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Australian Competition and Consumer Commission
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Email: guidelines@acc.gov.au

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Dear Mr Bezzi

INTERIM MISUSE OF MARKET POWER AND CONCERTED PRACTICES GUIDELINES

The Insurance Council of Australia¹ (the Insurance Council) welcomes the opportunity to provide feedback on the Australian Competition and Consumer Commission's (ACCC) interim guidelines on the new concerted practices and misuse of market power provisions, given the successful passage through Parliament of the Competition and Consumer Amendment (Misuse of Market Power) Bill 2017 and Competition and Consumer Amendment (Competition Policy Review) Bill 2017.

Overall, the Insurance Council is broadly supportive of interim guidelines. We appreciate the level of detail that the ACCC has provided in its guidelines – this is important because it provides all stakeholders with clarity around the ACCC's approach to interpretation and enforcement. This submission follows up on some of the issues that were raised at the ACCC's 17 November 2017 focus group session in Sydney regarding the interim guidelines.

Concerted Practices

In relation to the ACCC's interim guidelines on concerted practices, the Insurance Council suggests the inclusion of at least one example to show that general insurers can respond to questions about price trends (and their drivers) at annual general meetings or as part of their continuous disclosure obligations, without breaching the concerted practices prohibition. As

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 2017 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$45 billion per annum and has total assets of \$124.9 billion. The industry employs approximately 60,000 people and on average pays out about \$135 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).

the ACCC is aware, the Insurance Council raised this at the focus group and also in our earlier submission² to the ACCC on the draft frameworks for the then proposed guidelines.

This would help recognise the intense consumer and investor interest in pricing within the general insurance industry. We note that a number of other stakeholders at the focus group last week also asked for examples to be included to show that industry participants can appropriately respond to questions, such as around pricing, without breaching the law.

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

Misuse of Market Power

In regards to the interim guidelines on misuse of market power, we appreciate that the ACCC emphasises in the guidelines that its approach to those provisions is not to protect individual firms, but rather to act against conduct by a firm with a substantial degree of market power if it has a broader detrimental impact upon the competitive process itself.

The Insurance Council particularly appreciates the ACCC making it clear that the type of conduct that it will target is “*exclusionary conduct*”³ and that ‘normal’ competitive conduct is not intended to be captured by the misuse of market power provisions.

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 & CEO

² The Insurance Council of Australia's submission to the Australian Competition and Consumer Commission, 30 Sep 2016.

³ Australian Competition and Consumer Commission, October 2017, ‘*Interim Guidelines on misuse of market power*’, page 4: “... a firm with substantial market power may maintain or advance its position by restricting or undermining its rivals’ ability to compete, rather than by offering a more attractive product. Sometimes this is referred to as ‘*exclusionary conduct*’. Such conduct undermines the effective operation of markets and the economy.”