

Mr Marcus Bezzi
Executive General Manager
Competition Enforcement
Australian Competition and Consumer Commission
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Dear Mr Bezzi

CONCERTED PRACTICES AND MISUSE OF MARKET POWER GUIDELINES

The Insurance Council of Australia¹ (the Insurance Council) welcomes the opportunity to provide feedback on the Australian Competition and Consumer Commission's (ACCC) draft frameworks for its proposed concerted practices and misuse of market power guidelines. We recognise that the ACCC's finalisation of the frameworks and publication of guidelines about its approach to possible breaches of the prohibitions against this behaviour will depend on the Commonwealth Government's proposed changes² to the *Competition and Consumer Act 2010* being enacted.

Overall, the Insurance Council appreciates the level of detail that the ACCC has provided in the draft frameworks. This is important because it provides all stakeholders with clarity around the ACCC's approach to interpretation and enforcement.

Concerted practices

In relation to the ACCC's draft framework for concerted practices guidelines, we suggest the inclusion of at least one example to show that general insurers can respond to questions about price trends at annual general meetings or as part of their continuous disclosure obligations, without breaching the proposed prohibition. This would help recognise the intense consumer and investor interest in pricing within the general insurance industry.

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. June 2016 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$43.9 billion per annum and has total assets of \$122.6 billion. The industry employs approximately 60,000 people and on average pays out about \$124.0 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

² Exposure Draft legislation: Competition and Consumer Amendment (Competition Policy Review) Bill 2016.

Given that the prudential strength of our members is dependent upon them pricing accurately the risks they cover, movements in prices is a frequent focus of the questions posed publicly to general insurers – this is particularly so after a major catastrophe event.

Additionally, we would also suggest that the ACCC clarify in the guidelines how the concerted practices prohibition interacts with the aforementioned disclosure pressures that face general insurers, should the proposals become law.

Misuse of market power

With respect to the draft framework for misuse of market power guidelines, we note that the ACCC's approach to the misuse of market power provision is not to protect individual competitors. Rather, the ACCC will act against conduct by a corporation with a substantial degree of market power if it has a broader detrimental impact upon the competitive process itself. The Insurance Council in particular appreciates the ACCC making it clear that the type of conduct that it would target is "*exclusionary conduct*"³ and that 'normal' competitive conduct is not intended to be captured by the proposed misuse of market power provision.

The Insurance Council would suggest that the ACCC also include this clarification in its guidelines as well, should the proposed amendments to the provision become law.

If you have any questions or comments in relation to our submission, please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
Executive Director and CEO

³ ACCC, September 2016, 'Framework for misuse of market power guidelines', page 4: "The objective of a misuse of market power provision is to prohibit unilateral conduct by a corporation with substantial market power that interferes with the competitive process by preventing or deterring rivals or potential rivals from competing on their merits. Sometimes this is broadly referred to as 'exclusionary conduct'."