

BEFORE THE COMMERCE COMMISSION

DECISION NO 240

IN THE MATTER of the Commerce  
Act 1986 [the Act]

A N D

IN THE MATTER of an application  
made by the INSURANCE COUNCIL OF  
NEW ZEALAND (INC) for  
authorisation of its Statistical  
Programme.

DECISION OF THE COMMISSION

The Commission:

Kerrin M Vautier (Chairman of the  
Division)  
R E Hall  
M A Vennell

Date of Decision:

13 October 1989

A. THE APPLICATION

1. The Insurance Council of New Zealand Inc (the Council) seeks authorisation, in terms of s.58(1)(b) of the Act, for itself and its members to give effect to a Statistical Programme involving the collection and dissemination of information relating to insurance premiums, claims, levies, and expenses.

2. Each member company submits quarterly returns, to the Executive Director of the Council (now known as General Manager), of its total:

- (a) gross written premiums;
- (b) claims incurred;
- (c) fire service levies; and
- (d) expenses : (i) staff costs  
(ii) commissions  
(iii) other

for the preceding three month period. Information on total premiums and claims is provided in respect of the following categories of insurance : commercial fire; domestic fire; motor vehicle; other accident; marine-hull; and marine-cargo.

Information on levies and expenses is aggregated over all types of insurance.

3. Returns are made on the form attached as Appendix A. Amounts under each item are then aggregated by the General Manager and the aggregated data are circulated to members in the same format.

B. PROCEDURES

4. The application was received and registered in terms of s.60(2)(a) on 2 March 1987. In terms of s.60(2)(c) the application was notified to members of the Council and other insurers and reinsurers operating in New Zealand (Appendices B and C). Public notice of the application (in terms of s.60(2)(d)) was given in three metropolitan newspapers on 7 July 1987. No detailed submissions were received in relation to this application; however, several non-members of the Council expressed an interest and made brief comments. None of these comments raised any objection to the scheme under consideration. American International Underwriters (New Zealand) Ltd noted that:

"the items under consideration have been considered long standing, common industry practice and in our opinion, do not constitute a substantial lessening of competition in the insurance market in New Zealand, nor act as a detriment to the consumer."

Multicorp Insurance Ltd advised that it "would have no objection to contributing towards a nationwide statistical data base from which general trends could be established". State Insurance Office simply expressed the view "that the public would have no objections". The Commission issued a Draft Determination to interested parties on 15 September 1989. None of the persons to whom the Draft was sent requested the Commission to hold a conference on this matter.

C. THE APPLICANT

5. The Council is a body corporate under the Incorporated Societies Act 1908, with membership open to any person carrying on the business of underwriting and/or reinsurance relating to all classes of insurance other than life insurance. Membership is voluntary and not required in order to carry on such a business. Most companies involved in "general insurance" are members. A list of Council members is attached as Appendix B.

D. THE MARKETS

6. The markets to which this practice relates are the provision of underwriting and/or reinsurance services relating to fire, accident, marine and motor insurance in New Zealand.

7. The Council has advised that it does not have figures relating to the market share of insurance companies. It states in the application that "the level of competition as between members of the Council and non-members is high in all markets affected by the statistical programme practice". As shown in Appendix B, 42 companies are members of the Council. Appendix C lists a number of companies which are not Council members, including State Insurance which is a major competitor in the relevant markets.

#### E. JURISDICTION

8. The application has been submitted in terms of s.58(1)(b) of the Act, which allows the Commission to grant an authorisation for a person "To give effect to a provision of a contract or arrangement or understanding to which section 27 of this Act applies". For s.27 to be applicable, the provision must have the purpose, effect or likely effect of substantially lessening competition in a market.

9. The Council submits that the practice does not substantially lessen competition. The application states:

"It is submitted that the statistical programme practice is in fact pro-competitive. It provides every member with a consistent guide and recommendation not as to price but as to relevant ratios. It gives members a basis for assessing their performance which they need to determine how best to allocate their own resources."

"The supply of information results in a better informed and viable market - an environment within which competition is more likely to prosper."

10. Market information agreements may take many different forms. Overseas precedents have considered the actual or potential effects on competition of information exchanges; for example, some information exchanges have been linked with price fixing arrangements. Following its issuing of a decision relating to a market information agreement, the Australian Trade Practices Commission (TPC) issued an Information Circular entitled Market Information Agreements, on 28 April 1976, noting that it was a guideline statement expressing the TPC's views in general principle. The Commission is also aware that there have been several United States Supreme Court decisions dealing with market information exchanges, from which commentators have drawn similar principles to those set out by the TPC. In New Zealand Medical Association (Decision No 220), the Commission quoted the guidelines set down by the Australian TPC in relation to information exchanges and agreements, noting that "an arrangement which complies with the following principles will not normally substantially lessen competition".

11. The principles as described by the TPC are set out below in bold print, together with comments on whether or not they apply to the Statistical Programme.

#### Information Exchange

12. **"(a) That the agreement is a genuine information exchange directed towards information generally and not with the intent or effect of controlling or recommending prices of product or other matters relating to sales terms and conditions relating to such product."**

13. The Commission is satisfied that the information is not used for recommending or policing prices because neither the data provided by each member nor the aggregate information is specific enough for either members or the Council to detect individual policy premiums. There are two reasons for this. First, the data collected do not include information on the number of policies written or the total amount of sums insured. Secondly, within each class of insurance, companies offer a range of policies at different prices and terms. Therefore average prices cannot be calculated or recommended.

14. As noted in paragraph 9 above, the Council states that the agreement provides members with a guide not as to price but as to relevant ratios. Comments received by the Commission refer to the relationship between the ratio of claims to premiums and price. The Commission acknowledges that a general relationship exists but also notes the nature of insurance underwriting services, with insurance policies designed to cater for individual situations. Variations in terms and premium structures may result from a number of factors, such as whether or not policies are inflation adjusted, whether or not they relate to an indemnity value or replacement cost, the level of excess for minimum claims, the company's policy on determining claim eligibility, etc.

15. The Commission accepts that one of the main purposes of the information agreement is to carry out market research and broad analysis for Council members. The Council states that:

**"the information allows members to measure important areas of their own performance against that of all members particularly in the areas of expenses and of claim ratios for various classes of insurance business."**

Comments made by non-members indicate that they also see the practice primarily as allowing members to calculate their own market share in relation to the total business written by Council members, to gauge their performance in relation to others and to become aware of industry trends.

Independence/Anonymity of Data Collection

16. "(b) That the information collected pursuant to the agreement is collected independently and with anonymity of records being preserved. In this regard, the [Trade Practices] Commission must be assured that arrangements both as regards anonymity of records and independence of collection of information are adequate. The [Trade Practices] Commission expresses its general opinion that collection of information and preservation of records by an organisation totally divorced from a trade association is more likely not to have significant competitive repercussions than a collection of information and records in which a trade association itself is involved."

17. The information is collected by "the Council" rather than an independent agency. However, collection and collation is done by the General Manager (formerly Executive Director) - an employee of the Council who is independent of individual members. The Council's Rule 18.5, as quoted in the application, states:

"Each member shall on or before the last day in February in each year provide the Executive Director with details of its premium income for the classes of insurance business specified by the General Executive for the twelve months ending on the preceding 31st day of December in the form prescribed by the Executive Director. Only the auditor and the Executive Director shall have access to the information thereby provided."

Although this rule describes the procedure for providing annual information for the purpose of assessing levies only, the Council in its description of the Statistical Programme practice notes that the practice arises out of or relates to the Rules and states that:

"The section on premiums provides the information necessary for the assessment by the General Executive of annual levies against each member as required for under Rule 18 of the Rules".

In addition, the application states that, apart from the information necessary to assess each member's levies to the Council,

"The balance of statistical information collected by the Council is collated and distributed as a report ... to members of the "total" of the statistical information collected (individual member statistics are not disclosed)." (Underlining inserted)

18. The Commission sought to clarify the situation regarding the independence of collection of and access to the information. A letter from the Council's solicitors advised on the one hand that "The only persons having access to the individual member levy returns are four or five members of the Council", and on the other hand that "Statistical information acquired from individual members is not disclosed to other individual members or non-members". The Commission has been advised by the current General Manager that, apart from himself and one staff member who compiles the information, no-one has access to the statistical information. He suggested that it was likely that the letter from the Council's solicitors had intended to refer to members of the Council's staff rather than members of the Council.

19. The Commission notes that the Council has combined the collection of levy information and the additional information collated under the Statistical Programme on the form headed Confidential Levy Returns (Appendix A). The Commission considers that the arrangements as described in Rule 18.5, and which the Commission understands are currently followed by the Council in relation to the Statistical Programme, are adequate as regards the independent collection and anonymity of individual returns.

#### Anonymity/Generality

20. "(c) That the agreement assures the anonymity of members participating and that information is of such a nature as to be generalised, naming no particular producer or consumer."

21. "(d) That the agreement is one pursuant to an industry structure in which particular members, producers or consumers cannot be identified from the figures obtained. This will normally mean that the industry will comprise a number of members sufficient to prevent identification from figures obtained. A statistical exchange of information between members of an industry in which the number of members is limited would appear in its actual operation to be likely to be a recommended price agreement in another form and to be likely to have a significant effect on competition for this reason. This would be so notwithstanding a compliance with other criteria set out in this para 4.3. The [Trade Practices] Commission will need to be satisfied in detail as regards the matters in this sub-para 4.3(d), and feels that it cannot, in a guideline of this nature, be more specific than stated. The effect on competition will be evaluated in light of the actual industry involved and the actual operation of the agreement and its terms."

22. The General Manager and the Council's auditor are aware of the identity of each member participating and the information provided by each, but as discussed above, the information provided to the Council members is very generalised.

23. The all-companies summary which is circulated to members aggregates the statistics provided by more than 40 insurance companies and the data provided by individual members are not discernible.

#### Voluntary Returns

24. "(e) That the scheme is voluntary to industry members and may or may not be engaged in by particular industry members at their complete discretion."

25. The application states:

"Whilst each member is obliged to advise the Council of its premium income for the purposes of the Council assessing levies there is no obligation to supply the additional information sought by the Council."

Thus the provision of the statistical information which may be used as a guide to the ratio of claims to premiums is on a voluntary basis. However, the Commission understands that all members supply the information requested by the Council.

#### Open Access

26. "(f) That the results of the information agreement are available to any persons [including non industry members] on request."

27. The aggregated statistics are distributed to Council members. The Council advises that it rarely, if ever, receives any requests from non-members and has no firm policy on whether or not the information should be made available to non-members. The Council says that it does publish some of the information, i.e. total annual premiums and claims, either through its bulletin or through the news media. The practice for which authorisation is sought does not include any provision to restrict the availability of the statistics.

#### Price or Other Recommendation

28. "(g) That there is no question of the figure collected from the survey being used as a vehicle for recommending or policing pricing or other policies. In this regard, any form of action to suggest that members follow the figures or terms reached as a result of the information agreement, or any suggestion that it is morally improper or "unethical" not to charge certain figures or adopt certain trading terms would be regarded by the [Trade

Practices] Commission as a method of recommending or policing policies."

29. The Commission has already commented on this criterion in its comments on criterion (a). The Commission has no evidence that the Statistical Programme could be used for recommending or policing pricing or other policies and doubts that it could be so used. The Council states:

"The statistical information is merely collected, collated and distributed to members - it does not carry with it any recommendation."

As mentioned in paragraph 9, the Council referred to the practice as providing a "guide and recommendation not as to price but as to relevant ratios". The Commission's view is that the provision of average claim ratios could possibly be regarded as an implicit guide and recommendation to members as to these ratios. The ratios of claims to premiums are very general, however, with claims made over a particular period not being related to premiums of policies written in that same period. In addition, a range of factors would be taken into account by a company in determining both premiums and claims.

#### Historical Data

30. "(h) That information is based on details of past historical fact. Pre-notification of prices or trading terms should not occur. The [Trade Practices] Commission regards pre-notification of prices or trading terms as likely to result in a price recommendation agreement in another form and thus likely significantly to affect competition for this reason."

31. "(i) How frequently information is provided by parties and how closely up to date is the information will be matters clearly of relevance in assessing the likely competitive effects of the arrangement. In this regard, the Commission cannot be more specific because an evaluation will be required of the particular industry structure involved and the particular agreement in question. In each case the Commission will look at the actual effect of the agreement. Applicants for clearance of information agreements should therefore show just how up to date and detailed the information is kept. If the effect at any given time is to remove most of the uncertainty from the market, this is more likely to control competition than to stimulate it."

32. The statistical programme involves actual historical information pertaining to the previous quarter. The information collected is not of a type which would have the effect of removing uncertainty from the market, given the generalised, historical nature of that information. As



mentioned above, the information is provided on a quarterly basis. The Council advised that there is a delay of up to three months in the collation and distribution of the information.

"Sometimes some companies are a little slow in providing data and this means that there is a gap between the provision of data and the supply of collated material resulting from the fact that speed of supply is dependant upon the slowest supplier."

### Conclusion

33. The scheme under consideration satisfies most of the criteria outlined in the TPC guideline. The Commission has commented above on the areas in which the Statistical Programme does not fully comply with the criteria, namely the independence of collection of data, anonymity of individual members and availability of the information to others. These factors are not of concern to the Commission in this case because of the nature of the information collected and the form in which it is distributed. As discussed above, the Commission concludes that the information is too generalised to be used as a basis for an individual company's price determination.

34. The Commission considers that the scheme is an information exchange which does not place any restriction on the insurance companies who participate, either as regards the price or terms of insurance premiums or other aspects of competition in the relevant markets. Thus the purpose, effect or likely effect of substantially lessening competition in a market has not been found in this case.

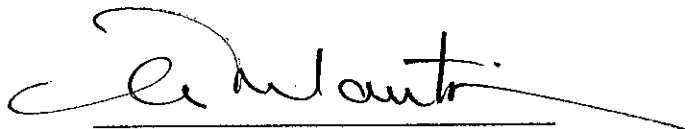
### F. CONCLUSION

35. On the basis of the information provided by the Council, the Commission is of the view that the Statistical Programme as described in the application and summarised in paragraphs 1-3 above is not an arrangement to which s.27 of the Act applies. Accordingly, the Commission concludes that it does not have jurisdiction to grant or not grant authorisation for the practice.

Dated at Wellington this 13<sup>th</sup> day of October 1989

The Seal of the Commerce Commission  
was affixed hereto in the presence of:



  
Kerrin M Vautier  
Chairman of the Division

# CONFIDENTIAL LEVY RETURNS

APPENDIX A

The Executive Director,  
The Insurance Council of New Zealand Inc.,  
PO Box 474,  
Wellington.

Dear Sir,

I ..... being the Controlling Officer for  
New Zealand of the undermentioned Company hereby declare that the Fire and Accident Premium  
Incomes received during the quarter ended ..... were as stated hereunder viz:

## GROSS WRITTEN PREMIUM LESS FACULTATIVE R/I

(i.e. Actual premium charged to or refunded to  
clients prior to deduction of Commission/Brokerage  
but less Facultative Reinsurance: before deducting  
exchange commission.)

|                 |          |
|-----------------|----------|
| COMMERCIAL FIRE | \$ ..... |
| DOMESTIC FIRE   | \$ ..... |
| MOTOR           | \$ ..... |
| OTHER ACCIDENT  | \$ ..... |
| MARINE - HULL   | \$ ..... |
| MARINE - CARGO  | \$ ..... |
| TOTAL PREMIUMS  | \$ ..... |

## INCURRED CLAIMS LESS FACULTATIVE R/I

(i.e. Payments plus or minus adjustment of  
reserves for outstanding claims but excluding IBNR  
and any internal adjustment for claims "on cost". This  
figure is to include inwards reinsurance and to be  
reduced by local facultative recoveries.)

|                 |          |
|-----------------|----------|
| COMMERCIAL FIRE | \$ ..... |
| DOMESTIC FIRE   | \$ ..... |
| MOTOR           | \$ ..... |
| OTHER ACCIDENT  | \$ ..... |
| MARINE - HULL   | \$ ..... |
| MARINE - CARGO  | \$ ..... |
| TOTAL CLAIMS    | \$ ..... |

## FIRE SERVICE LEVY

(i.e. Proportion debited in Quarters accounts.)

\$ .....

## EXPENSES

### NOTE:

#### (a) Staff Costs:

These are to include payments and accruals for  
salaries and to include cost of employers'  
subscriptions to staff superannuation and  
housing loan interest subsidies.

(a) STAFF COSTS \$ .....

#### (b) Other Expenses:

These expenses are to be related to Fire, Motor,  
Accident and Marine business and they are not  
to be relieved of transfers such as claim  
"on-cost". All expenses charged against the New  
Zealand operation should be included.

(b) OTHER EXPENSES \$ .....

#### (c) Commission:

Commission on Gross Written Premiums  
including inward facultative reinsurance and  
reduced by outward facultative reinsurance.

(c) COMMISSION ALLOWED  
ON G.P.W. \$ .....

TOTAL \$ .....

N.B. COMMERCIAL FIRE AND DOMESTIC FIRE should consist of all business normally written in  
the Fire Department. It is appreciated that the positioning of Contractors All Risks may vary between  
Companies but the premium volume involved is unlikely to affect the total figures.

THE INSURANCE COUNCIL OF NEW ZEALAND INC.

1. AA MUTUAL INSURANCE COMPANY
2. ALLIED REINSURANCE CORPORATION OF NEW ZEALAND LIMITED
3. ALLIED MORTGAGE GUARANTEE COMPANY LIMITED
4. AMP FIRE AND GENERAL INSURANCE COMPANY (NZ) LIMITED
5. ANSVAR INSURANCE (NEW ZEALAND) LTD
6. AUSTRALIAN REINSURANCE COMPANY LIMITED
7. BISHOPSGATE INSURANCE plc
8. CIGNA INSURANCE NEW ZEALAND LIMITED
9. COLOGNE REINSURANCE COMPANY
10. COLONIAL MUTUAL GENERAL INSURANCE COMPANY LTD
11. COMMERCIAL UNION GENERAL INSURANCE COMPANY LIMITED
12. CONTRACTORS BONDING LIMITED
13. THE COPENHAGEN REINSURANCE COMPANY LIMITED
14. THE FARMERS' MUTUAL INSURANCE ASSOCIATION
15. GENERAL ACCIDENT INSURANCE COMPANY NEW ZEALAND LIMITED
16. GOLD STAR INSURANCE COMPANY LIMITED
17. GUARDIAN ROYAL EXCHANGE ASSURANCE OF NEW ZEALAND LTD
18. LOMBARD INSURANCE COMPANY LIMITED
19. THE MARINE INSURANCE COMPANY LIMITED
20. MEDICAL ASSURANCE SOCIETY NEW ZEALAND LIMITED
21. THE MERCANTILE AND GENERAL REINSURANCE COMPANY OF AUSTRALIA LIMITED
22. METROPOLITAN LIFE (FIRE & GENERAL) INSURANCE LIMITED
23. MUNICHRE NEW ZEALAND SERVICE LIMITED
24. THE NATIONAL INSURANCE COMPANY OF NEW ZEALAND LTD
25. NEUCHATEL SWISS GENERAL INSURANCE COMPANY LTD
26. NEW REINSURANCE COMPANY
27. NEW ZEALAND COUNTIES CO-OPERATIVE INSURANCE COMPANY LIMITED
28. THE NEW ZEALAND INSURANCE COMPANY LIMITED
29. THE NEW ZEALAND MUNICIPALITIES CO-OPERATIVE INSURANCE COMPANY LIMITED
30. THE NIPPON FIRE AND MARINE INSURANCE COMPANY LTD
31. NORWICH WINTERTHUR INSURANCE (NZ) LTD
32. PHOENIX ASSURANCE COMPANY OF NEW ZEALAND LTD
33. THE PRIMARY INDUSTRIES INSURANCE COMPANY LTD
34. THE PRUDENTIAL ASSURANCE COMPANY LIMITED
35. QBE INSURANCE (INTERNATIONAL) LTD
36. REINSURANCE COMPANY OF AUSTRALASIA LTD
37. ROYAL INSURANCE FIRE AND GENERAL (NZ) LIMITED
38. THE SECURITY AND GENERAL INSURANCE COMPANY (NZ) LIMITED
39. SIMU MUTUAL INSURANCE ASSOCIATION
40. SKANDIA INTERNATIONAL INSURANCE CORPORATION
41. SUN ALLIANCE INSURANCE LIMITED
42. TAISHO MARINE AND FIRE INSURANCE COMPANY LIMITED

APPENDIX C

PARTIES DIRECTLY AFFECTED (OTHER  
THAN THE APPLICANTS)

STRIKES RISK CARGO

American Home Assurance Company  
Australasian Commercial  
Civic Insurance Limited  
First National Insurance Company Ltd  
Multicorp Insurance Co NZ Ltd  
Southern Cross Medical Care Society  
State Insurance  
Swann Insurance NZ Ltd.

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