the submission.

The submission also acknowledges in 7.3, that there is little benefit to motor vehicle dealerships in the proposal.

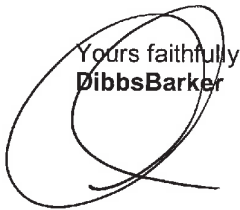
Due to reduced payments the likely impact is that motor vehicle dealers would be disinclined to incur additional costs of training staff and instituting compliance systems at their cost.

This may have the effect of perpetuating the poor sales processes identified in finding 6 of REP 492⁴.

Further, if underwriting agents and insurance agents are included in the 20% cap, there would be insufficient financial incentive to carry out their existing roles in addition to incurring costs for the implementation of the systems and controls necessary to comply with the terms of the Proposal.

Please direct all correspondence in respect of the Authorisations to the writer of this submission.

Yours faithfully
DibbsBarker



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⁴ REP 492 at paragraph 24