



8 December 2016

Mr Gavin Jones
Director, Adjudication
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By email: adjudication@accc.gov.au

Dear Mr Jones,

Supplementary Submission: Applications for authorisation—A191556-A91557 Aioi Nissay Dowa Insurance Company Australia Pty Ltd & Ors

We refer to our original submission on the application by insurers for Australian Competition and Consumer Authority (**ACCC**) authorisation to cap commissions on add-on insurance sold through motor vehicle dealerships at 20% of premiums (the **Application**).¹ In that submission, we expressed the view that approval of this Application will not deliver a net public benefit. That remains our position.

Since our original submission, additional information has come to light via the submission from the Australian Securities and Investments Commission (**ASIC**) and the Applicants' response to interested party submissions.²

¹ Consumer Action, [Submission: Applications for authorisation—A191556-A91557 Aioi Nissay Dowa Insurance Company Australia Pty Ltd & Ors](#), 20 October 2016 (**Consumer Action First Submission**).

² ASIC, *Submission relating to authorisation application to the Australian Competition and Consumer Commission—A91556 & A91557*, November 2016 (**ASIC Submission**); Gilbert+Tobin, *Motor vehicle dealership add-on insurance reform—A91556 & A91557: Response to interested party submissions*, 14 November 2016 (**Insurers' Submission**).

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This supplementary submission responds to some significant issues raised by those comments from ASIC and the Applicants. In particular, the proposal:

- without claims ratio targets, it is unlikely to deliver good-value products,
- does not detail any compliance or enforcement mechanisms,
- is limited in scope, which creates the risk of avoidance of the cap,
- does not set out a clear timeline for implementation, and
- does not incorporate other additional measures which would address the consumer harm caused by add-on insurance, including the 'opt-in' sales model, instalment pricing and an end to life (trauma) insurance sales in car yards.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action Law Centre (**Consumer Action**) is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

No claims ratio targets

While the Application states that the proposal will deliver a public benefit by addressing reverse competition in the market, it does not have any clear objective to improve the value of add-on insurance products. One way to measure any improvement (or otherwise) in product value would be to measure any changes to the claims ratios for these products.

As ASIC's submission states, the 20% commission cap will not in itself deliver claims ratios which represent 'good value' products for consumers.³ While ASIC expect the insurers to set and monitor claims ratio targets,⁴ the Application as it stands does not compel insurers to do this, nor to improve their claim ratios.

The insurers have stated that a 20% commissions cap covers the costs of selling add-on insurance, and that without an 'appropriate' commission, 'motor vehicle dealerships will have little incentive to sell add-on insurance'.⁵ They note that the UK has seen reduced prices in add-on products since commissions were reduced, but that this 'is due in part to the introduction of simpler products and funds which have a lower charge'.⁶

However, it remains unclear why a cap set at 20% will deliver genuine consumer benefits, absent of any targets for improved product value. For any change in consumer outcomes to be measured, insurers would need to set and work towards appropriate claim ratio targets,

³ ASIC Submission, pp 3-4.

⁴ ASIC Submission, p 4.

⁵ Insurers' Submission, pp 3-4.

⁶ Insurers' Submission, p 5.

and report publicly on their progress towards these targets. We note that this would only deliver a real public benefit if insurers also took steps to improve product suitability and sales practices (see further below).

No enforcement mechanism

Our original submission noted that there are no monitoring or enforcement mechanisms specified in the Application.⁷ As it stands, the Application provides no consequences for breach of the commissions cap.

We continue to hold significant concerns that there is no detailed mechanism to implement the proposed commissions cap.

The insurers have indicated that a voluntary code of practice will govern the commissions cap,⁸ however *Attachment A—Add-on Insurance Reform Proposal* to the Application does not appear to be a complete draft code. This means that;

- the insurers are asking the ACCC and others to consider a proposal which does not detail any governance mechanism, or
- if a complete draft code does exist, it has not been developed in consultation with key consumer representatives.

In both cases, there is a significant risk that the code will not do what is promised.

While we maintain that this Application would not deliver the net public benefit required, if it were approved, we would echo ASIC's view that any effective industry code would comply with ASIC's Regulatory Guide 183 and be registered with ASIC.⁹

Avoidance risks

ASIC has expressed concerns with the potential for the proposed cap to be avoided, in particular, because it does not cover car leases.¹⁰ This opens the potential for the problems experienced with add-on insurance to be exacerbated in the car lease market. Also, the application does not clearly define motor vehicle dealerships—for example, does this include dealerships that sell motor bikes and caravans?

We also note that motor vehicle dealers have also submitted that the fact that the cap covers only insurance sold through the dealerships, not other channels such as authorised deposit-taking institutions, has the potential to create 'competitive distortions'.¹¹

⁷ Consumer Action First Submission, p 7.

⁸ Insurers' Submission, p 3.

⁹ ASIC Submission, p 6.

¹⁰ ASIC Submission, p 5.

¹¹ Australian Automotive Dealers Association, *A91556-A91557 – Aioi Nissay Dowa Insurance Company Pty Ltd & Ors (Applicants) – Authorisation – Submission: Australian Automotive Dealers Association (AADA)*, 21 October 2016, para 4.4.

In our view, the limits of the proposed cap could create problem ‘hot spots’, including in car leasing and in the 25% of add-on insurance sold outside motor vehicle dealerships.¹²

Unclear timeline

The Application originally proposed a commencement date of three months after the approval of the Application.¹³ The Applicants’ most recent submission notes that they are amenable to a longer transition period, in response to motor vehicle dealers proposing a transition period of three years.¹⁴ This wide variation in proposed transition periods indicates that there is no agreed plan between the insurers and dealers, despite the fact that both industries would need to work to implement any commissions cap. We understand that this is one of many points of disagreement between car dealers and insurers in relation to this Application.

ASIC state that, without this commission cap, their ability to ‘drive improvement in claims ratios and consumer outcomes in this market’ will be limited.¹⁵ If this commission cap is considered a critical part of ASIC’s work to improve consumer outcomes in the add-on insurance market, it would clearly be inappropriate to delay its commencement for up to three years.

Additional, more effective measures

This Application, as it stands, will not effectively address the acknowledged problems in this market. In ASIC’s view, it is not ‘a complete solution to the many and varied concerns’.¹⁶

The insurers have indicated that they intend to offer non-financed premium payment options (in addition to single-premium pricing) and to review their product design.¹⁷ Both of these changes could provide some public benefit, however neither is part of this Application. Many of the other measures proposed by the insurers (but not part of this Application) will, at best, tinker around the edges of the problem, rather than go to the heart of it.¹⁸

In our previous submission we detailed other measures which could deliver a public benefit. These include an ‘opt-in’ sales model, a ban on single-premium pricing and an end to life (trauma) insurance being sold in car yards.

We cited evidence for the effectiveness of these measures, including:

- a reduction in the amount in claims and compensation paid by UK PPI insurers after the ‘opt-in’ model was introduced in the UK,¹⁹

¹² See ASIC, *Report 492: A market that is failing consumers: The sale of add-on insurance through car dealers*, September 2016, para 9.

¹³ *Motor vehicle dealership add-on insurance reform: Application for authorisation*, 12 September 2016 para 3.4, p 4.

¹⁴ Insurers’ Submission, p 13.

¹⁵ ASIC Submission, p 7.

¹⁶ ASIC Submission, p 1.

¹⁷ Insurers’ Submission, p 9.

¹⁸ Insurers’ Submission, pp 5-6, 9.

¹⁹ Consumer Action Submission, p 8.

- the lower price paid when insurance premiums are paid in regular instalments rather than by a financed single premium—single premium pricing was banned in the UK due to the poor consumer outcomes associated with it,²⁰ and
- the significant problems with the suitability and value of life insurance sold in car yards.²¹

If the Application were approved, the inclusion of one or more of these requirements in the approval could represent a genuine public benefit by:

- removing people from the high-pressure sales environment of a car yard when they buy insurance,
- ensuring that people do not pay for insurance without knowing it,²²
- reducing the price of add-on insurance, which will improve its value, and
- removing life insurance—one of the most problematic add-on insurance products—from the car dealer channel.

While these measures would not resolve all consumer harm cause by add-on insurance, they would represent a much more significant attempt to address the key consumer concerns with the add-on insurance market.

Pre-decision conference

We note our previous request for a pre-decision conference after the release of the ACCC's draft decision. We add that, if this request is granted, our preferred date would be on or after 24 January 2017.

Please contact Susan Quinn on 03 9670 5088 or at susan@consumeraction.org.au if you have any questions about this submission.

Yours sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer

²⁰ Consumer Action Submission, pp 10-11.

²¹ Consumer Action Submission, p 11, citing ASIC, *Report 471: The sale of life insurance through car dealers: Taking consumers for a ride*, February 2016, pp 7-8.

²² Consumer Action Submission, p 9: citing Consumer Action, [*Junk Merchants: How Australians are being sold rubbish insurance, and what we should do about it*](#), December 2015, p 29; UK Financial Conduct Authority, [*General Insurance Add-Ons: Final Report—Confirmed Findings of the Market Study*](#), Market Study 14/1, July 2014, p 7; Consumer Action [DemandARefund.com](#) usage statistics.