Submission in relation to authorisation application to the Australian Competition and Consumer Commission - A91556 & A91557

ASIC is making a second submission to the Australian Competition and Consumer Commission (ACCC) to address issues arising from the recent exchange of correspondence between the ACCC and the Applicants. By letter dated 21 December 2016 the ACCC advised the Applicants of its preliminary views in relation to the application. The Applicants responded by letter dated 2 February 2017.

ASIC has publicly set out its view that addressing the range of problems it has identified in this market requires a 'package' of reforms. As previously stated, ASIC's view is that while a cap on commissions is likely to be a very useful element of this package it would, on its own, not be sufficient. ASIC has clearly indicated that additional measures are required. One such measure is a deferred sales model (as discussed further below).

In summary the ACCC was not convinced that a cap on commissions would comprehensively address the limitations that currently exist. These limitations inhibit the capacity of consumers, who are not put in a position to make rational, well-informed choices when buying add-on insurance products through motor vehicle dealerships. The ACCC concluded therefore, that the 20% cap on commissions would not prevent the sale of expensive, poor value products without a further intervention that directly addresses the consumer's ability to make an informed decision, particularly in relation to the price.

For example the ACCC identified the following risk of continued market failure (the 'preferred insurer' issue): *Because commissions will still be set as a percentage of the price of the policy, when selling add-on insurance products to consumers who are not price sensitive motor vehicle dealerships will also still have incentives to favour higher priced policies over lower priced policies irrespective of which policy may represent the best value for the customer or best suit their needs*

ASIC's view is that the ACCC's response flagged to the Applicants the need to provide a more comprehensive response to the concerns identified by ASIC in REP 470, 471 and 492, and to therefore supplement the application with other firm commitments to address the limitations identified by the ACCC (notwithstanding that ASIC is engaging with insurers on other changes).

Accordingly in a meeting with the Applicants in January 2017 ASIC clearly stated its view that they should make a firm commitment to the development of a deferred sales model in their response to the ACCC, as suggested in REP 492 (see Finding 6).

In the United Kingdom, a deferred sales mechanism has been introduced so that certain add-on insurance products cannot be sold at the same time as the primary product. Consumers are provided with the relevant disclosures at the point of sale and then contacted after a gap, to allow time for the consumer to consider whether they need the products being offered and to give them the opportunity to review competing products online. The objective of this deferred sales mechanism is to allow increased competition in the add-on insurance market.

ASIC considers that the way the deferred sales model operates means that it encourages lower prices through greater competition and more consumer awareness.

ASIC accepted that the timeframe for this response meant it would not be possible for the Applicants to commit to a specific model. However ASIC considered it would be possible for the Applicants to take steps such as:

- an explicit commitment to develop a sales model that incorporates a break between the sale of the primary product and the insurance product;
- an acknowledgement, from senior management levels within the Applicants, of the advantages of this model;
- identification of preferred consumer outcomes that would frame its development; and
- an indicative timetable for introduction with interim milestones.

The Applicants response dated 2 February 2017 did not have any such commitment and stated: *ASIC has also raised such a measure as a potential remedy to address its concerns, though substantive discussions have not yet been had with industry on that option*.

More broadly the letter of 2 February 2017 responded to the ACCC's concerns by stating:

The applicants consider that high commissions paid in the motor vehicle dealership channel contribute significantly to the market failure identified by ASIC by providing incentives to engage in the inappropriate sales practices identified in the recent ASIC reports into that channel, such as providing incomplete information or explanation of the products, pressuring or rushing customers, downplaying the cost of products, using pre-filled application forms, and in some cases misrepresenting the value or necessity of add-on insurance products

ASIC therefore considers that the Applicants' application is subject to the following limitations:

1. It does not have a commitment to a deferred sales model or to any mechanism that would address the market failures relating to transparency in price and competition.

2. It acknowledges that the risk of problematic or coercive practices in the current sales model would persist, and that a reduction in commissions would only reduce – but not eliminate – this risk.

3. It does not propose any measures to address the risk of continued sales of poor value policies as a result of the preferred insurer issue, which would encourage car dealers to sell the add on product with the highest cost.

4. The Applicants did not make any commitment to pass on the savings from a reduction in commissions to consumers, even though the ACCC had expressed concerns that *"at least part of the reduction in commissions will likely be reflected in a wealth transfer from motor vehicle dealerships to insurers rather than a reduction in prices for consumers".*

5. It placed the onus for addressing these matters on ASIC (through its current work with insurers, or in the proposed reporting requirements to ASIC) or on consumers (as a result of being provided with additional disclosure, notwithstanding the limitations ASIC has identified in disclosure in this market: see REP 492 at paragraphs 218 to 220).

ASIC accepts that the above limitations could lead the ACCC to form the view that the cap on commissions is an inadequate response to the concerns it identified in its letter of 21 December 2016, and that, given the longstanding history of problems in this market, the Applicants could be expected to have responded more constructively.

ASIC's view nevertheless remains that there is a need for comprehensive changes in this market, and that an effective cap on commissions could still be considered as part of a package of reforms, including a move to a deferred sales model.