



# Draft Determination

Application for authorisation AA1000485

lodged by

Suncorp Group Limited and Ors

in respect of

insurance relief measures for policyholders, largely small businesses

Authorisation number: AA1000485

10 June 2020

Commissioners: Rod Sims, Delia Rickard, Sarah Court, Mick Keogh and Stephen Ridgeway

## Summary

Suncorp Group Limited is seeking authorisation for itself, Allianz Australia Limited, QBE Insurance Australia Limited and other insurers and brokers who notify the ACCC (the Participating Insurers) to coordinate minimum relief measures they would offer policyholders, predominantly small and medium sized businesses, suffering hardship due to the COVID-19 pandemic.

Specifically, Suncorp is seeking authorisation for Participating Insurers to discuss and collectively agree on minimum relief measures in respect of policy renewals that fall due up to and including 30 June 2020 and to be able to honour any such measures until 31 December 2020.

Examples of the minimum relief measures include offering eligible policyholders the opportunity to defer their insurance premium payments for up to six months and providing refunds on unused premiums for any cancelled insurance policies without administration or cancellation fees.

The ACCC granted interim authorisation on 2 April 2020 to enable the proposed arrangements to commence while the ACCC is considering the substantive application.

Based on the information available to date, the ACCC considers the conduct is likely to result in public benefits and minimal, if any, public detriments.

The ACCC proposes to grant authorisation for coordination solely for the purpose of enabling Participating Insurers to provide relief measures to policyholders suffering effects of the pandemic. The authorisation does not preclude Participating Insurers from individually deciding to offer more favourable terms to policyholders and is in addition to any existing hardship program entitlements.

The ACCC proposes to grant authorisation until 31 December 2020.

The ACCC invites submissions in relation to this draft determination by 23 June 2020 before making its final decision.

### 1. The application for authorisation

- 1.1. On 1 April 2020, Suncorp Group Limited (**Suncorp**) lodged application for authorisation AA1000485 with the Australian Competition and Consumer Commission (**ACCC**) on behalf of itself, Allianz Australia Limited (**Allianz**) and QBE Insurance Australia Limited (**QBE**) (together, the **Applicants**). The Applicants are seeking authorisation for themselves and other insurers and brokers who wish to opt into the arrangements and who notify the ACCC of this in advance (the Applicants and other participants together, the **Participating Insurers**).
- 1.2. The authorisation is sought to allow the Participating Insurers to coordinate and implement relief measures for companies suffering hardship due to the COVID-19 pandemic. The relief measures are predominantly aimed at small and medium sized enterprises (**SMEs**). This application for authorisation AA1000485 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.3. The ACCC may grant authorisation which provides businesses with legal protection for arrangements that may otherwise risk breaching the law but are not harmful to competition and/or are likely to result in overall public benefits.

- 1.4. The Applicants requested interim authorisation to enable the Participating Insurers to engage in the conduct while the ACCC is considering the substantive application. The ACCC granted interim authorisation under subsection 91(2) of the Act on 2 April 2020 (the **Interim Authorisation**). The ACCC granted the Interim Authorisation in response to the urgent need to implement relief measures to assist SMEs suffering hardship due to the COVID-19 pandemic. Interim Authorisation will remain in place until the date the ACCC's final determination comes into effect or until Interim Authorisation is revoked.

## The Applicants

- 1.5. The application for authorisation was made by Suncorp on behalf of:
- itself and its related bodies corporate;
  - Allianz Australia Limited;
  - QBE Insurance Australia Limited; and
  - any other insurer or insurance broker who wishes to engage in the conduct the subject of the application provided the ACCC is notified in advance.
- 1.6. Suncorp, Allianz and QBE supply various insurance products in Australia, including home and contents insurance, car insurance and business insurance.
- 1.7. As at 10 June 2020, 390 Australian Financial Services License (**AFSL**) holders (plus their Authorised Representatives where relevant) have notified the ACCC of their engagement in the conduct under the Interim Authorisation.
- 1.8. Notified parties include insurers and insurance brokers. For the purposes of this application for authorisation an 'insurance broker' is defined as an intermediary party that operates either as an agent for an insurer or as an agent for a customer seeking insurance products and/or advice. Insurance brokers can hold an AFSL or operate as an Authorised Representative under the AFSL holder.
- 1.9. A register of parties who have notified under the Interim Authorisation can be found on the ACCC website.

## The Conduct

- 1.10. In relation to policyholders whose policy renewal falls due for payment up to and including 30 June 2020, the Applicants are seeking authorisation for Participating Insurers to discuss, enter into or give effect to any contract, arrangement or understanding, or engage in any conduct, which has the purpose, effect or likely effect of:
- (a) Offering existing SME policyholders, who are experiencing financial hardship from the impact of the COVID-19 event, the ability to elect to defer premium payments for up to 6 months,
  - (b) Offering SME policyholders who need to cancel their insurance policies due to changes in revenue as a result of COVID-19 a refund of all unused premium with no administration or cancellation fees applying,
  - (c) Offering SME policyholders who need to close the premises of insured businesses due to COVID-19 continuing cover on the premises with no changes to premium,
  - (d) Offering all policyholders (including consumer, SME and larger businesses) who can no longer travel as planned due to the impact of COVID-19 a credit or refund

for any unused travel insurance premium with no administration or cancellation fees applying, or

- (e) Reducing payment times for SME suppliers and contractors involved in servicing claims for participating insurers to no more than 15 business days to assist small and medium-sized businesses and individual property owners, and to help stimulate the economy.

(the **Conduct**)

- 1.11. The Applicants are seeking authorisation to give effect to these relief measures until 31 December 2020. For example, the Applicants can agree to offer eligible policyholders the opportunity to defer their insurance premium payments for up to six months and then defer the premium payments of those policyholders who choose to take up the offer until 31 December 2020.
- 1.12. For the purposes of the application for authorisation an SME is defined as an individual, partnership, company or trust that is carrying on a business and:
  - (a) employs fewer than 20 employees (or 100 if a manufacturing business); and
  - (b) has an aggregated annual turnover of less than \$10 million.
- 1.13. Each Participating Insurer may independently choose to apply a higher threshold by extending this definition, or may specify the particular SME policyholders eligible for relief to be provided by that insurer.
- 1.14. Any SME policyholder of a Participating Insurer that is entitled to relief under the insurer's existing hardship programs retains that entitlement, in addition to any entitlement provided by the Conduct.

## 2. Background

- 2.1. The ACCC recognises the significant challenges being faced by small businesses and the economy more broadly as a result of the COVID-19 pandemic. The pandemic has caused a major disruption to society and the economy, with social distancing measures and travel bans affecting various sectors across the economy. In that context, that ACCC has received a large number of applications for authorisation, including interim authorisation, aimed at providing financial relief to businesses and individuals, facilitating the supply of goods and services (including medical products and services) and managing the financial impact of a significant economic shock. Many small businesses around Australia have temporarily closed or are suffering from sharp declines in revenue while continuing to service their existing financial obligations. This has given rise to the need for relief packages from both government and industry.
- 2.2. Small businesses play an important role in the Australian economy, employing around 5 million (or 44% of) working Australians in the private sector and paying more than \$166b in wages and salaries each year.<sup>1</sup> The relief measures for small business policyholders that are the subject of this application for authorisation operate as a set of minimum requirements for Participating Insurers.

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<sup>1</sup> Parliament of Australia, "Small business sector contribution to the Australian economy", found at: [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1920/SmallBusinessSectorAustralianEconomy#\\_ftn1](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/SmallBusinessSectorAustralianEconomy#_ftn1)

### 3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including major competitors, suppliers, customers, relevant industry associations and peak bodies.<sup>2</sup>
- 3.3. The ACCC received submissions from the Motor Trades Association of New South Wales (**MTA NSW**) and the National Insurance Brokers Association of Australia (**NIBA**).
- 3.4. The MTA NSW outlined their general support for the authorisation and the Conduct. The MTA NSW suggested that in respect of reducing payments times for contractors and suppliers involved in servicing claims for Participating Insurers, reference should be made to 'following submission of a duly compliant tax invoice' to clarify when payment times are due.
- 3.5. The NIBA welcomed the move by the Applicants to develop proposals to assist small and medium-sized businesses who are experiencing hardship as a result of the COVID-19 pandemic. The NIBA did however note that they were not consulted in the formulation of the Conduct. The NIBA was also surprised by the requirement for insurance brokers to notify the ACCC in advance if they wish to engage in the Conduct, given that insurance brokers only facilitated their clients' access to the relief measures under the Conduct.
- 3.6. The NIBA advised that since Interim Authorisation was granted, relatively few clients of its members have taken advantage of the offer to defer premium payments for six months. The NIBA submits that a key issue for the clients of its members is the uncertainty around their ability to pay the premium payment as a lump sum in six months' time. Due to this uncertainty, the NIBA submits that most clients preferred to enter into either a premium instalment repayment process over 12 months, or a premium funding process, which permits periodic repayments of the cost of the premium to an insurance premium funder in a 10-month period.
- 3.7. In addition, the NIBA has expressed concerns over the Applicants' proposal that if the premium payment is deferred for up to six months, and a claim occurs while the premium is outstanding, the cost of the premium will be deducted from the claim payment. The NIBA expressed concern that this could severely limit the effectiveness of the insurance cover if the cost of the claim is not fully met at that point in time.
- 3.8. The NIBA welcomed the various other relief measures offered as part of the Conduct, including cancellation of insurance cover with a refund of unused premium, continued cover for uninhabited premises with no additional premium, cancellation of travel insurance with a refund of unused premium and the reduction of payment times for suppliers and contractors. However, the NIBA noted that insurance cancellation should be the last option, after insurance brokers have carefully discussed the risks with the client.
- 3.9. Finally, the NIBA noted the potential for detriment to insurance brokers if premium repayments are deferred, as insurance brokers derive their income from commissions from premium repayments. The NIBA did however note that this concern is somewhat

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<sup>2</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

mitigated by the preference of customers to engage in premium repayment plans, as opposed to deferrals, which usually results in insurance brokers being paid their commission up front while the client pays the premium over an agreed period.

3.10. Public submissions by the Applicants and interested parties are on the ACCC's Public Register for this matter.

## Update from the Applicants on the Interim Authorisation

3.11. On 30 April 2020, the ACCC requested an update from the Applicants regarding their experience with the operation of the Conduct under the Interim Authorisation.

### Suncorp

3.12. Suncorp submits that the Conduct has been working as expected where SME policyholders have elected to take up the relief offered. Suncorp submits that the following aspects of the Conduct have worked as expected:

- A significant portion of SME policyholders have cancelled their policies and have had their unused premiums refunded, with no cancellation or administration fees charged;
- Suncorp received anecdotal feedback that the continued cover of unoccupied premises has provided SME policyholders with peace of mind;
- A significant portion of travel insurance customers whose upcoming travel plans were affected by COVID-19 have cancelled their travel insurance policies and have had their unused premiums refunded, with no cancellation or administration fees charged;
- Suncorp has successfully introduced reduced payment times for its suppliers and contractors involved in servicing claims.

3.13. Suncorp has informed its brokers that any insurer or insurance broker wanting to offer the relief measures under the Interim Authorisation must first notify the ACCC.

3.14. Suncorp submits that the take-up of premium deferral by SME policyholders as a relief measure has been limited. Suncorp submits that this may be a result of a number of factors, including a preference among worst-hit policyholders towards cancellations rather than deferrals, the fact that April is a relatively quiet month for renewals across Suncorp's SME insurance book, the public health impact of COVID-19 in Australia being more limited than initially expected, the range of Federal and State government assistance measures that have provided alternative relief measures and Suncorp offering tailored discounts on premiums to meet the needs of individual policyholders under its hardship policies, separate to the Conduct.

### Allianz

3.15. Allianz submits that the Conduct is working as expected and in accordance with the Interim Authorisation. In addition, Allianz unilaterally expanded some aspects of the Conduct, including offering the deferral of premiums for up to six months to a wider group of eligible SME policyholders whose policies were not due for renewal in the period 3 April 2020 to 30 June 2020, providing that these eligible SME policyholders contacted Allianz before 30 June 2020.

3.16. Allianz submits that they have made some changes to certain SME policies and/or their management of the policies, such as:

- Laid up cover under commercial motor insurance policies to be more broadly available for commercial vehicles which are not being driven during the pandemic with resulting premium reductions, and
  - Relocation of stock from premises enables policyholders with business premises to remove stock from unoccupied premises and store it at their homes during the period where their business premise is closed.
- 3.17. Finally, Allianz submits that the benefits of the Conduct are in providing a minimum standard of relief for eligible SME policyholders. In particular, the Conduct provides eligible SME policyholders with flexibility to organise their business arrangements including management of physical assets, premises and stock while still retaining insurance cover and to manage their cash flows as most appropriate to their business needs.

## **QBE**

- 3.18. QBE submits that it has implemented the relief measures that are the subject of the Conduct, as well as additional relief measures. QBE's additional relief measures include:
- Continued cover for commercial motor policies where vehicles are no longer on the road,
  - Workers compensation premium support, including premium instalments for SME customers and mid-term wage adjustments for businesses that have material changes in estimated wages,
  - An accelerated cash-settlement process for customers who have a natural disaster claim underway and would prefer to manage their own repairs, and
  - Changes to claim processes to mitigate against infection between suppliers and customers.
- 3.19. QBE submits that the Conduct appears to be working, evident by the uptake of the relief measures by QBE customers. QBE notes that premium deferral grants range in duration based on individual customer circumstances, however cancellations of policies are still being requested.
- 3.20. QBE submits that they have not identified any unintended consequences (either benefits or detriments), however QBE notes that it is still early and it is mindful of the possibility and prepared to address any unintended consequences should they arise.
- 3.21. Finally, QBE submits that the circumstances have been challenging for many people, including QBE staff and network partners who deal directly with customers affected by COVID-19. As a result, QBE has extended its employee wellbeing program to their network partners, including free confidential counselling and wellbeing support.

## **4. ACCC assessment**

- 4.1. The ACCC's assessment of the Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The Applicants have sought authorisation for the Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsection 90(7) and 90(8) of the Act, the ACCC must not grant

authorisation unless it is satisfied, in all the circumstances, that the Conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (**authorisation test**).

## Relevant areas of Competition

- 4.3. To assess the likely effect of the Conduct, the ACCC will identify the relevant areas of competition likely to be impacted.
- 4.4. The ACCC considers that the relevant areas of competition are likely to be:
- The supply of general insurance products to small business customers in Australia,
  - The supply of travel insurance products to individual customers and business customers in Australia,
  - The supply of insurance broking services to small business customers in Australia, and
  - The supply of insurance broking services to insurance companies in Australia.

## Future with and without the Conduct

- 4.5. In applying the authorisation test, the ACCC compares the likely future with the Conduct that is the subject of the authorisation to the likely future in which the Conduct does not occur.
- 4.6. In the absence of the Conduct, Participating Insurers would each be likely to unilaterally implement their own relief measures but would not be discussing and agreeing the details of the minimum relief measures with each other and would not be communicating the agreed minimum relief measures to the market participants and the public.
- 4.7. While the ACCC recognises that there are material benefits of the relief measures themselves, at least some of these benefits may have been achieved without coordination. The ACCC has not considered it necessary in this case to quantify the extent of any such difference. As a result, the ACCC's assessment of the public benefits and detriments of the authorisation, set out below, has focused on the benefits and detriments arising from the coordination that more clearly would not have arisen absent the Conduct.

## Public benefits

- 4.8. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*<sup>3</sup>

- 4.9. The ACCC considers that there has been, and will likely continue to be, some public benefit in allowing the Participating Insurers to collectively agree on and give effect to minimum relief measures, in the form of:

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<sup>3</sup> Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.



- greater certainty and transparency of relief measures available to SME policyholders,
- consistency in eligibility criteria and the minimum terms available to all SME policyholders, and
- greater number of small businesses becoming aware of, and taking up, the relief measures offered by the Participating Insurers.

4.10. The ACCC notes that the Applicants have taken steps to ensure that the relief measures are communicated to eligible policyholders and that a significant number of policyholders have already taken up the various relief measures on offer. The clear and coordinated communication of the measures is likely to be of some public benefit.

## Public detriments

4.11. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>4</sup>*

4.12. Feedback and submissions received about the Conduct, which has been operating under the Interim Authorisation, have not identified any public detriments of allowing the Participating Insurers to coordinate relief measures. While the NIBA and the MTA NSW suggested a number of possible refinements to the Conduct, the ACCC considers that these comments do not alter the ACCC's assessment of likely public detriments resulting from the Conduct.

4.13. The ACCC considers that the Conduct is likely to result in minimal, if any, public detriment, as any impacts have been largely mitigated by the fact that the Conduct:

- is a temporary measure,
- does not extend to insurers or brokers discussing the premiums or terms for new policies,
- only relates to relief measures for existing policyholders where those policyholders are suffering hardship due to the COVID-19 pandemic, and
- enables Participating Insurers to independently offer relief measures to their policyholders above the minimum terms provided by the Conduct. For example, Allianz has offered variations to the measures offered to some of its policyholders and QBE has announced that it has extended the availability of its relief measures to policies with an expiry date up to and including 30 September 2020.<sup>5</sup>

## Balance of public benefit and detriment

4.14. For the reasons outlined in this determination, the ACCC is satisfied that the Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Conduct.

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<sup>4</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

<sup>5</sup> QBE Insurance (Australia) Limited, 3 April 2020, available at: <https://www.qbe.com/au/media-centre/press-releases/qbe-announces-measures-to-support-sme>

## Length of authorisation

- 4.15. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>6</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.16. In this instance, the Applicants seek authorisation to engage in the Conduct until 31 December 2020.
- 4.17. The ACCC proposes to grant authorisation until 31 December 2020.

## 5. Draft determination

### The application

- 5.1. On 1 April 2020, the Applicants lodged application AA1000485 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 5.2. The Applicants seek authorisation for Participating Insurers to engage in the Conduct specified at paragraph 1.10.
- 5.3. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

### The authorisation test

- 5.4. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Conduct.
- 5.5. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Conduct.
- 5.6. Accordingly, the ACCC proposes to grant authorisation.

### Conduct which the ACCC proposes to authorise

- 5.7. The ACCC proposes to grant authorisation AA1000485 for the Participating Insurers to coordinate relief measures relating to COVID-19, as described in paragraph 1.10 and defined as the Conduct.
- 5.8. The Conduct does not preclude Participating Insurers from individually deciding to offer more favourable terms to policyholders and is in addition to any existing hardship program entitlements.
- 5.9. The ACCC proposes to grant authorisation for the Conduct only in so far as it is for the sole purpose of providing relief measures to policyholders relating to COVID-19 hardship.

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<sup>6</sup> Subsection 91(1) of the Act.

5.10. The Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.

5.11. The ACCC proposed to grant authorisation until 31 December 2020.

5.12. This draft determination is made on 9 June 2020.

## 6. Next steps

6.1. The ACCC now invites submissions in response to this draft determination by **23 June 2020**.

6.2. In addition, consistent with section 90A of the Act, the Applicants or an interested party may request that the ACCC hold a conference to discuss the draft determination.