

Public Version

**NOTICE SEEKING CLEARANCE OF A BUSINESS ACQUISITION PURSUANT TO SECTION
66 OF THE COMMERCE ACT 1986**

2 March 2017

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

EXECUTIVE SUMMARY

- 1.1 Vero Insurance New Zealand Limited ("**Vero**"), a member of the Suncorp New Zealand group ("**Suncorp**") currently holds 13.2% of the ordinary shares in Tower Limited ("**Tower**"). Vero is seeking clearance to acquire up to 100% of the shares in Tower by way of a scheme of arrangement under Part 15 of the Companies Act 1993 (the "**Transaction**").

No substantial lessening of competition

- 1.2 Suncorp and Tower are complementary businesses, and the degree of market share aggregation that would arise from the Transaction is low and unlikely to materially change the competitive dynamic.
- 1.3 The Commission has analysed the relevant insurance markets in its recent decisions of *IAG/AMI* and *IAG/Lumley*.¹ As the Commission found in those recent clearance decisions, it remains the case that there are a number of well-resourced and established insurance providers with trusted and respected brands. Just as the Commission found in *IAG/Lumley*,² the level of existing competition means that the Transaction is unlikely to result in a substantial lessening of competition.

Market share aggregation is low

- 1.4 Tower has approximately a 5% share of the general insurance market in New Zealand. It is estimated to have about a []% share in personal lines and []% in commercial lines. This means that the degree of market share aggregation that would arise from the Transaction is low. It is, in that regard, similar to the level of aggregation to IAG's share, that the Commission approved in 2013, which it granted clearance for IAG to acquire Lumley (*IAG/Lumley*). This Transaction is equally unlikely to materially change the competitive dynamic, but is more pro-competitive as the acquirer is not the largest market participant.
- 1.5 The prevailing structural dynamic in the affected relevant insurance markets is, and will remain, that IAG, with a market share of approximately 45%, is the market leader with a materially different size and scale of business to Suncorp, whose share could increase from 25% to 30% with the Transaction. There will be no ability for Suncorp to exercise market power in the context of that market structure, and the minimal level of aggregation will make no effective difference to that dynamic.
- 1.6 Indeed, the merged entity's market share will still be significantly smaller than IAG's market share was, before IAG was approved to acquire Lumley.
- 1.7 The material market share differential between the number 1 and number 2 players also means that there can be no possibility of coordinated effects arising. Again, in the area that Tower is most active, in personal lines, the market share differential between numbers 1 and 2, of 15% in general insurance, increases to a 20% differential.

Suncorp and Tower are not each other's closest competitors

- 1.8 Suncorp and Tower have strengths in different segments and with different customer groups.
- 1.9 *Personal insurance* - Tower is not Suncorp's closest competitor in this market – instead, Suncorp considers that IAG (through AMI and State Insurance) and Youi are its closest competitors for domestic house and contents. Suncorp also faces significant competition from ASB, BNZ and Westpac in this market which are each underwritten by IAG.

¹ *IAG/Lumley* [2014] NZCC 12 ("**IAG/Lumley**") and *IAG/AMI* [2012] NZCC 6 ("**AIG/AMI**").

² *IAG/Lumley* at [92], [119].

- 1.10 *Commercial insurance* - Suncorp has a stronger presence in the commercial insurance markets, while Tower has only a small presence in the commercial markets. Tower's rural insurance offering is similarly very small. Unlike Suncorp, Tower does not participate in the broker market where the vast majority of commercial insurance is transacted. Instead, Tower has limited its commercial offerings to the direct commercial insurance channels (which makes up a small portion of the total commercial insurance markets).³ Suncorp considers that its acquisition of Tower would not materially change its existing commercial insurance market share.

No impact on acquisition markets

- 1.11 In *IAG / Lumley* the Commission considered the competitive impact of the acquisition in a number of markets where IAG and Lumley competed to buy services – namely, the collision repair services market and the windscreen repair services market.⁴ In that decision, the Commission pointed to the merged entity's relatively low market share being insufficient to substantially lessen competition in the relevant acquisition markets (as well as to the fact that non-insured work, which is estimated to account for around 20% of the total collision repair market, would remain unaffected by the acquisition). The Commission also considered that the parties would be unlikely to have the incentive to depress prices to low levels because any consequent reduction in the quality of repair work would likely cause IAG to lose insurance customers.
- 1.12 The significantly smaller share of these markets that Suncorp has, and will continue to have post-Transaction, indicates that there can be no material impact on those acquisition markets either.

³ Suncorp estimates that the total direct commercial insurance channel is \$60M, while the total commercial insurance channel is \$2,329M.

⁴ *IAG/Lumley* at [165].

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PART A: TRANSACTION DETAILS

PARTY DETAILS

2. The Applicant

2.1 The applicant, Vero Insurance New Zealand Limited ("**Vero**") is a member of the Suncorp New Zealand group ("**Suncorp**") and currently holds 13.29% of the ordinary shares in Tower Limited ("**Tower**"). Vero seeks clearance to acquire up to 100% of the remaining shares in Tower (the "**Transaction**").

2.2 Contact details for Suncorp are:

Suncorp
48 Shortland Street
Vero Building
Auckland 1010
Private Bag 9212

www.suncorp.co.nz

Attention: []

2.3 All correspondence and notices for Staples in respect of this application should be directed in the first instance to:

Russell McVeagh
Barristers & Solicitors
PO Box 8
AUCKLAND 1140

Attention: Sarah Keene / Elisha Kemp
Telephone: 09 367 8133 / 09 367 8222
Fax: 09 367 8595 / 09 367 8596

Email: sarah.keene@russellmcveagh.com
elisha.kemp@russellmcveagh.com

2.4 A diagram showing the organisational structure of Suncorp and its subsidiaries and related companies is set out in **Appendix One**.

3. The other merger party

3.1 The other party is Tower Limited ("**Tower**"). Contact details for Tower are:

Tower
Level 14, 45 Queen Street
Auckland 1010
New Zealand

www.Tower.co.nz

3.2 The Contact Person for Tower is:

□

Suncorp understands that Tower has instructed Chapman Tripp.

- 3.3 A diagram showing the organisational structure of Tower and its subsidiaries is set out in Appendix Two.

4. About the parties

- 4.1 Vero is the New Zealand subsidiary of Suncorp Group Limited ("**Suncorp Group**"), an Australian finance, insurance and banking corporation based in Brisbane, Queensland, Australia. Suncorp's direct brands are AA Life (a joint venture partnership between Suncorp and the New Zealand Automobile Association ("**NZAA**")) and AA Insurance ("**AAI**") (a joint venture partnership between Vero and NZAA).
- 4.2 Suncorp, through Vero Insurance, Asteron Life and AAI provides a range of personal and commercial insurance products direct to customers, through insurance brokers, and (as white label insurance) through ANZ bank and AMP.
- 4.3 Tower is a New Zealand-based insurance company that provides personal and commercial insurance products direct to customers and (as white label insurance) through Kiwibank and TSB.
- 4.4 More detail on the New Zealand business operations of the parties is set out in the section below.

THE PROPOSED TRANSACTION

5. Transaction details

Outline and structure of the transaction

- 5.1 Vero currently holds 13.29% of the ordinary shares in Tower and seeks to acquire the remaining shares in Tower by way of a scheme of arrangement under Part 15 of the Companies Act 1993.

Rationale for the merger

- 5.2 Since the start of 2014, there have been changes in how competition operates in both the commercial and personal segments of the insurance markets.
- (a) In the commercial segments there has been continued aggressive growth of large international insurers, such as IAG, Allianz, QBE and Chubb Insurance, as well as new entry by international insurers, such as Ando and Berkshire (as discussed below in 8.31).
 - (b) Insurance brokers (who compete with Suncorp for the provision of insurance) have also been increasingly placing commercial risks directly with off-shore insurance providers, such as Lloyds.
 - (c) The personal segment has also been impacted, with the new direct insurer Youi entering the market, and with insurers predominantly known for their commercial insurance expanding into the personal insurance segments. For example, IAG have introduced their high-value customer policy suite with Crombie Lockwood, and have promoted this to ANZ bank. QBE have established a personal

insurance division, and focused on developing an intermediated personal insurance portfolio. They have also been in market, seeking a bancassurance partner. Chubb Insurance (a well-known insurance provider with no real presence in New Zealand) merged with ACE Insurance in 2016 and has started offering personal insurance in New Zealand.

- (d) Additionally, since the start of 2014 Suncorp has observed changes in the market in relation to competitive dynamics for the provision of white-label insurance products to banks. Specifically, over the past two years the purchasers of white-label insurance (typically large banks) have increased pressure for lower prices and product differentiation, largely in response to development in the online insurance channel (and insurance being easily available from direct insurers).

- 5.3 The added efficiencies arising from the merger will assist the merged entity to continue to deliver competitive products and services into market in competition with the wide range of participants, and particularly with IAG – which will remain the largest insurer pre and post-Transaction by a substantial margin.

Ancillary agreements

- 5.4 There are no relevant ancillary agreements.

Copies of transaction documents

- 5.5 []

Notification of other competition agencies

- 5.6 As this is a domestic New Zealand transaction no other competition agency is being notified. Consent will also be sought from the Overseas Investment Office for the transaction.

PART B: COUNTERFACTUAL

- 5.7 Suncorp is aware that Canadian company Fairfax Financial has announced its intention to purchase Tower.⁵ It is not clear whether the Fairfax offer will be successful. In any event, under Fairfax ownership, Tower would remain separate, which implies a counterfactual not materially different to the status quo.

PART C: THE INDUSTRY

6. Background to the industry

Industry dynamics

Product types

- 6.1 The proposed Transaction relates to general (non-life) insurance. General insurance is often divided into two broad categories.

Personal insurance products

- 6.2 Personal insurance products include home, contents, private motor vehicle, and pleasure craft insurance sold to consumers for private use. These products are mainly sold directly to consumers, rather than through brokers. Where brokers sell personal products, this is most often done as part of a package to commercial consumers.⁶
- 6.3 There are three channels through which insurance companies sell personal insurance that are of interest in this application:⁷
- (a) direct sales to consumers, such as through Suncorp's and Tower' brands (typically through call centres and, increasingly, online);
 - (b) sales made via the affinity channel, including to retail banks, such as ANZ, to final consumers (known as "white label" insurance); and
 - (c) sales made to consumers through insurance brokers.

Commercial insurance products

- 6.4 Commercial insurance products include a variety of types of insurance products designed to protect a business, and include commercial property, commercial motor vehicle, and marine cargo.
- 6.5 Commercial insurance products are mainly sold through brokers, and as of 2014, the Insurance Council of New Zealand ("**ICNZ**") estimated that 85% of commercial products were sold by brokers.⁸

Regulation

- 6.6 The Insurance (Prudential Supervision) Act 2010 establishes licensing and registration rules and empowers the Reserve Bank to administer them. This Act provides the major supervisory regime for insurance entities and sets out the requirements for an insurer to

⁵ "Canadian firm targets Tower Insurance" (9 February 2017) NZ Herald. Accessible at: http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11797542

⁶ Re IAG (NZ) Holdings Limited and Lumley General Insurance (NZ) Limited [2014] NZCC 12 at [36] to [37].

⁷ Re IAG (NZ) Holdings Limited and Lumley General Insurance (NZ) Limited [2014] NZCC 12 at [38].

⁸ ICNZ Insurance Handbook *A Short Guide to the General Insurance Industry in New Zealand* at 22.

become licenced and registered, and provides for the ongoing supervision of an insurance company's operations after it has been licensed.

Impact of earthquakes in New Zealand

- 6.7 In September 2010 and February 2011, the Canterbury region experienced major seismic events that resulted in significant damage and loss of life. The claims resulting from the events had a dramatic effect on all companies providing insurance in New Zealand, and led to insurance companies struggling to get reinsurance, resulting in increased premiums and changes in business practices.⁹ However, notwithstanding the Kaikoura earthquake in November 2016, reinsurance capacity remains available in the New Zealand market.
- 6.8 The Reserve Bank of New Zealand issued new regulatory requirements for insurance entrants, to be effective from 2016. It is expected that these new regulatory requirements will help protect the insurance industry and consumers.

Industry participants

Suncorp

- 6.9 Suncorp is a general and life insurance provider. Suncorp Group New Zealand Limited is the holding company of Suncorp Group Services NZ Limited. Suncorp Group New Zealand Limited is wholly owned by Suncorp Group Limited, a large general insurance, banking, life insurance, and superannuation business, with a presence in Australia and New Zealand. Suncorp Group is a Top 20 ASX-listed company, with A\$96b in assets.
- 6.10 Suncorp, through Vero Insurance, Asteron Life and AAI provides a range of personal and commercial insurance products.
- 6.11 Suncorp provides the following types of insurance:
- (a) domestic house and contents;
 - (b) private motor vehicle insurance;
 - (c) private pleasure craft insurance;
 - (d) commercial motor vehicle insurance;
 - (e) commercial property (including business interruption);
 - (f) various forms of liability (including commercial liability);
 - (g) commercial hulls;
 - (h) marine and air cargo;
 - (i) other commercial products (eg contract works and engineering);
 - (j) consumer credit (including loan protection); and
 - (k) warranty (including mechanical breakdown).

⁹ Re IAG (NZ) Holdings Limited and Lumley General Insurance (NZ) Limited [2014] NZCC 12 at [46].

Tower

- 6.12 Tower is a general insurance provider. Tower Insurance Limited is the holding company of The National Insurance Company of New Zealand Limited. Tower Insurance Limited is ultimately owned by Tower Limited, which is listed on both the NZX and ASX. Tower Limited also owns Tower Financial Services Group Limited.
- 6.13 Tower provides the following types of insurance:
- (a) domestic house and contents;
 - (b) private motor vehicle insurance;
 - (c) private pleasure craft insurance;
 - (d) commercial motor vehicle insurance;
 - (e) commercial property (including business interruption);
 - (f) various forms of liability (including commercial liability); and
 - (g) travel insurance.

Existing competition

- 6.14 There are a range of other competitors with whom Suncorp competes with vigorously, including IAG (which has over 50% of the market share in many of the insurance market segments). These competitors include:

IAG

- 6.15 As the Commission is aware, in 2014 it granted clearance to IAG to acquire 100% of Lumley General Insurance. IAG has continued to hold significant market share in many insurance market segments.
- 6.16 IAG is a wholly-owned subsidiary of Insurance Group Limited, an Australian, ASX-listed, general insurance company. IAG New Zealand sells insurance directly to customers predominantly through the well-known State and AMI brands. Both State and AMI offer car, house, contents, life, business, and travel insurance. State also offers insurance for boats, caravans, contract works and landlords. AMI also offers boat, motorcycle, caravan, and lifestyle block insurance.
- 6.17 IAG also provides insurance through intermediaries predominantly under the Lumley and NZI brands and white label insurance products through ASB, BNZ and Westpac. NZI offers comprehensive insurance services in New Zealand, including personal and business. Lumley offers construction and engineering, marine, property, commercial motor, and liability insurance.
- 6.18 IAG distributes personal lines and commercial products (including bundled products to SMEs) under third-party brands by corporate partners, some of which are large financial institutions.

FMG

- 6.19 FMG is a New Zealand owned and operated insurer which focuses on the rural market. FMG grew out of the Farmers Mutual Association that was formed in 1905 in Otago, Wellington, Taranaki, and Hawke's Bay. Today, FMG provides risk advice and insurance to over 64,000 people across New Zealand.

- 6.20 FMG offers a range of insurance products to farmers and growers; including dairy, sheep and beef, arable crop, and horticulture and viticulture. FMG also provides coverage for a wide range of insurance options, including life and personal, commercial, home, contents, vehicle, boat, horse, and liability insurance.

MAS

- 6.21 Medical Assurance Society ("**MAS**") was set up in 1921 as a mutual by a group of doctors. It has grown as a membership society to around 28,000 members. MAS offers life, income and disability insurance, house, contents, and vehicle insurance.
- 6.22 MAS also offers a range of products and services other than insurance, including savings and investment services, lending services, and business advisory services.

Youi

- 6.23 Youi NZ Pty Limited is a general insurance company that has operated in New Zealand since 2014. It offers vehicle, home, and watercraft insurance products. Youi is wholly owned by Youi Holdings Pty Ltd, an Australian company founded in 2008.

Allianz

- 6.24 Allianz New Zealand ("**Allianz**") is part of the Allianz Group, which operates worldwide. Allianz provides insurance to New Zealand through its New Zealand branch of Allianz Australia Insurance Limited. Allianz provides a range of personal, commercial, and corporate insurance products through brokers and agents.

QBE

- 6.25 QBE Insurance (International) Limited ("**QBE**") is one of the world's top 20 general insurance and reinsurance companies and is listed on the ASX. QBE has been operating in New Zealand since 1890. In New Zealand, QBE offers a range of commercial insurance products through independent intermediaries. Insurance products include accident and health, commercial motor, contract works and engineering, liability, marine, property, trade credit, and travel. QBE has been expanding into the personal insurance markets over the past 2-3 years, primarily through insurance brokers.

Chubb

- 6.26 In July 2016 ACE Insurance Limited changed its name to Chubb Insurance New Zealand Limited, following ACE Limited's acquisition of The Chubb Corporation. Chubb has operations in 54 countries providing a range of insurance services. In New Zealand Chubb offers both large multinationals and SMEs property and casualty, group personal accident, and corporate travel insurance through brokers. Chubb also offers personal travel insurance.

AIG

- 6.27 AIG Insurance New Zealand Limited ("**AIG**") is part of the international AIG insurance group, which is the world's largest insurance organisation with more than 88 million customers around the globe, and with significant brand presence in New Zealand (as a sponsor of the All Blacks). AIG offers a range of commercial insurance products (directly and through brokers), including package solutions for SMEs.

Zurich New Zealand (Zurich)

- 6.28 Zurich New Zealand is headquartered in Auckland, and is part of the global Zurich Insurance Group. Zurich offers its insurance products through brokers. Zurich offers

various types of insurance; including motor, marine, casualty, professional, and property. It also offers risk management analysis.

- 6.29 Zurich maintains a network of approved repairers as part of its motor insurance offering, which it offers to customers who require a recommendation in the event of an accident. In September 2016 Zurich launched its DigitalResolve programme in New Zealand to holders of its Security and Privacy Protection policy. The programme provides a team of experts to help businesses reduce the impact of, and aid in the recovery from, cybercrime.

Other competitors

- 6.30 In addition to the above, there are over 75 insurance companies listed with the Reserve Bank of New Zealand and registered as licensed insurers in New Zealand.¹⁰

Role of banks in the sale of insurance in New Zealand

- 6.31 New Zealand's trading banks are active in the retail insurance markets. Insurance companies such as IAG, Suncorp and Tower sell "white label" insurance products (typically house, contents and motor vehicle policies) to banks, which banks resell in conjunction with other financial services.
- 6.32 None of the banks currently distributing insurance products in New Zealand underwrite the policies they sell. Instead, banks contract with an underwriter (an insurance company) to distribute the underwriter's product, which may be branded with the bank's logo.¹¹

Role of insurance brokers in sale of insurance in New Zealand

- 6.33 Insurance brokers act as intermediaries between insurance companies and customers (either of personal or commercial insurance).
- 6.34 Brokers provide specialist advice on insurance products and offer advice on insurance products. Brokers have visibility of insurance providers' retail prices, which enables them to help clients find insurance that meets their needs at the most competitive price available.
- 6.35 There are over 200 insurance broking firms in New Zealand, ranging from large global firms to small broking businesses.
- 6.36 Large broking firms (such as Crombie Lockwood's subsidiary, Offshore Market Placements Limited) have the ability to place insurance offshore. Accordingly, brokers are able to place insurance outside New Zealand with companies such as Lloyds. Suncorp understands that there are few barriers to companies self-sourcing insurance by dealing directly with international underwriters (such as Lloyds) or through intermediaries such as Crombie Lockwood's subsidiary, Offshore Market Placements Limited, which provides the New Zealand service component of Lloyds underwritten products direct to the New Zealand market.

Role of trade associations

- 6.37 The ICNZ plays a role in representing the insurance industry. There are currently 26 members, all of whom are licensed insurers under the Insurance (Prudential Supervision) Act 2010.¹² Suncorp, AAI, and Tower are all ICNZ members.

¹⁰ RBNZ *Register of licensed insurers in New Zealand*. Accessible at: <http://www.rbnz.govt.nz/regulation-and-supervision/insurers/licensing/register>.

¹¹ *Re IAG (NZ) Holdings Limited and Lumley General Insurance (NZ) Limited* [2014] NZCC 12 at [49] and [50].

¹² "About us" Insurance Council of New Zealand. Accessible at: <http://www.icnz.org.nz/about-us/>.

6.38 Members of the ICNZ share the following types of information (on a product line level) with the ICNZ on a quarterly basis:

- (a) gross written premium;
- (b) net earned premium; and
- (c) net earned claims costs.

6.39 This information is consolidated by ICNZ and shared between members at a company level indicating market share, as a benchmark for premiums in each class of business and to illustrate loss ratio.

Lloyd's

6.40 Lloyd's of London ("**Lloyd's**") is not a company but a market that provides specialist insurance for different categories of risk. Business written at Lloyds is brought to specialist syndicates, who price and underwrite risk via brokers and cover holders.¹³

¹³ "About us" Lloyd's. Accessible at: <https://www.lloyds.com/lloyds/about-us>.

PART D: COMPETITIVE ASSESSMENT**7. Relevant markets****Market definition***Approach of previous regulators*

7.1 The Commission has analysed the relevant insurance markets in its recent decisions of *IAG/AMI* and *IAG/Lumley*. The Commission in those cases segmented the market as "personal" and "commercial" and further segmented these by products. Specifically, the markets were defined as follows:

- (a) domestic house and contents;
- (b) private motor vehicles;
- (c) private pleasure craft;
- (d) commercial motor vehicles;
- (e) commercial property (including material damage and business interruption);
- (f) various forms of liability (including commercial liability);
- (g) commercial hulls;
- (h) marine and air cargo; and
- (i) other commercial products (eg, contract works and engineering).

7.2 However, in conducting its assessment, the Commission considered the competitive effects of some personal and commercial products collectively (while others were considered separately).¹⁴

7.3 Specifically, in the personal products segment, all personal products were considered in aggregate except for:

- (a) personal insurance products sold to banks; and
- (b) pleasure craft insurance.

(These two were considered separately).

7.4 In the commercial insurance markets, all commercial products were considered in aggregate except for:

- (c) insurance for cars;
- (d) insurance for heavy vehicles;
- (e) commercial insurance for SMEs when sold in bundles.

(These were considered separately).

¹⁴ At [61].

7.5 The Commission has also previously considered the underwriting and distribution components of the insurance products together when assessing the competition effects of an acquisition of relevant markets.

7.6 In the *IAG/AMI* decision, the Commission also considered that there were national markets for:¹⁵

- (a) the provision of windscreen repair services; and
- (b) the provision of collision repair services.

The overlapping goods or services

7.7 Suncorp and Tower overlap in connection with the provision of:

- (a) domestic house and contents;
- (b) private motor vehicle insurance;
- (c) private pleasure craft insurance;
- (d) commercial motor vehicle insurance;
- (e) commercial property (including business interruption); and
- (f) various forms of liability (including commercial liability).

7.8 Suncorp and Tower also compete to buy services to fulfil their claims obligations, including windscreen repair/replacement and collision repair services.

8. Overview of the competitive dynamics

Current competitive dynamics in the insurance industry

8.1 In general, the New Zealand insurance market (and the global market) is characterised by a proliferation of strong competitors. For example, there has been, and continues to be, strong competition in general insurance markets such as domestic house and contents insurance, and domestic motor vehicle insurance.¹⁶ “Substantial competitors” such as Tower, Suncorp, IAG, Zurich, and Lumley are well-resourced companies with trusted and respected brands.¹⁷ Further, smaller insurers also provide a competitive constraint in many of the general insurance markets.¹⁸

8.2 Enhancing this competitive dynamic, there is significant countervailing power from buyers in both personal and commercial markets. For example, there are plenty of options for customer switching,¹⁹ with brokers “enhance[ing] the degree of competitive vigour in the relevant market by reducing purchasers’ search and switching costs”.²⁰

8.3 Australia has also identified that brokers play an important role in the commercial insurance sector. The Australian Competition and Consumer Commission stated that brokers “enhance[ing] the degree of competitive vigour in the relevant market by reducing

¹⁵ *IAG/AMI* at [2.3] - [2.4].

¹⁶ *IAG/AMI* at [59], *CGU/Norwich* at [69] and [91].

¹⁷ *IAG/AMI* at [66], *CGU/Norwich* at [69], *IAG/Lumley* at [175].

¹⁸ *CGU/Norwich* at [69].

¹⁹ *IAG/Mike Henry Travel Insurance* at [126] – [128].

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

purchasers' search and switching costs".²¹ Suncorp has observed that this is also the case in New Zealand in both the commercial and personal insurance markets. []

- 8.4 In 2014, in its consideration of IAG's acquisition of Lumley, the Commission outlined the impacts of the Canterbury earthquakes on New Zealand insurers as follows (and considered that the likeliness of new entry into the insurance markets was accordingly lower at that time):²²
- (a) insurance companies are facing considerably higher reinsurance costs as they renew their insurance programmes;
 - (b) most insurers are moving from providing total replacement to a capped sum insured cover for property;
 - (c) increased premiums;
 - (d) the withdrawal of some insurance underwriters from the market or a reduction by some underwriters in the geographic or product coverage, particularly in respect of property (for example, since the quakes, Zurich has withdrawn from catastrophe cover south of Hamilton).
- 8.5 Suncorp considers that, while this was the case at the time of the *IAG / Lumley* decision, the market dynamics in New Zealand have changed considerably in the past three years. This is evidenced by the substantial number of new competitors entering the New Zealand insurance markets since 2014 and successful expansion from existing competitors, as discussed in further detail below.

Market shares

- 8.6 Suncorp's estimates of market shares are set out in Tables 1–3 below. These estimates are based on the latest ICNZ market data available to Suncorp, internal analysis by Suncorp employees, and information provided to Suncorp as part of the sales proposal process.
- 8.7 Market share has been measured in the tables below by percentage and by gross written premiums for both underwriting (white label) and retail distribution components of the market.
- 8.8 Suncorp notes that, as not all insurers are members of the ICNZ, not all insurers provide data to the ICNZ. Because the estimated market shares based on ICNZ data accounts for only 26 of New Zealand of insurance providers²³ (and, as noted above at 6.30, there are over 75 registered providers of insurance in New Zealand), the estimated markets shares for Suncorp, Tower, and other ICNZ members will be greater than the actual underlying position.
- 8.9 Additionally, the market share data below does not reflect offshore commercial insurance that is sourced by New Zealand commercial enterprises. Suncorp understands that many major commercial enterprises can and do source insurance offshore. This also contributes to the estimated market shares based on ICNZ data being greater than they actually are.

²¹ ACCC *Proposed acquisition of Promina Group Ltd* (12 January 2007) at [23].

²² *IAG/Lumley* at [46].

²³ <http://www.icnz.org.nz/about-us/>

Table 1: Market share – commercial & personal combined (i.e all of the general insurance market)²⁴

Company	Market share (%)	Gross written premiums (\$M)
IAG	45%	\$2,383
Suncorp (Vero & AAI)	25%	\$1,360
Tower	5%	\$244
Combined market share	30%	\$1,604
QBE	7%	\$370
FMG	4%	\$236
AIG	3%	\$179
Allianz	3%	\$160
Chubb	2%	\$122
Zurich	1%	\$67
MAS	1%	\$66
Great Lakes Reinsurance (UK) SE – NZ Branch ²⁵	1%	\$65
Youi Pty Ltd	1%	\$31
Others	1%	\$61

Table 2: Market share of Suncorp and Tower by product category²⁶

Product		IAG	Suncorp	Tower	Combined	FMG	MAS	Youi	Others ²⁷
Personal insurance	Domestic house and contents	0	0	0	0	0	0	0	0
	Private motor vehicles	0	0	0	0	0	0	0	0
	All others	0	0	0	0	0	0	0	0
	Total	0	0	0	0	0	0	0	0
Commercial insurance	Commercial motor vehicles	0	0	0	0	0	0	0	0
	Commercial property	0	0	0	0	0	0	0	0
	All others	0	0	0	0	0	0	0	0
	Total	0	0	0	0	0	0	0	0
Total		0	0	0	0	0	0	0	

²⁴ Information on ICNZ members is available and current as at June 2016.

²⁵ Great Lakes Reinsurance (UK) SE, trading as Great Lakes New Zealand, is a German company that underwrites Cover-More travel insurance, the insurance partner of Flight Centre in New Zealand and globally.

²⁶ Source: ICNZ and Suncorp estimates.

²⁷ See Table 1. This indicates the share of other competitors in Table 1, not all competitors in New Zealand.

Table 3: Gross written premiums of Suncorp and Tower by product category (\$M)²⁸

Product		IAG	Suncorp	Tower	Combined	FMG	MAS	Youi	Others ²⁹
Personal insurance	Domestic house and contents	0	0	0	0	0	0	0	0
	Private motor vehicles	0	0	0	0	0	0	0	0
	Private pleasure craft	0	0	0	0	0	0	0	0
	Total	0	0	0	0	0	0	0	0
Commercial insurance	Commercial motor vehicles	0	0	0	0	0	0	0	0
	Commercial property	0	0	0	0	0	0	0	0
	Various forms of liability (incl commercial liability)	0	0	0	0	0	0	0	0
	Total	0	0	0	0	0	0	0	0
Total			0	0	0	0	0	0	0

8.10 Suncorp further notes that 0% of its products are sold through the "affinity channel" (ie banks, AMP, etc) as white label insurance. This would increase to 0% following the Transaction.

8.11 As the Commission will readily observe, the merged entity's market share will still be significantly smaller than IAG's market share, before it acquired Lumley.

Competition between existing competitors

8.12 The relevant markets are competitive and the merging parties' existing competitors will continue to constrain the merged firm post-Transaction. This is evidenced by the market shares in Tables 1-3 above and is further detailed below.

8.13 As the Commission observed in *AIG/AMI* and *IAG/Lumley*, there are a number of well-resourced and established insurance providers with trusted and respected brands.³⁰ In those decisions, the Commission considered that the level of existing competition meant that those acquisitions were unlikely to result in a substantial lessening of competition.³¹ Suncorp currently faces strong competition in the commercial and personal insurance markets from those same well-resourced competitors.

8.14 Following the Transaction, Suncorp will continue to face material constraint from a number of credible competitors. In both personal and commercial insurance markets, the primary competition is currently, and will remain, between IAG and the remaining suppliers, which includes a number of smaller but established competitors, including MAS, FMG and Youi, who will continue to compete aggressively for market share.

²⁸ Source: ICNZ and Suncorp estimates.

²⁹ See Table 1. This indicates the revenue of other competitors in Table 1, not all competitors in New Zealand.

³⁰ *IAG/AMI* at [66].

³¹ *IAG/Lumley* at [92], [119].

8.15 There are additional constraints specific to the commercial markets, personal markets and in the supply of white label insurance to banks.

- (a) Commercial insurance products. Suncorp also competes against offshore providers. Specifically, there is direct competitive constraint provided from offshore providers (such as Lloyds) and insurance brokers, who are the major sellers of commercial insurance lines, and who offer customers insurance products from both domestic and overseas providers.

Suncorp has also been experiencing increasing competition from Ando and Chubb in these markets, and understands it has recently been losing some commercial accounts to those competitors.

- (b) Personal insurance products. There have been several new entrants in the past two years (discussed below). Once these competitors have established themselves in the market, Suncorp also expects them to act as a competitive constraint.

There has also been substantial expansion by providers of commercial insurance into the personal insurance markets. For example, QBE has been expanding into the personal insurance markets over the past 2-3 years, primarily targeting insurance brokers' personal insurance business. Suncorp understands that in the past couple of years QBE has taken personal insurance business from Suncorp via insurance brokers. Suncorp expects that Chubb (which is well-known overseas for its high net-worth personal insurance products) may also begin promoting its personal insurance products in New Zealand.

- (c) Supply of white label insurance to banks. Suncorp will continue to be constrained by existing competitors who aggressively bid on bank tenders (such as AIG, and recently, QBE), by IAG (who is the insurer for the majority of banks in New Zealand), the threat of bank-assisted entry of a new insurance provider, the ability for banks to self-insure, and the significant countervailing bargaining power of the banks themselves.

8.16 Any attempts by Suncorp post-Transaction to increase price would be defeated by existing competitors, meaning the Transaction could not have the effect of substantially lessening competition.

Market share aggregation is low

8.17 Because Tower has a []% share in the personal insurance markets and a []% share in the commercial insurance markets, the degree of market share aggregation that would arise from the Transaction is low and unlikely to make a material change to the competitive dynamic.

Suncorp and Tower are not each other's closest competitors

8.18 Additionally, Tower and Suncorp are not each other's closest competitors. The complementary nature of the businesses is one reason that Tower is an attractive investment for Suncorp.

Personal insurance markets

8.19 Suncorp considers that IAG (through AMI and State Insurance) and Youi are Vero's closest competitors for domestic house, contents and motor. Suncorp also faces significant competition from ASB, BNZ and Westpac in this market which are each underwritten by IAG.

8.20 Additionally, Suncorp and Tower personal insurance product offerings are highly differentiated on coverage, service and claims handling and reputation. Specifically:

(a) [³²

³³ ³⁴ ³⁵

(b)]

(c) Brand. The trustworthiness of a brand is relevant to many consumers. Vero, through the AAI brand, has been voted as New Zealand's most trusted general insurance provider for six years,³⁶ while Tower is not featured as a "Trusted Brand" by Reader's Digest.

Commercial insurance markets

8.21 Suncorp has a stronger presence in the commercial insurance markets, while Tower has only a small presence in the commercial markets, and Tower's rural insurance offering is similarly very small. Unlike Suncorp, Tower does not participate in the broker market where the vast majority of commercial insurance is transacted. Instead, Tower has limited its commercial offerings to the direct commercial insurance channels (which makes up a small portion of the total commercial insurance markets).³⁷ Suncorp considers that its acquisition of Tower would not materially change its existing commercial insurance market share.

8.22 Accordingly, Suncorp does not consider that its acquisition of Tower would significantly change competitive dynamics in the personal or commercial insurance markets.

The acquisition markets – windscreen repair services and collision repair services

8.23 In *IAG / Lumley* the Commission considered the competitive impact of the acquisition in a number of markets were IAG and Lumley competed to buy services – namely, the collision repair services market and the windscreen repair services market.³⁸ In that decision, the Commission pointed to the merged entity's relatively low market share being insufficient to substantially lessen competition in the relevant acquisition markets (as well as to the fact that non-insured work, which is estimated to account for around 20% of the total collision repair market, would remain unaffected by the acquisition). The Commission also considered that the parties would be unlikely to have the incentive to depress prices to low levels because any consequent reduction in the quality of repair work would likely cause IAG to lose insurance customers.

8.24 Suncorp considers that this assessment is highly relevant to the proposed Transaction. Suncorp and Tower's respective purchasing in the acquisition markets largely accords with their respective market shares in the private and commercial motor vehicle insurance markets (where Tower has a share of []% and []% respectively). Given Tower's small market shares in both these markets, and its respectively small activity in the acquisition markets, the removal of Tower from the acquisition market would be unlikely to strengthen

³² Elois Gibson "What will it cost to rebuild" Stuff.co.nz (26/8/2013) at:

<http://www.stuff.co.nz/business/money/9087849/What-will-it-cost-to-rebuild> Lane Nichols "Insurance: Is your home fully covered?" at NZ Herald (1 Oct 2014) at:

http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11334440 ;

³³ <https://www.tower.co.nz/quote/house-and-contents#/0>

³⁴ AA Insurance is the current overall winner of Canstar's Blue Most Satisfied Customer Awards for home and contents insurance. It has held this award for Home and Contents Insurance since 2013 and for Car Insurance since 2011.

³⁵ []

³⁶ Trusted Brands New Zealand 2016 award winner. <https://www.aainsurance.co.nz/readers-digest-most-trusted/>

³⁷ []

³⁸ *IAG/Lumley* at [165].

Suncorp's buyer power to such an extent that a substantial lessening of competition would be likely.

Potential competition

Conditions of entry

8.25 Suncorp considers that the barriers to entry in both the commercial and personal insurance markets are not significant, as is evidenced by recent entry and expansion in these markets, and that the conditions of entry largely consist of:

- (a) Regulatory requirements. The legal obligations associated with establishing an insurance business are set out in the Insurance (Prudential Supervision) Act 2010 (the "**Act**"), which establishes licensing and registration rules and empowers the Reserve Bank to administer them. This Act provides the major supervisory regime for insurance entities, sets out the requirements for an insurer to become licenced and registered, and provides for the ongoing supervision of an insurance company's operations after it has been licensed.
- (b) Advertising and building brand presence. A new insurer would need to invest in sales and marketing support to make their insurance product known to customers. While this cost would likely be the same for all market participants (ie new entrants as well as global companies entering New Zealand), building brand awareness may be easier for well-established and trusted brands from overseas, or New Zealand companies with existing presence in other markets, than for new companies seeking to enter the insurance markets.
- (c) Establishing networks with distribution channels (for example, with brokers and banks). Historically, it was necessary for an insurance provider to access distribution channels (such as insurance brokers) in order to successfully enter the personal and commercial insurance market. However, this is no longer the case. Direct insurance providers now primarily sell direct to customers online and using centralised call centres, especially in the personal insurance markets. This has significantly reduced the costs of establishing distribution channels and has made entry into the insurance markets easier for new entrants in recent years (as is evidenced by the entry of Youi, QBE and others in recent years, as further detailed below at 8.37 to 8.40).
- (d) Knowledge in pricing, risk and claim handling. The Commission has previously determined that acquiring knowledge of pricing, risk, and claim handling specific to a market could take up to 24 months.³⁹ Insurers can (and do) acquire this knowledge by training staff or by "poaching" a key employee from another insurance company.
- (e) Reinsurance. All existing insurers, as well as any new entrant, need to incur the costs relating to reinsurance arrangements. While this is more of an ongoing operating cost than a once-off entry requirement, it is likely to be a relevant consideration (especially for an overseas insurance company looking at the viability of entering the New Zealand market), as the costs of securing reinsurance have risen in New Zealand following the 2010, 2011 and 2016 earthquakes. However, as noted below at 8.37 to 8.40, Suncorp considers that the examples of recent entry and expansion indicate that this is not likely to be a significant deterrent for new entrants.

³⁹ IAG/Mike Henry at [163].

Factors affecting entry and expansion in the insurance markets

- 8.26 In 2012, (in *IAG/AMI*) the Commission considered that barriers to entry in the personal insurance markets were "not onerous" despite regulatory requirements⁴⁰ and that if the merged entity were to raise prices above the competitive level, specific new entry could occur.⁴¹
- 8.27 Since that time, there have been several new and significant entries into both the commercial insurance markets (namely Ando, QBE and Berkshire) and the personal insurance markets (namely, Youi and QBE), which indicates that barriers to entry are indeed "not significant", but also that the costs of re-insurance have not been a significant deterrent to new entrants.
- 8.28 With regards to the personal insurance markets, Suncorp notes that, while the Commission did not set out its view on the barriers to entry in the personal insurance markets in *IAG/Lumley*, in a subsequent interview the Chairman, Dr Mark Berry, appeared to move away from the reasoning in *IAG/AMI*:⁴²
- "However," Berry said "– on the evidence – the Commerce Commission reached a view that new entry would be difficult, with its decision to clear the deal not based on the likelihood of a new entrant coming into the market."
- "Our assessment has been, conservatively, that new entry is not going to be easy in this market, but who knows what may happen," said Berry.
- Asked why in his view it would be hard for a new entrant, Berry pointed to the need to set up and establish a network, getting a new brand accepted, and going through "all the regulatory hurdles" which would take time.
- "The crucial thing is New Zealanders have to be confident about who they're dealing with. If a major international player came out here with the credentials and set themselves up and invested in the set up they could well succeed. (But) didn't have any submitters making reference to that kind of evidence of likely new entry."
- 8.29 In both cases, Suncorp acknowledges that regulation is a condition of entry – however, this condition is one that can be easily met by most entrants. Additionally, while there are costs associated with getting a new brand accepted and developing networks, this is no greater in the personal insurance markets than in any other consumer-facing market and is a hurdle that can be easily overcome by advertising, market research and (in the case of established companies looking to venture into the insurance markets) leveraging off existing brand presence and existing networks.
- 8.30 Entry into the market is particularly easy for existing global insurance firms that have presence in other domestic markets,⁴³ or who are not currently present in the insurance industry but have a strong brand that can be carried over – such as large banks.⁴⁴ There is evidence of this in New Zealand, as described below, with the entry of Ando, QBE, and Berkshire.

⁴⁰ *IAG/AMI* at [87].

⁴¹ *IAG/AMI* at [82].

⁴² "Commerce Commission says IAG buying Lumley doesn't change NZ insurance markets much" (10 June 2014) Interest.co.nz

⁴³ *IAG/AMI* at [87], *ACCC Proposed acquisition of Promina Group Ltd* (12 January 2007) at [34] and [48].

⁴⁴ *ACCC Proposed acquisition of Promina Group Ltd* (12 January 2007) at [34] and [48].

- 8.31 Expansion within insurance sectors has also been described as relatively straightforward.⁴⁵ There is “ready supply-side substitution” for insurance providers,⁴⁶ who can easily provide their expertise to other product areas.⁴⁷

Factors relating specifically to commercial insurance

- 8.32 With regards to the commercial insurance markets, the Commission has considered that barriers to entry are “not negligible” but that expansion is “likely to be less onerous” once an insurance provider has entered either of the insurance markets.⁴⁸
- 8.33 Suncorp understands that in the commercial markets, businesses may be risk adverse and therefore reluctant to deal with a new entrant who does not have a high insurance rating. However, this is unlikely to be a barrier for large global insurance providers entering the New Zealand market or existing providers of personal insurance seeking to expand into the commercial insurance markets.
- 8.34 Additionally, Suncorp understands that many businesses are price-sensitive as regards commercial insurance and may switch to a lower-rated new entrant to save costs. To this end, Suncorp does not consider the hurdles relating to building brand presence to be significantly greater in the commercial insurance markets than for the personal insurance markets.

Likelihood, extent and timeliness of entry (LET test)

- 8.35 Suncorp considers that there are four main types of potential competition and/or likely new entry and expansion in the insurance markets, namely:
- (a) New entry by an international insurance provider into the New Zealand markets (either on its own or assisted by a bank). As is evidenced by the examples of recent entry and expansion in both the personal and commercial insurance markets, entry would be especially straightforward for an established international or Australian provider of insurance. Banks could incentivise or assist entry by a global or Australian insurance provider into New Zealand (ie in order to secure itself lower-priced white label insurance).
 - (b) Expansion by an existing New Zealand insurer (for example, expansion by a commercial insurance provider into personal insurance). Expansion into one segment (for example, from commercial into personal) would be relatively easy for an established provider of insurance in New Zealand.⁴⁹
 - (c) Self-insurance. Banks could self-insure and provide their own white-label insurance, and Suncorp considers that this would likely occur if insurance providers raised their prices or reduced their product offerings.
 - (d) Complete new entry. Entry by either a completely new company or a company that has been active in other markets, such as the financial services market, into the personal insurance markets is possible. Though Suncorp considers this to be less likely than entry or expansion by established insurance companies, recent entry by a provider of financial services into the personal insurance markets (see below) shows that this is a realistic possibility.

⁴⁵ CGU/Norwich at [79], IAG/Lumley at [141].

⁴⁶ CGU/Norwich at [79], ACCC Proposed acquisition of Wesfarmers’ insurance underwriting business – Ref 53459 (summary) (26 March 2014).

⁴⁷ ME/1717/05 – CGU International Insurance Plc/Gresham Insurance Company Ltd (summary) (5 July 2005).

⁴⁸ IAG/Lumley at [140] and [141].

⁴⁹ In IAG/Lumley the Commission recognised this and noted at [119] there was the ability and incentive for some existing insurance providers to expand into other segments of the insurance markets.

- 8.36 Suncorp considers that there is a high likelihood of entry and expansion in both the commercial and personal insurance markets. This will continue to be the case post-Transaction and will continue to constrain Suncorp, particularly in the personal insurance markets (where there has been both recent entry in the past two years as well as significant expansion by companies such as Youi) and in the white label insurance markets (where, as further discussed from 8.42, a new entrant or company seeking to expand into this area would only need to win one tender from one bank in order to obtain sufficient scale and presence to become a credible and effective competitor).

Examples of entry and expansion in the personal insurance

- 8.37 The ability companies have to easily overcome barriers to entry and expansion is evidenced by the following recent examples of entry into the personal insurance markets since 2014:
- (a) In April 2014, Lifetime Income Limited ("**Lifetime**") entered the market and became a licenced insurance provider as required under s 19 of the Insurance (Prudential Supervision) Act 2010.⁵⁰ Lifetime offers customers combined investment and insurance services by offering customers income insurance in conjunction with financial investment services. Lifetime is the first insurance provider to offer a combined investment / insurance product in this manner and, while still relatively new on the market, Lifetime is an example of the ability of new entrants to successfully overcome the regulatory hurdles, as well as the potential for new entrants to enter the insurance markets by offering innovative products.
 - (b) In November 2016, DPL Insurance Limited (an insurance provider under the umbrella of the Turners group, which also the entity trading as Turners Cars) acquired Suncorp's Autosure business, including the Autosure brand, mechanical breakdown and payment protection insurance portfolios.⁵¹ The Turners Limited Chairman, Grant Baker, said that the purchase of Autosure "completely aligns with our strategy of building on organic growth with acquisitions of reputable businesses and brands that build capability and scale in the integrated automotive financial services market".⁵² This is a recent example of an existing company leveraging off its existing brand presence and networks to enter into the personal insurance markets.
- 8.38 Entrants which entered just prior to 2014 have also been very successful in establishing and growing their insurance businesses in New Zealand.
- (a) Youi is now a strong brand with a growing New Zealand presence, with a GWP of \$31 million based on ICNZ statistics.
 - (b) QBE (an established insurance provider in the commercial insurance markets in Australia, and a new entrant to the commercial insurance markets in New Zealand) has been expanding into personal insurance markets over the past 2-3 years, primarily targeting insurance brokers' personal insurance business. Suncorp understands that in the past couple of years, QBE has taken personal insurance business from Suncorp via insurance brokers.

⁵⁰ "How it works" Lifetime Retirement Income. Accessible at: <http://www.lifetimeincome.co.nz/lifetime-income-fund/how-it-works/>; and RBNZ Register of licensed insurers in New Zealand. Accessible at: <http://www.rbnz.govt.nz/regulation-and-supervision/insurers/licensing/register>.

⁵¹ Turners Limited Company Announcement (21 November 2016). Accessible at: <https://www.nzx.com/files/attachments/248544.pdf>.

⁵² Ibid.

Examples of entry and expansion in the commercial insurance markets

- 8.39 There have also been examples of entry and expansion into the commercial insurance markets since 2014, namely:
- (a) In June 2015, Berkshire Hathaway Specialty Insurance Company ("**Berkshire**") became a licenced insurance provider as required under s 19 of the Insurance (Prudential Supervision) Act 2010.⁵³ Berkshire offers accident and health, casualty, construction, executive, marine, power, and property insurance products.
 - (b) In 2016, the Hollard Insurance Company Pty Ltd (an established Australian insurance provider) entered as an insurance provider in New Zealand, marketing commercial insurance solutions through the brand name "Ando".⁵⁴ Suncorp expect this company to be a formidable presence in the commercial insurance markets, as the company has strong financial backing from its' parent company, a strong A- rating with A.M. Best, and has 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 understands that Hollard has been particularly active in corporate property, and that it has purchased a 20% share in AIG.
 - (c) In December 2015, QBE (a well-established Australian insurance provider) became a licenced insurance provider as required under s 19 of the Insurance (Prudential Supervision) Act 2010.⁵⁵ Insurance products offered include accident and health, commercial motor, contract works and engineering, liability, marine, property, trade credit, and travel.
- 8.40 Additionally, Suncorp has seen evidence of existing commercial insurance providers seeking to expand their offerings. Suncorp also understands that Westpac may have been approached by QBE during the course of the *IAG/Lumley* merger.

Countervailing power of buyers

Personal insurance markets

- 8.41 Suncorp faces countervailing power from individual consumers as well as banks (who purchase white label insurance). This provides (and will continue to provide) a significant constraint on Suncorp in the personal insurance markets.

Countervailing power of banks

- 8.42 In New Zealand and overseas, banks have been characterised as having a degree of countervailing power in insurance markets. Banks are active in the retail of insurance products, and distribute a number of personal insurance products underwritten by insurance companies.⁵⁶ Banks have the ability to design their desired insurance product, and then obtain competitive tenders for the underwriting of that product – with the re-tendering process sometimes occurring in a relatively short period (for example, every 3-

⁵³ RBNZ *Register of licensed insurers in New Zealand*. Accessible at: <http://www.rbnz.govt.nz/regulation-and-supervision/insurers/licensing/register>.

⁵⁴ "About" Ando. Accessible at: <http://www.ando.co.nz/about>; and RBNZ *Register of licensed insurers in New Zealand*. Accessible at: <http://www.rbnz.govt.nz/regulation-and-supervision/insurers/licensing/register>.

⁵⁵ RBNZ *Register of licensed insurers in New Zealand*. Accessible at: <http://www.rbnz.govt.nz/regulation-and-supervision/insurers/licensing/register>.

⁵⁶ *IAG/Lumley* at [49].

4 years).⁵⁷ This gives the banks the upper hand when renegotiating with the underwriters, who often make concessions in order to retain the bank's business.⁵⁸

8.43 Suncorp considers that both Suncorp and IAG will continue to face significant countervailing power from banks following the Transaction. This is illustrated by the following:

- (a) Loss of (or gain of) a bank customer is significant to insurers. As noted above, each bank is relatively important to insurers in terms of total sales and the loss of a bank customer would significantly impact an insurer's profitability. For example, approximately []% of Suncorp's insurance products are distributed via its "affinity" channel, of which the provision of white label insurance to one bank (ANZ), makes up the major portion.⁵⁹
- (b) Low switching costs. The major banks would provide substantial competitive constraint, especially as banks have been known to switch underwriters⁶⁰ and (as the Commission noted in *IAG/Lumley*) "switching costs are not likely to be so high that banks would not consider switching underwriters".⁶¹
- (c) Banks are price sensitive and seek to obtain the best prices for customers. Banks are price sensitive (given that bank insurance premiums are constrained by downstream competition) and will seek to obtain the best insurance prices for their customers.⁶² In addition, consumers are likely to switch away from banks supplying insurance products⁶³ so banks are unlikely to pass through price increases from insurers to customers (and are likely to be aggressive when negotiating prices from insurers). Instead, banks are known for being highly resistant to price increases, and successfully push underwriters to provide insurance to banks on very tight margins.
- (d) AIG and QBE could be alternative providers of white label insurance. If either Suncorp or IAG were to attempt to raise prices following Vero's acquisition of Tower, Suncorp considers it very likely that other insurance providers would be capable of bidding for bank tenders. For example, Suncorp understands that both AIG and QBE have bid on bank tenders in the past two years. QBE is currently an insurance partner with ANZ in Australia, and so could use its existing relationship to assist it with winning a contract with ANZ in New Zealand. Suncorp's understanding is consistent with the Commission's findings in *IAG/Lumley* that "after speaking to several insurers that do not currently provide underwriting services to banks, are satisfied that there are likely to be insurers that have the ability and intention to bid for bank tenders".⁶⁴

A bank could assist an overseas or Australian insurance company to enter. Suncorp considers that this type of entry is particularly likely, given the international trend for global companies to use the same insurance partner to underwrite their businesses in different countries. For example, Flight Centre uses Cover-More globally to provide its travel insurance, while BMW uses Allianz to underwrite its motor vehicle insurance in New Zealand and internationally.

Many of New Zealand's banks have sister or parent companies overseas, such as in Australia. Where banks have relationships with global or Australian

⁵⁷ *CGU/Norwich* at [84].

⁵⁸ *Ibid.*

⁵⁹ []

⁶⁰ *IAG/AMI* at [78] and [79].

⁶¹ *IAG/Lumley* at [106].

⁶² *IAG/Lumley* at [98] – [103].

⁶³ *IAG/Lumley* at [105].

⁶⁴ *IAG/Lumley* at [115].

insurance companies that do not have a presence in New Zealand, a bank may incentivise entry. Similarly, a bank could assist an existing insurance provider that it has a relationship with overseas (such as Westpac with Allianz⁶⁵) to expand in the personal insurance markets in New Zealand.

A new entrant would only need to win one tender with a large bank in order for entry into New Zealand to be financially viable and securing a tender from a large bank would also enable the new entrant insurance provider to obtain the scale and presence required to be a credible and effective competitor in the personal insurance markets.

- 8.44 Because of the "winner takes all" nature of the provision of white label insurance, and because of the proportion of insurers' revenue that white label insurance makes up, and in light of the likelihood of New Zealand-based, global or Australian insurance providers entering this channel, Suncorp considers that both it and IAG would continue to face significant countervailing power from banks post-Transaction.

Countervailing power of consumers

- 8.45 The Commission has noted in *IAG/AMI* that there is a low (or non-existent⁶⁶) cost to consumers in switching to alternative providers of personal insurance.⁶⁷ In the majority of instances, insurance policies can be terminated on notice by the consumer without any penalty and, as noted by the Commission, there is evidence that consumers are able to (and do) switch providers.⁶⁸
- 8.46 Consumers also have the ability to select from a number of insurance providers, and are able to conduct price comparisons easily and quickly, whether by using price comparison websites or by seeking quotes from individual insurance companies' websites.
- 8.47 The ability of consumers to switch insurance providers, and banks to exercise meaningful countervailing power, currently acts, and will continue to act, as a significant constraint on Suncorp in the personal insurance markets.

Countervailing power of brokers

- 8.48 Suncorp estimates that approximately []% of its personal insurance business comes to it through insurance brokers. An insurance brokers' role is to find the best insurance for their customers at the lowest price. Accordingly, if Vero were to attempt to raise its personal insurance prices, brokers (who supply a substantial portion of Vero's business) would simply offer their customers an alternative insurance option.
- 8.49 On the other hand, there will be no material changes to the dynamics on the sell-side of the market segment, given Tower does not distribute through brokers to any material extent.

Commercial insurance markets

- 8.50 Insurance brokers and purchasers of commercial insurance exercise countervailing power and will constrain Suncorp after the Transaction in the following ways:
- (a) Insurance brokers, who have access to all insurance providers' prices and offerings, play a key role in the commercial insurance markets, and enable consumers to exercise substantial countervailing power. If a commercial insurance provider attempted to raise prices, the broker would likely replace that

⁶⁵ For example, in Australia, Allianz underwrites Westpac's personal insurance products.

⁶⁶ *CGU / Norwich* at [70].

⁶⁷ *IAG/AMI* at [58].

⁶⁸ *IAG/Lumley* at [70].

provider with an insurance company that could provide a better offering to a broker's customer.

- (b) The potential for purchasers of commercial insurance to self-supply also provides those customers with leverage when negotiating prices with commercial insurance providers. Suncorp understands that there are few barriers to companies self-sourcing insurance by dealing directly with international underwriters (such as Lloyds) or through intermediaries such as Crombie Lockwood's subsidiary, Offshore Market Placements Limited, which provides the New Zealand service component of Lloyds underwritten products direct to the New Zealand market.

No coordinated effects

8.51 It is Suncorp's view that the relevant markets do not have any of the structural features noted in the Commission's M&A *Guidelines* as potentially facilitating coordinated conduct. For example:

- (a) Non-homogenous products. While Suncorp and IAG overlap in the provision of products in all insurance market segments, there is differentiation both in the product offerings and their customer bases.

For example, in the personal insurance markets, as IAG is the underwriter to at least 4 New Zealand banks (including BNZ, ASB and Westpac), Suncorp understands that a large share of IAG's market share is derived from its sales of white label insurance. Conversely, Tower only underwrites insurance for two smaller New Zealand banks (Kiwibank and TSB), and Suncorp one larger one (ANZ), with most of Tower's personal insurance products being marketed directly to consumers

- (b) Growing number of competitors and strong competition from outside firms. As noted above at 8.37 to 8.40, there has been recent entry and expansion in the insurance markets as well as strong competition from existing firms such as Youi, MAS, FMG, IAG, Allianz and QBE. The competitive constraint from these companies will continue post-Transaction and would significantly deter coordinated conduct in the insurance markets – as any coordinated increase in prices would merely provide greater opportunity for aggressive competitors and new entrants to grow their market share by offering lower prices to customers.
- (c) Ease of entry into the insurance markets. The conditions of entry are not prohibitive and a number of new insurance companies have entered the markets since 2014. This is a factor that would prevent coordination in the insurance markets.⁶⁹ Suncorp considers that, just as any increase in prices would provide opportunity for existing competitors to compete, it would similarly incentivise new entry, especially by overseas and Australian insurance companies looking for new areas to grow their insurance businesses. This will continue to constrain Suncorp following the Transaction.
- (d) Limited interaction between Suncorp and IAG. Aside from as members of ICNZ there is no formal or regular interaction between Suncorp and IAG.
- (e) Different size and cost structure. IAG will remain significantly larger than Suncorp post-Transaction, and accordingly Suncorp and IAG will continue to have different methods of operating their respective businesses and different cost structures. Indeed, IAG was significantly larger than the merged entity will be, even before it acquired Lumley.

⁶⁹ AMP/AXA at [65].

- (f) Innovation and changeable demand. In the past 5 years, Suncorp's prices in the commercial segment have decreased, and profitability has likewise decreased. In the personal insurance segment, profitability has decreased as claims volumes have increased. Across all segments, profitability has decreased because of claim trends and increased reinsurance costs.
- (g) Inability to readily observe each other's prices and volumes. Suncorp acquires limited pricing information by using a consulting agency that sources and collates the publicly available pricing information of State, AMI, TradeMe, Tower, AAI, and Warehouse Money, which is "scraped" from online sites for house, contents and motor vehicle insurance. This does not enable Suncorp to readily observe IAG's volumes or retail prices generally, and is not likely to enable it to coordinate its retail prices with those of IAG.
- (h) Merger unlikely to change conditions in the market that would make coordination more likely. Despite its established brand presence, Tower has not been a particularly vigorous, innovative, or aggressive competitor in recent years, and in 2016 Tower posted a half-year loss of \$8.7m (due in part from increased competition).⁷⁰ As discussed above, Suncorp does not consider that the Transaction would remove an aggressive competitor from the market.

8.52 Accordingly, Suncorp does not consider that the Transaction would be likely to lead to coordination in the markets for commercial insurance and/or personal insurance products.

⁷⁰ "Tower Insurance posts \$8.7m half-year loss" (24 May 2016) RNZ. Accessible at: [http://www.radionz.co.nz/news/business/304665/Tower-insurance-posts-\\$8-point-7m-half-year-loss](http://www.radionz.co.nz/news/business/304665/Tower-insurance-posts-$8-point-7m-half-year-loss)

FURTHER DOCUMENTATION / INFORMATION**Copies of most recent financial statements**

- 8.53 The latest financial statements for Vero are available on the Companies Office at: <https://www.companiesoffice.govt.nz/companies/app/ui/pages/companies/1331/documents>

Names and contact details of key competitors

- 8.54 The parties' main competitors are those listed above in paragraph 7. Please advise if the Commission would like Suncorp to provide it with the contact details for those companies.

Key customers

- 8.55 As key customers are individual consumers, customer information for those individuals has not been provided.

PART E: CONFIDENTIALITY**9. Reasons for confidentiality**

- 9.1 Confidentiality is sought in respect of the information in this application that is contained in square brackets and highlighted. Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the grounds that:
- (a) the information is commercially sensitive and valuable information which is confidential to the participants; and
 - (b) disclosure would be likely unreasonably to prejudice the commercial position of the participants, as the parties providing the information.
- 9.2 Suncorp requests that it be notified of any request made to the Commission under the Official Information Act 1982 for release of the confidential information. Suncorp also requests that the Commission seek and consider Suncorp's views as to whether the information remains confidential and commercially sensitive at the time responses to such requests are being considered.
- 9.3 The foregoing equally applies in respect of any additional information provided to the Commission that is expressed to be confidential.
- 9.4 A confidential version and a public version of this application have been provided.
- 9.5 In the confidential version of the application, confidential information is contained in square brackets and highlighted blue.

PART F: DECLARATION

I, Tim Buckett, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all the information specified by the Commission has been supplied;
- if the information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of the company and am duly authorised to submit this notice.

Tim Buckett, Chief Financial Officer NZ

Signature

Date