

Ms Rebecca McCallum
Market and Competition Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: competition@treasury.gov.au

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Dear Ms McCallum

COMPETITION LAW AMENDMENTS: EXPOSURE DRAFT CONSULTATION

The Insurance Council of Australia¹ (the Insurance Council) appreciates the opportunity to provide feedback on the Government's Exposure Draft of the Competition and Consumer Amendment (Competition Policy Review) Bill 2016 (Exposure Draft). We are pleased that the Government is consulting on the Exposure Draft, given the potential for any change to competition law to have serious consequences on conducting business in Australia.

This submission sets out the Insurance Council's feedback on the Exposure Draft's proposed amendments to section 45 and 46 of Part IV of the *Competition and Consumer Act 2010* (the Act), concerning the price signalling and concerted practices and misuse of market power provisions, respectively.

Price signalling and concerted practices

The Insurance Council supports the proposed repeal of Division 1A of Part IV of the Act (price signalling provisions), and the proposed alternative approach to expand section 45 of the Act to apply to conduct dealt with by Division 1A of Part IV of the Act (the proposed concerted practices prohibition).

While we recognise that the price signalling provisions are confined in their application to the banking industry, it is important to note that in the general insurance industry there is intense consumer and investor interest in pricing. Given that the prudential strength of our members is dependent upon them pricing accurately the risks they cover, movements in prices is a

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).

frequent focus of the questions posed publicly to general insurers – this is particularly so after a major catastrophe event.

Misuse of market power

The proposed amendments to section 46, which adopt the Competition Policy Review’s final recommendation, reframes the current provisions to prohibit a corporation with a substantial degree of power in a market from engaging in “*conduct that has the purpose, or has or is likely to have the effect, of substantial lessening competition in that or any other market*”. In determining this, a court would have regard to the extent to which:

- *“the conduct has the purpose of, or has or would be likely to have the effect of, increasing competition in that market, including by enhancing efficiency, innovation, product quality or price competitiveness in that market; and*
- *the conduct has the purpose of, or has or would be likely to have the effect of, lessening competition in that market, including by preventing, restricting, or deterring the potential for competitive conduct or new entry into that market.”*

The Insurance Council notes that the use of broad term ‘conduct’ – without qualification – may create uncertainty about how it may be applied in practice. For instance, it is not clear whether ‘normal’ competitive conduct may be captured, unintendedly, under the proposed amendments. In this regard, it may be beneficial to explicitly clarify in the legislation the type of conduct that would be targeted. We note that the Australian Competition and Consumer Commission’s (ACCC) draft framework for misuse of market power guidelines states that the type of conduct that it would target is “*exclusionary conduct*”.

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
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