Cross-submission by Suncorp on the submissions to the SOPI

Introduction

1. Vero Insurance New Zealand Limited ("**Vero**"), a member of the Suncorp New Zealand group ("**Suncorp**") has had the opportunity to review the submissions to the Commerce Commission ("**Commission**") in response to the Commission's 16 March 2017 Statement of Preliminary Issues ("**SOPI**") relating to Vero's application for clearance to acquire up to 100% of the shares in Tower Limited (the "**Transaction**").

2. Suncorp is of the view that the submissions raise no new concerns that the Commission should take into account, and that they fail to demonstrate how the Transaction would negatively affect competition in the relevant markets.

3. This cross-submission addresses the submissions in turn, identifying the submitters' central concerns and responding to them.

AIG submission

4. **The Transaction will result in highly concentrated markets.** This statement is incorrect. To the extent that a simple addition of market shares delivers the result that the market is categorised as "concentrated", it is the *IAG/Lumley* and *IAG/AMI* transactions that resulted in that outcome. This Transaction makes little difference to that calculation. Indeed, it should improve the competitiveness of Vero as the number 2 player, improving competition in the market, not reducing it. As demonstrated by the "Market Share of Top 5 players in Insurance Markets (Global and NZ)" document provided to the Commission, the gap between numbers 1 and 2 in the insurance markets post-Transaction would be similar to the current gap between number 1 and 2 in Australia, which is also still a highly competitive market;[1] although more concentrated than Europe or the US, as is to be expected. The principal point is that, because Tower only has a [ ]% share in personal insurance lines and a [ ]% share in commercial insurance lines, the degree of aggregation that would result from this Transaction is in fact low.[2]

5. **Following the acquisition, no insurer (other than IAG, QBE and Vero) will have a market share of more than 3%, and in many cases, it will be substantially smaller.** This statement is incorrect, and misleading as to the relevance of market share on the competitive assessment. As demonstrated by the "Market Share of Top 5 players in Insurance Markets (Global and NZ)" document provided to the Commission, and as demonstrated at Table 1 of Vero's clearance application, FMG will continue to have a market share of 4% while AIG and Allianz each will continue to have market shares of 3% respectively.

   In any event, firms need not be large in order to act as an effective constraint. This was recognised in *Commerce Commission v. Southern Cross Medical Care Society.*[3] There, the Court of Appeal said:[4]

   > … a large market share will not necessarily confer market power. This will be the case where competitors, even though they have a small market share, are able and willing to expand output quickly and at a relatively low cost. In other words,

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1 *Macquarie Report on the Australian General Insurance Market* (8 March 2016) (provided to the Commission); EY "*Competition, compliance & cost continue to challenge the c-suite of Australian insurers*" (2016), available here: http://www.ey.com/Publication/vwLUAssets/insurance-competition-compliance-and-cost/$FILE/ey-insurance-competition-compliance-and-cost.pdf.

2 Vero's clearance application dated 2 March 2017 at 8.17.

3 (2001) 10 TCLR 269 (CA).

4 At para. [71].

> market share will not confer market power when small competitors face low barriers to expansion and, thus, are able to contest the whole of the relevant market.

In this case, numerous competitors will remain post-Transaction, including a competitor with a larger market share than Tower. Therefore, the Commission's assessment of competition in the market must take into account the combined impact of those numerous small competitors in the various insurance market segments.

6. **Because the proposed Transaction "significantly exceeds" the Commission's concentration indicators, there must be "compelling reasons" or "strong evidence" to grant the clearance.** This is incorrect, and misleading as the appropriate approach when assessing whether an acquisition would have, or be likely to have, the effect of substantially lessening competition in a market. While the Commission has historically recommended that clearance be sought when its concentration indicators are exceeded, the Commission stresses that these indicators are only initial guides, and ultimately whether or not an acquisition gives rise to competition concerns will depend on a full analysis of the specific market dynamics.[5] It would represent a significant departure from Commission standard practice to treat the concentration indicators as imposing a burden on an applicant to rebut any presumption as to the effect of the proposed transaction.

7. **The proposed Transaction is a 3 to 2 merger that will result in a "comfortable duopoly" that will be able to respond to new entry by lowering prices.**[6] This is incorrect, and not supported by the facts.

   As demonstrated by the "Market Share of Top 5 players in Insurance Markets (Global and NZ)" document provided to the Commission, and as demonstrated at Table 1 of Vero's clearance application, the size of the number 3 player does not change with the Transaction. Essentially, this is a merger of numbers 2 and 4 in a widely dispersed market. Post-Transaction, the gap between numbers 1 and 2 would be similar to the current gap between 1 and 2 in Australia, which is also still a highly competitive market.

   As noted in Vero's clearance application, the relevant markets do not have any of the structural features noted in the Commission's M&A Guidelines as potentially facilitating coordinated conduct.[7]

   Further, as noted at 5, numerous competitors will remain to also constrain Suncorp and IAG.

8. **Vero and Tower have a stronger presence in the personal insurance markets than the combined market figures indicate, and so the increase in Vero's market share will be significant.** This is incorrect, and not supported by any argument of fact. First, Suncorp notes that AIG's claim at 2.10 of its submission (that the combined market figures "hide" the impact of the Transaction "significantly" with respect to the personal insurance markets) contrasts sharply with its subsequent statement at 2.12 of its submission (that "ICNZ premium information is a good indication of market share" in the personal insurance markets). Secondly, AIG fails to provide any reasons or evidence as to why Vero and Tower's "presence" in the personal insurance markets would be different than what is reflected by their respective market share.

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5 NZCC *Mergers and Acquisitions Guidelines* (July 2013) at [3.49].

6 AIG's submission at 2.9 and 3.14 – 3.16.

7 Vero's clearance application dated 2 March 2017 at 8.17. 8.51.

Tower's market share in the personal insurance markets is [ ]% - this market share (which is based on Tower's gross written premiums) is an accurate approximation of its "presence" in the personal insurance markets. Suncorp's increase in the personal insurance markets will therefore be [ ]% - giving Suncorp a combined market share of [ ]% (still significantly less than IAG's [ ]% market share).[8]

9. **Domestic house and contents insurance, and private motor vehicle insurance, should be regarded as a single market because of bundling and the need for insurers to offer each product line.** This is incorrect, and the product definitions adopted by the Commission in *IAG/Lumley* and *IAG/AMI* continue to be appropriate. Further, AIG's submission exaggerates the extent of bundling and is misleading as it regards the need for insurers to offer each product line.

Bundled insurance

While bundled insurance products are available, it is not uncommon for customers to purchase home and contents separately from motor vehicle insurance. In some cases, customers may get a better deal by doing so. This is in part because an insurer's risk for policyholders varies by a number of factors (including geographic region, value, and the insured) and this risk level will differ for home and contents compared to motor vehicle insurance.

Further, the proposition is inconsistent with commercial reality. Customers are likely to purchase home and contents insurance when they purchase a house,[9] and purchase motor vehicle insurance when they purchase a vehicle. A customer who purchases a new vehicle is not necessarily going to think about seeking new insurance for their house. Moreover, different insurers have strengths in different product lines.

Even if it were true, the proposition does not change the competitive effects analysis, in which all personal lines are looked at as a whole, and the proposed transaction remains competitively neutral or pro-competitive as compared with the market in which IAG continues to have a significantly larger share of personal lines than any other competitor.

Need to offer each individual product line to gain market share

It is incorrect to say that it is essential for an insurer to offer each product line in order to gain market share. By way of example, DPL Insurance Limited (an insurance provider under the umbrella of the Turners group, which also owns the entity trading as Turners Cars) provides (through the Autosure brand) mechanical breakdown and payment protection insurance portfolios, as well as motor vehicle insurance (which is underwritten by Vero). DPL Insurance Limited does not offer home and contents insurance. Instead, its strategy appears to be to leverage off its existing brand presence and networks in the automotive industry to "build capability and scale in the integrated automotive financial services market".[10] This is just one example of the way in which AIG's statement overreaches in its submission in opposition.

Suncorp's understanding is that this is, in part, due to the fact that insurance purchases are often connected to a transaction (ie home purchase, vehicle purchase) as people don't set out to insure, but are driven to insure by a transaction.

8 Vero's clearance application dated 2 March 2017 at Table 2.

9 [ ]

10 Vero's clearance application dated 2 March 2017 at 8.37(b).

10. **The personal insurance markets are "dominated" by IAG and Vero.** This is factually incorrect. As noted in Vero's clearance application, IAG has a [ ]% market share in the personal insurance markets and Suncorp has a [ ]% market share, and there are numerous other competitors active in those markets.

11. **Barriers to entry and expansion are high and will be even higher if the proposed Transaction proceeds.** AIG refers to Suncorp's submission on the *IAG/Lumley* merger to support its view that barriers to entry and expansion are high. The views expressed by Suncorp in February 2014 (over three years ago) were rejected by the Commission in its decision in *IAG/Lumley* and are no longer relevant. Since that time, the market has changed significantly: both Youi and QBE (which entered just prior to 2014) have successfully grown year-on-year; there have been two new entrants in the personal insurance markets; and there have been three new entrants in the commercial insurance markets.[11] Ando has also made public its intent to launch an online personal lines business in New Zealand.[12] As set out in Vero's clearance application, the correct view is that barriers to entry and expansion are "not onerous" - this is the view taken by the Commission in *IAG/Lumley* and *IAG/AMI*, and has since been shown to be correct by the numerous instances of entry and expansion in the past three years.[13]

12. **Underwriting data is a significant barrier to entry that can only be achieved through experience in the market.** This is incorrect. The Commission did not consider this to be a barrier to entry and expansion in *IAG/Lumley* and *IAG/AMI*, and access to underwriting data has not deterred or impeded the success of the numerous new entrants in recent years. In any event, AIG's submission on this point is overly simplistic and does not accurately reflect how data is used by insurers to manage risk and set their prices. It is Suncorp's experience that different insurers use different methods to manage risk and set prices, which leads to different patterns of behaviour across brands and differences in book performance. Considering underwriting data may be only one way that an insurer manages risk and sets prices. Another way in which insurers measure risk and set prices is to work with data companies (such as Finity) who use their own data or look at competitor prices to provide insurance companies with insights into the insurance business, as well as industry trends and benchmarks. Doing this does not require experience in the market. The advent of online quote tools also enables insurers to use "bots" to reverse engineer a competitor's pricing so they can compare those prices against their own.

13. **Significant barriers to entry include:**

    (a) **Recruiting staff to resource claims services and experience working with EQC.** The Commission has previously considered this not to be a significant barrier to entry.[14] As noted in Vero's clearance application, insurers can (and do) acquire this knowledge by training staff or "poaching" a key employee from another insurance company.[15] Suncorp understands that there is an active and mobile market in staff transfers between insurers. By way of example, new entrant Ando has taken this approach, and recruited staff with in-depth knowledge of the New Zealand insurance industry, including John Lyon, the ex-CEO of Lumley and an ex-Vero executive. Suncorp has also hired the previous employees of AIG and IAG.

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11 Vero's clearance application dated 2 March 2017 at 8.37 to 8.39.

12 Jenee Tibsharaeny "*Ando Insurance opens for business, taking fresh approach towards using technology to streamline the insurance process to cut costs and keep premiums low*" (25 January 2016). Available at: http://www.interest.co.nz/insurance/79665/ando-insurance-opens-business-taking-fresh-approach-towards-using-technology

13 Vero's clearance application dated 2 March 2017 at 8.25 to 8.40.

14 *IAG/Mike Henry* at [137] – [150].

15 Vero's clearance application dated 2 March 2017 at 8.25(d).

(b) **Marketing, communications and advertising costs.** This was not considered a significant barrier to entry in *IAG/Lumley* and *IAG/AMI* and, as noted in Vero's clearance application, recent entry and expansion shows that this is not a significant barrier.[16]

(c) **Securing competitive pricing on crash repair services and needing to "control the repair network" are also a significant barriers to entry.** For both home and motor repairs, Suncorp does not dictate what repairers customers use, so Suncorp does not "control the repair network" (this is further discussed below at 22 to 29). Pricing is set by repairers, not by Suncorp.[17] Being able to "control the repair network" is not a requisite for entering the insurance markets, and existing competitors are in much the same position as new entrants with regards to negotiating the price at which services are supplied.

14. **Barriers to entry will become higher following the Transaction.** AIG states at 3.9 and 8.4 that barriers to entry will become harder if Vero acquires Tower. However, AIG fails to provide any reasoning or basis for this proposition. Suncorp suggest that this is because there is no factual basis for this submission.

15. **Tower is a significant competitor to Vero and IAG and is the only participant that can challenge those companies.** This is incorrect. As noted in Vero's clearance application, Tower has not been a particularly vigorous, innovative, or aggressive competitor in recent years, and Suncorp does not consider that the Transaction would remove an aggressive competitor from the market.[18] Additionally, many other competitors (including QBE, Youi, Ando, MAS and FMG) will remain in the personal insurance markets, including competitors with a size larger than, or similar to, that of Tower.

16. **QBE will not exert competitive pressure in the personal insurance markets because its entry is recent and only through intermediaries.** This is incorrect. Though QBE has only entered the personal insurance markets in the past 2-3 years, it is a significant competitor. It is the third largest insurance company in New Zealand and is backed by one of the world's top 20 general insurance companies. As noted in Vero's clearance application, it is Suncorp's experience that QBE has taken business from Suncorp via brokers.[19] Suncorp also understands that NZI (an IAG brand) is losing to QBE in the broker channel. The fact that QBE is successfully winning competition through brokers enhances, rather than lessens, its competitive vigour as brokers play an important role in enhancing competition by reducing purchasers search and switching costs.[20] Suncorp's business is primarily intermediated, so QBE's winning competition in this area is a threat to a large part of Suncorp's business.

17. **Youi is not a significant competitor and its long-term future is "uncertain" due to its recent Fair Trading Act issues.** This is at odds with the publicly available Macquarie Report, which notes that Youi's growth has been unhindered by the Commerce Commission's Fair Trading Act review.[21] Additionally, the Macquarie Report notes that the marketing spend of Youi has created churn in the market, with IAG being the suspected "net loser from this phenomenon".[22] Since its entry into the New Zealand market, Youi has proven itself to be an

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16 Vero's clearance application dated 2 March 2017 at 8.25(b).

17 While Suncorp looks at the competitiveness of rates provided when contracting with a repairer to be an approved repairer, it also looks at repair timeframes that can be achieved, the quality of repairs and customer service.

18 Vero's clearance application dated 2 March 2017 at 8.51(h).

19 Vero's clearance application dated 2 March 2017 at 8.15(b).

20 ACCC *Proposed acquisition of Promina Group Ltd* (12 January 2007) at [23].

21 Macquarie Group Report on NZ General Insurance (28 June 2016) at 4 states: "It did not surprise us that the general public are either not aware or do not understand the content of the [Commerce Commission] review. What did surprise us is that it is not materially affecting their pace of growth."

22 Ibid.

aggressive competitor. It now has an established brand presence, has a GWP of $31 million based on ICNZ statistics, and will continue to be a competitive constraint. Suncorp considers that Youi may become even more of a constraint as more consumer purchases begin to occur online.

18. **MAS and FMG are niche providers who do not impose any significant constraint.** This is incorrect, and misleading as to the product market and geographic market definitions of insurance in New Zealand. This is also inconsistent with the Commission's decision in *IAG/Lumley*, where it found that providers such as FMG did exert competitive pressure.

    (a) **FMG does not market to urban consumers and a non-rural customer would not purchase FMG insurance to cover home and contents.** Suncorp competes for customers across New Zealand, not just in urban centres, so FMG's brand presence in rural areas does not mean it is not a significant constraint on Suncorp. Further, while FMG may have a stronger brand presence in rural areas (including all rural towns), it is by no means absent as a competitor in urban areas. This is because insurance providers do not compete for customer segments, but for individual customers, and customers (particularly in New Zealand) are not all exclusively "rural" or exclusively "urban". By way of example, a student may go from a farm into an urban centre for university study, and then stay in that urban centre for work, while retaining their contents insurance with FMG. A dairy farmer may purchase rental properties in Dunedin, Hamilton, or Auckland and choose to insure those urban properties with FMG.

    (b) **MAS is a niche provider only approved to people who have qualifications (predominantly in the medical field).** Similarly, this argument is not consistent with the competitive reality in which insurance companies operate, where they compete with each other for individual customers, not for customer segments. MAS's strength with a type of customer does not mean it is not a significant constraint. Suncorp notes that, while MAS traditionally drew on health professionals for membership, MAS is not constrained by profession and in recent years MAS has been very active in marketing insurance to other professionals, including lawyers, business people, and others.

19. **It is not reasonably likely that banks would switch underwriters of white label insurance, and banks do not have significant countervailing power.** This is incorrect and inconsistent with the Commission's previous findings in this regard.[23] The extent to which both Suncorp and IAG will continue to face significant countervailing power from banks is set out in Vero's clearance application.[24] With respect to AIG's statement that banks will not engage with a new entity unless it has "the proven ability and capacity to deliver", Suncorp agrees but does not consider this as likely to prevent the banks from switching underwriters. There are a number of insurers who would meet the banks standard (including AIG) – for example, as set out in [ ]. Further, an insurance provider which already has an established relationship with a bank overseas (such as Allianz), or an insurance provider with a large international backing (such as QBE) would also be likely to meet the banks' standards – and would likely view the opportunity to win a bank tender as a palatable one.

20. **Consumers do not have countervailing power.** AIG's statements in relation to this argument are misleading and incorrect.

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23 *IAG/ AMI* at [73]. The Commission affirmed the approach taken in its previous *CGU Plc and Norwich Union Plc* decision that banks "provide a degree of constraint over insurance companies due to their size, and because of their ability (and willingness) to change insurance underwriter readily if faced with a decline in service, quality or increased prices".

24 Vero's clearance application dated 2 March 2017 at 8.43 – 8.44.

(a) First, AIG states that the Commission in *IAG/Lumley* "did not find that customers had any countervailing power" – this is incorrect, as the Commission did not consider in that decision whether consumers had countervailing power.

(b) Second, AIG states that individual customers do not have any special characteristics listed in the Merger Guidelines, and so are unable to exercise countervailing power. This is incorrect. Customers can and do switch suppliers. This is noted in several of the Commission's clearance decisions in the insurance markets; for example, in *IAG/AMI* the Commission noted that customers "can and do switch insurance providers readily".[25] This will particularly be the case when there is significant customer churn or mass switching. It is Suncorp's experience that it faces significant churn, especially where an offer has been price-driven, as is often the case with respect to motor vehicle insurance, and where buying a new car leads customers to reconsider suppliers. It also faces significant churn where customers are advised about better options (for example, by brokers, advisors, or by getting online quotes). Suncorp's experience that churn has increased is consistent with the Macquire Report, which found that Youi's entry had contributed to high levels of churn in the market.[26]

21. **The counterfactual is not the status quo, but a "materially more competitive market structure than if Tower remains under current ownership".** As stated in Vero's clearance application, there is no evidence that if Fairfax Financial was successful in its bid to acquire Tower, it would reform Tower to be an innovative competitor. Any third party speculation that Fairfax Financial (or any other independent party) would change its competitive profile is entirely speculative.

MTA submission

22. Suncorp appreciates the Motor Trade Association ("**MTA**") providing a submission that outlines the concerns expressed by collision repairers, and is grateful of this opportunity to respond to it. Suncorp notes that this submission addresses two separate topics – first, the state of competition in acquisition markets for windscreen and collision repair services (collectively, "**repair services**"), and secondly, MTA's concerns about the effect of the Transaction on the repair services market. Suncorp responds to both those topics in turn, below.

The current competitive dynamics

23. **Insurers control the repair market because being an approved repairer is essential to a repairer's survival.** While Suncorp accepts that repairers may seek to have good supply relationships with insurers, being an "approved repairer" is not essential for a repairer to be successful. This is due to several factors.

First, (at least as regards Suncorp) repairers do not need to be "approved" to get insured work. For example, Suncorp provides work to non-approved suppliers that may be recommended by insurance brokers, or that may be selected by customers themselves. While Suncorp does have approved suppliers, Suncorp does not dictate that customers use approved suppliers, and customers remain free to have their vehicle repaired by whichever repairer they chose.

25 IAG/AMI at [70].

26 Macquarie Group Report on NZ General Insurance (28 June 2016) at 4.

Secondly, as noted in *IAG/Lumley*, non-insured work accounts for around 20% of the total collision repair market.[27] Success for non-insured work is dependent on the repairers' own competitiveness (ie quality, price, customer relationships, etc).

24. **Delays in repair jobs are due largely to a skill shortage, which is the result of repairers being unable to attract employees because insurers prevent them from raising their prices**. This is incorrect. While Suncorp accepts that there are delays in repair jobs, these delays are caused by a number of factors (such as increased claims costs, increased claims volumes, a skills shortage, and the emergence of credit hire companies). Specifically:

    (a) *Increase in claim costs*. Delays have been caused by an increase in claim costs across the industry due to vehicles being more high-tech, made from "more advanced materials", and therefore more difficult and expensive to repair.[28] This has been particularly an issue in Auckland, where there is a higher concentration of new and high-spec vehicles that require speciality parts. Because New Zealand has a smaller auto market compared to larger countries, parts for speciality vehicles are not always readily available at repair shops and often have to be sent away for, either from other areas of the country or from overseas. Additionally, labour rates have increased due to a higher demand (and decreased supply) of repairers.

    (b) *Increase in claim volumes*. According to the Collision Repair Association, an increase in the number of collisions is a key factor leading to a shortage of panel beaters in New Zealand.[29] According to ICNZ statistics, the number of private vehicle related claims in New Zealand has increased by more than 5% since 2013[30] – although it is Suncorp's experience that this figure is closer to 20%. This increase in claim volumes is due to increased congestion on New Zealand roads – driven in part by record numbers of high net migration and low fuel costs.

    (c) *Skills shortage*. The MTA has cited a "skills shortage" as being a problem for the motor industry.[31] Similarly, the CRA's general manager, Neil Pritchard has said that, in addition to the issue of increased numbers of collisions, compounding the shortage is the impact of many panel beaters reaching retirement age at the same time. In order to remedy this, the industry has launched a marketing campaign and scholarship programme to help recruit hundreds of new apprentices into the industry.[32]

    (d) *Emergence of credit hire companies*. An additional factor causing delays has been the recent emergence of credit hire companies in the New Zealand market. These companies typically partner with repairers to offer rental vehicles to not-at-fault drivers at "credit hire" rates, which are higher than normal rental car rates, and a claim is then made on the at-fault party's policy. Suncorp's experience with the two companies currently operating (Right 2 Drive and Acorn) is that repairs to vehicles

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27 *IAG/Lumley* at [165].

28 "*Rising vehicle collisions causing panelbeater shortage*" (25 January 2017) Stuff.co.nz. Available at: http://www.stuff.co.nz/motoring/news/88740714/Rising-vehicle-collisions-causing-panelbeater-shortage, quoting Neil Pritchard, the general manager of the Collision Repair Association: "Modern cars are made from more advanced materials including high density steel and even aluminium. Their integrated safety systems mean that what used to be a straightforward task such as changing out a windscreen is now far more complex as an array of sensors and cameras must also be reattached. This means the technical capabilities required of the panelbeater are far higher, involving more sophisticated diagnostic tools and knowledge of new welding techniques and modern adhesives."

29 "*Rising vehicle collisions causing panelbeater shortage*" (25 January 2017) Stuff.co.nz. Available at: http://www.stuff.co.nz/motoring/news/88740714/Rising-vehicle-collisions-causing-panelbeater-shortage.

30 ICNZ statistics. The number of claims in 2013 was 399,828. The number of claims in 2016 was 422,429.

31 Philip McSweeny "MTA troubled by skills shortage in Canterbury" (6 September 2016) Stuff. Available at: http://www.stuff.co.nz/business/industries/83963552/MTA-troubled-by-skills-shortage-in-Canterbury.

32 "*Rising vehicle collisions causing panelbeater shortage*" (25 January 2017) Stuff.co.nz. Available at: http://www.stuff.co.nz/motoring/news/88740714/Rising-vehicle-collisions-causing-panelbeater-shortage.

take far longer than they should in order to maximise the rental car period. Issues relating to credit hire companies are not unique to New Zealand, but have been recognised as a problem by the competition authority in the United Kingdom[33] and have been a topic of discussion in the media in Australia.[34]

Delays are not caused by insurers - it is not in insurers' interests to have delays in the completion of repair jobs. Delays in repair jobs lead to insurance companies paying more on collision repair claims (for example, by paying for customers to have rental cars for longer periods or paying for alternative transport when customers are using their vehicle to travel out of town) and lead to reduced customer satisfaction. With commercial customers (ie fleet customers), insurers lose money the longer the customer's vehicle is being repaired. Insurers would not act in a way that would lead to delays in repair jobs being completed, as this would be counter to their own interests.

25. **The relationship between collision repairers and insurers have declined since the market began consolidating because merged brands do not perform as well, and impose administrative burdens and delay payments.** Suncorp cannot comment on the accuracy of this statement with regards to other insurance providers. However, Suncorp considers this to be incorrect where it relates to its relationship with collision repairers. Suncorp has approved and non-approved repairers access Suncorp's B2B PNet system, which provides an auto pay function that enables over 90% of its payments to be made within 24 hours. Suncorp has taken the approach of paying repairers quickly in order to encourage greater levels of service from repairers.

Further, the MTA's submission on this point infers that merged brands do not perform well, impose administrative burdens and delay payments and therefore that Suncorp will also not perform well, impose administrative burdens and delay payments following the Transaction. While Suncorp cannot submit on IAG's performance following its acquisition of Lumley and AMI, Suncorp notes that any argument that its performance will decrease, that it will impose greater administrative burdens on repairers, or that it will delay payments to repairers is unsupported by any evidence and is completely speculative.

The effect of the Transaction on the repair services market

26. **The Transaction will result in a duopoly that will enable Vero and IAG to increase the number of service providers in their networks and apply pressure to those providers.** This is incorrect. As noted above at 7, and in Vero's clearance application,[35] the Transaction will not result in a duopoly and significant competition will remain in market both for the supply of insurance and in the acquisition markets for repair services.

27. **IAG has been conducting a price review and reducing the number of "approved" repairers in its network, and the MTA expects Suncorp will undertake a similar review and reduction following the Transaction.** While Suncorp is not able to comment on the approach taken by IAG in relation to acquiring repair services, this is completely speculative with respect to how Suncorp will behave following the Transaction.

Suncorp acquires repair services through approved repairers and non-approved repairers (see 23, above). Approved repairers are managed by Suncorp's procurement team (or, for AAI, by

33 Competition Markets Authority ("**CMA**") *Final Report on the Private motor insurance market investigation* (28 July 2014) at [33] and [35]. The CMA concluded that the hiring of courtesy cars via credit hire companies increases premiums and distorts the market. A copy of the report is linked here: https://assets.publishing.service.gov.uk/media/5421c2ade5274a1314000001/Final_report.pdf.

34 Anna Tims "*Car insurance and the little-known world of credit hire companies*" (28 March 2016) The Guardian. Available at: https://www.theguardian.com/money/2016/mar/28/car-insurance-and-credit-hire-agencies.

35 Vero's clearance application dated 2 March 2017 at 8.51.

AAI's procurement team). While Suncorp and AAI share some approved repairers, they also have relationships with different repairers, reflecting different operations of Suncorp and AAI's businesses. Repairers "bid" to become approved repairers, and are selected as approved repairers by Suncorp based on a number of criteria, including health and safety, average repair time, customer satisfaction levels, location and cost of repairs.

Suncorp notes that its own approach to acquiring repair services is unique to its method of operating its business, and so unlikely to be similar to that of IAG's. As noted by Vero in its clearance application,[36] because of the difference in size and cost structure, Suncorp and IAG have (and will continue to have) different methods of operating their businesses – this includes different approaches to acquiring repair services. This difference will remain following the Transaction and Suncorp considers that the Transaction is therefore unlikely to result in it conducting a price review, or otherwise begin acting in a manner similar to IAG with respect to the acquisition of repair services.

Secondly, there is simply no evidence that Vero or Suncorp intend to conduct a price review, are likely to act in a way similar to IAG, or would be more likely to do so following the Transaction; any suggestion in this respect is highly speculative. Rather, Suncorp considers it more likely to continue acquiring repair services as it has historically done. Suncorp has no commercial incentive to depress prices at which it acquires repair services to low levels that would result in a consequent reduction in the quality of repair work, and cause Suncorp to lose insurance customers. For completeness, Suncorp notes that roughly 60% of Tower's approved repairers are already Suncorp approved repairers.

28. **The Transaction will increase Vero's vertical integration of repair services, which compete with independent repairers for work.** This is speculative, and misleading as to the nature and competitive effects of the introduction of Suncorp's Small to Medium Accident Repair Technology (SMART).

First, there is no evidence that the Transaction will increase Suncorp's level of investment in SMART – Suncorp's investment in SMART will be dependent on SMART's success in the New Zealand market. Any suggestion that Suncorp's acquisition of Tower (which in any event only has a [ ]% market share of the private motor vehicles market and a [ ]% share of the commercial motor vehicles market) would impact on Suncorp's level of investment in SMART is highly speculative.

Second, SMART is very unlikely to have a material effect on competition in the repair services market. There are only **three** SMART repairers operating in New Zealand (two in Auckland and one in Christchurch)[37] and SMART repairers are only able to repair vehicles that do not have mechanical damage and do not have significant structural damage[38].. Customers whose vehicles are able to be repaired by SMART are not required to use SMART, but can use the repairer of their choice. While customers may choose to use SMART because of the speed at which repairs can be carried out, they may also chose to use a panel beater that they are familiar with, or a repairer that operates closer to where they live or work.

In any event, the introduction of SMART is beneficial for consumers as it enables customers with minor repairs (who live in specific areas within Auckland or Christchurch[39]) to have an additional option of supplier where their vehicle can be repaired quickly and at a high quality.

36 Vero's clearance application dated 2 March 2017 at 8.51(e).

37 "SMART". Accessible at: https://www.capitalsmart.co.nz/.

38 Michael Burke "Vero gets SMART with motor repairs" (14 March 2017) Vero. Accessible at: https://www.vero.co.nz/vero-voice/vero-gets-smart-with-motor-repairs.html.

39 [ ]

29. **The Transaction will increase IAG's dominance in the market for buying independent repair services by taking Tower work away from independents.** This is incorrect. The Transaction will not change IAG's share in the private motor vehicle market or the commercial motor vehicle markets and will therefore not make IAG a more powerful purchaser in those markets than it already is.

Additionally, any assertion that the Transaction will take Tower work away from independents is highly speculative and misleading as to the effect of SMART in the market. While [ ], as discussed above at 28, SMART repairers make up a very small part of the repair market. Suncorp uses independent repairers (either approved or non-approved) for the large majority of its repairs, and there is no indication that this would change for either Suncorp or Tower following the Transaction.

Youi submission

30. **The Transaction will increase barriers to entry - for example, using cross-subsidisation to fund losses in portfolios where Vero products compete with new entrants.** There is simply no evidence that Vero behaves in this way; any suggestion of such behaviour is highly speculative. In any event, Suncorp notes that such a strategy would require market power in another market, which Vero does not have. Further, the demands of the bancassurance channel, which requires provision of high quality products to customers all over the country, and the broker channel, where there are significant demands on insurance providers to offer competitive solutions, as well as the structural independence of AA Insurance ("**AAI**"), all reinforces Vero's incentives, like its competitor insurers, to offer competitive solutions for all various channels, regions and portfolios.

31. **The Transaction will negatively affect suppliers / crash repairers.** As discussed in greater detail at 26 to 29 in response to the MTA's submission, this submission is not borne out by the facts.

32. **The Transaction will reduce product / service innovation.** Youi appears to suggest that it is only its entry that has induced innovation. This is simply not correct. It is not the first new entrant to the New Zealand market in decades; for example, Chubb, QBE, Lifetime and DPL Insurance have recently entered (as outlined in Vero's clearance application).[40] Moreover, banks and other non-insurance partners in the affinity channel have brought competition and innovation to the market.

Youi also suggests that “market consolidation” turns off new entrants. In fact, new entrants (particularly highly capitalised foreign entrants like Youi) have advantages that incumbents do not, including reduced earthquake risk and legacy claims.

33. As noted at 21, third party speculation that Fairfax Financial would invest in Tower in specific ways or change its competitive profile is simply that, entirely speculative.

34. **Ratings and capital advantages are significant barriers to entry -** Barriers to entry were discussed in Vero's clearance application at paragraphs 8.25 to 8.34. In relation to ratings, these were not considered as a significant barrier in *IAG/Lumley* and *IAG/AMI* and should not be given undue weight. As acknowledged in Vero's clearance application, reputation is one important, but not insurmountable, barrier to entry, but in any event there are no material barriers to expansion and a large number of significant insurers are already competitors in this market.

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40 Vero's clearance application dated 2 March 2017 at 8.37 to 8.40.

As a matter of fact, the evidence is clear; RBNZ solvency standards have plainly not deterred a number of overseas-based new entrants, as set out in Vero's clearance application at 8.26 to 8.31 and 8.37 to 8.40. Further, any additional capital expenditure would be offset by a relatively unencumbered legacy of New Zealand risk compared to established local insurers. Youi has certainly demonstrated the effectiveness of a well-capitalised new entrant (unencumbered by legacy systems and difficult risk portfolios) coming into the market, investing in marketing, targeting lower risk areas, and in that way withstanding initial unprofitability.

35. **The Transaction creates a risk that Suncorp or IAG would limit cover in certain areas -** This statement is simply untrue. Currently, and in the Factual, both Suncorp and IAG are driven to compete fiercely in both the direct and indirect channels, through pressure from direct customers, banks, and brokers. Due to the nature of the different risk profiles for each portfolio, and the different cost structures of each different book of business underwritten by each organisation, there is no incentive, nor ability, given the lack of transparency in pricing and costs, for IAG and Suncorp to coordinate in the way Youi is suggesting.

CBL Insurance Submission

36. CBL's comments about the New Zealand insurance industry reflect a lack of understanding of local industry dynamics. For example, its claims that Vero's acquisition of shares, and application to the Commission for clearance should somehow be viewed as "aggressive anti-competitive behaviour" demonstrate a lack of understanding of New Zealand competition law and jurisprudence. The Commission should assess very closely whether it places weight on CBL's assertions.

37. **The Transaction will result in a duopoly –** This is plainly untrue, as is discussed at 7 of this submission. To adopt the Spark / Vodafone / 2degrees analogy, in the New Zealand insurance industry there are 9 other market participants – 9 other "2degrees" who will individually and collectively continue to constrain the merged entity. Further, as noted at 5, firms need not be large in order to act as an effective constraint and the Commission's assessment of competition must take into account the combined impact of numerous small competitors.

38. **Cherry-picking of large insurers is preventing competition -** As addressed in the context of the response to Youi's submission, the choice to underwrite certain portfolios is a strategic decision based on costs and risk profiles.

Dr Michael Naylor's submission

39. An academic perspective on the Transaction is welcome; however, it appears that Dr Naylor has not had access to significant and useful material relating to the New Zealand insurance market to inform his submission. Dr Naylor raises prima facie valid questions, but those are answered by the market evidence. In the absence of having reviewed the market material, Dr Naylor's submissions suggests an "initial impression" commentary, rather than a fully informed and balanced academic view.

40. In Dr Naylor's submission, he states:[41]

> Tower is the remaining competitor of any significance and its removal would have a significant adverse impact on the market. This is relevant across both direct and brokered markets, despite Tower's limited presence in the brokered market, as the two markets are competition as far as the household P&C is concerned.

41 Submission by Dr Naylor, page 2, paragraph 2.

41. With respect, this comment is incorrect, and lacks the necessary focus on market definition that is central to the Commission's analysis. The statement displays the need for a more focussed assessment on the legal requirements and the Commission's approach to a competition assessment. There is no reason to characterise Tower as "the remaining competitor of any significance"; as outlined above, Tower is not currently perceived as an innovative market participant, and there are several other participants who impose competitive pressure on Suncorp (including IAG, Youi, Chubb, QBE, and so on).

42. **"Cost structures are high, as are profit margins" -** New Zealand cost structures are currently high because of earthquake-related activity and related issues. However, profit margins are actually low in many portfolios, as evidenced by the Macquarie Report provided to the Commission.

43. **Fairfax Financial would make Tower more competitive -** As addressed in the response to Youi's submission, there is no certainty around the Counterfactual involving a Fairfax Financial acquisition of Tower, and that that would necessarily lead to Tower becoming more competitive.

44. **Youi is struggling to retain its market share -** This statement is at odds with the publicly available Macquarie Report which states that Youi market growth is not slowing. Further, this statement does not reflect how quickly Youi has gained market share, and that it continues to take business from Suncorp / Vero. Youi competes for a limited number of portfolios, and is more aggressive in some regions than others, so a comparison across the entire business is misleading.

45. **Banks do not have countervailing power -** As addressed above and in Vero's clearance application, this statement is incorrect and inconsistent with the Commission's findings in *IAG/Lumley* and *IAG/AMI*. Banks rely on insurers to make recommendations as to price, and often put pressure on insurers to offer better deals to their customers and push back on price increases that may be recommended, to ensure their customers are getting a good deal on insurance products available through the bank.[42] [ ]

46. **The Transaction would create an internationally unique level of market concentration -** This statement is also incorrect and Suncorp refers to its comments at 4 of this submission.

42 Vero's clearance application dated 2 March 2017 at 5.2(d) and 8.42 to 8.44.