Submission by CBL Insurance Limited to the Commerce Commission on the proposed acquisition of Tower Limited by Vero Insurance New Zealand Limited

20 March 2017

This submission relates to the proposed acquisition by Vero Insurance New Zealand Limited (**Vero**) of 100% of the shares in Tower Limited (**Tower**; together the "**Proposed Transaction**"), a subsidiary of Suncorp Group Limited (**Suncorp**).

This submission is made by CBL Insurance Limited (**CBL Insurance**), a New Zealand licenced non-life insurer and reinsurer specialising in writing property liability and construction related credit and financial surety insurance, bonding and reinsurance. CBL Insurance has a Financial Strength Rating of A- (Excellent) and an issuer rating of a-, with both outlooks 'Stable', from A.M. Best Ratings Agency. Headquartered in New Zealand and established over 43 years ago, CBL Insurance has 8 offices and writes business in 25 countries. CBL Insurance writes builders warranty products in New Zealand along with other bonds and sureties.

CBL Insurance is a subsidiary of CBL Corporation Limited (**CBL**), an NZX and ASX listed global insurer and reinsurer group. CBL has a number of wholly owned subsidiary insurance companies including CBL Insurance Europe Limited, which is a regulated insurer in Ireland, and Assetinsure Pty Ltd a regulated surety and bonding insurer in Australia, and owns a 35% investment in Afianzadora Fiducia, S.A. de C.V Fiducia, a regulated surety and bonding insurer in Mexico.

CBL also has Managing General Agents (**MGAs**), the largest being Securities and Financial Solutions Europe SA (**SFS**), which is owned 71% by CBL. Established in 2002, SFS is a leading MGA writing specialist construction-sector insurance products on behalf of insurers. CBL also owns European Insurance Services (100% owned by CBL) and Professional Fee Protection (92% owned by CBL).

Introduction

CBL Insurance does not write much of its business in New Zealand, nor is it a direct competitor of either Tower, Vero or Suncorp (except through Assetinsure in Australia). However, CBL Insurance actively participates in the New Zealand insurance sector and considers itself to be a good corporate citizen supporting the growth, viability and long-term sustainability of a competitive New Zealand insurance market. CBL Insurance considers that a healthy and properly functioning New Zealand insurance market promotes advances in the sector in areas such as product development, pricing, corporate governance, diversity, independence, transparency and regulatory rigour. These are valuable characteristics that are beneficial to all insurers, including CBL Insurance, but more importantly provides a solid platform from which customers can confidently select insurance at a competitive price.

CBL Insurance did not make a submission in relation to the acquisition by IAG (NZ) Holdings Limited (**IAG**) of Lumley General Insurance (N.Z.) Limited (**IAG/Lumley**). In hindsight, this was a mistake. Clearance for that transaction was not expected, so it came as a surprise that the Commerce Commission granted its approval for that transaction to proceed. CBL Insurance cannot, in the case of Vero and Tower, make the same mistake, and so makes this submission in the hope that a competitive and vibrant New Zealand insurance market can be maintained.

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Executive Summary

CBL Insurance considers the Proposed Transaction will substantially lessen competition on the basis that:

- Suncorp will become a dominant number two with 30% market share;
- IAG and Suncorp together will control 75% of the market, an effective duopoly, likely to lead to detrimental outcome for customers;
- Existing insurers do not have a significant impact on the large dominant positions of IAG and Suncorp, and with one less competitor the impact will severely reduce further;
- Nine existing insurers operate in the New Zealand and account for only 24% of the market; and
- Large international insurers have been operating in New Zealand for many year and have not achieved significant market shares gains.

Submission Discussion

Vero has made statements regarding the proposed acquisition of Tower in its notice seeking clearance. CBL Insurance is not addressing all of these statements. Those statements it wishes to address in this submission are:

- No substantial lessening of competition; and
- Market share aggregation is low.

Vero contends that "the degree of market share aggregation that would arise from the Transaction is low and unlikely to materially change the competitive dynamic"[1] and "the level of existing competition means that the Transaction is unlikely to result in a substantial lessening of competition."[2]

In the context of the insurance market, the Proposed Transaction is a major change to the status quo. We note that in Suncorp's own words, the Lumley/IAG transaction represented a ""tipping point" in insurance markets. It will remove any remaining competitive balance in the market, give IAG substantially increased market power and will substantially lessen competition in relevant insurance markets"[3].

We are now past the tipping point, and the Proposed Transaction represents a further consolidation into what would effectively be a duopoly-controlled market led by IAG, with 45%, and Suncorp with 30% post-transaction. The combined market power of these two companies would be 75%, with nine (9) other participants making up a further 24%. These two dominant companies would be left to control market dynamics, with very little impact being made by the other competitors.

New Zealand has a history of allowing duopolies to flourish with naïve beliefs that the two will work in competition with each other to drive down prices and improve service for end customers. This has not been the case. Instead suppliers and customers are manipulated to ensure profitability is maintained. Although disrupters to a cosy duopoly can facilitate choice and competition for end-users. Case-in-point being the Spark / Vodafone duopoly that existed prior to Two Degrees entering the market. Two Degrees' arrival on the scene drove down prices and increased product development resulting in lower prices and better choices for consumers. The insurance market is no different.

Vero also contends that "there are a number of well-resourced and established insurance providers with trusted and respected brands"[4]. That may be the case, but large global insurers AIG Insurance New Zealand Limited (**AIG**), Allianz New Zealand (**Allianz**) and Zurich New Zealand (**Zurich**), represent only 7% of the market. These companies have been operating in New Zealand for many years and, despite having the brands and resources, these companies have either not had the wherewithal to compete for market share, or have simply not been able to compete. This is troubling to us. If these large insurance players have been cherry-picking business through selected underwriting without trying to compete head-on with the large, dominant players IAG and Suncorp, then how is this "status quo" going to change by taking away yet another competitor form the market?

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[1] *Notice seeking clearance of a business acquisition pursuant to section 66 of the Commerce Act 1986, page ii*
[2] *Ibid*
[3] *Submission of Suncorp Group Limited on IAG's proposed acquisition of Wesfarmers' underwriting business, 21 February 2014, page 1*
[4] *Notice seeking clearance of a business acquisition pursuant to section 66 of the Commerce Act 1986, page ii*

In addition, if it was easy to gain market share, as Vero has implied in its application, then why does it want to acquire market share? Why not act competitively and take market share without paying for it? Perhaps there is an ulterior motive to Vero's actions? If the Proposed Transaction is cleared to proceed, this could potentially block the first-proposed acquisition of Tower by Fairfax Financial Holdings Limited (**Fairfax**). Is this an attempt to stop what could be a new "well-resourced" insurance provider from entering the market and effectively competing against established players through a "trusted and respected brand" such as Tower?

Vero's actions could be interpreted as aggressive anti-competitive behaviour. We note that the Vero's offer only materialised after Fairfax had issued its takeover offer, this transaction is not a Vero or Suncorp-led initiative. Furthermore, Vero were aggressive in acquiring a non-controlling stake of 19.99% in Tower, which can prevent Fairfax from acquiring 100% of Tower, even if Vero is not given clearance to acquire Tower.

Given Suncorp's existing market share of 25% (second only to IAG), its financial strength and established presence in the New Zealand market, surely it is best placed out of all the existing insurers to compete with IAG and gain market share? If Suncorp is resorting to acquiring market share, this points to the trouble new entrants or existing market participants have growing or influencing the businesses of the large incumbents (IAG and Suncorp). It also points to the fact that Vero may be preventing a new competitor from entering the market, at the same time as shoring up its dominant second position in the New Zealand market. We can firmly contend that the competitive landscape would be significantly different if Fairfax were to acquire Tower.

CBL Insurance Limited

Peter Harris
Managing Director