

18 November 2022

Commerce Commission – Te Komihana Tauhokohoko
Wellington

By email: misuseofmarketpower@comcom.govt.nz

Dear Madam/Sir,

ICNZ submission on draft Misuse of Market Power Guidelines

Thank you for the opportunity to submit on the Commerce Commission (**Commission**)'s draft Misuse of Market Power Guidelines (**Guidelines**).

By way of background, the Insurance Council of New Zealand - Te Kāhui Inihua o Aotearoa (**ICNZ**)'s members are general insurers and reinsurers that insure about 95 percent of the Aotearoa New Zealand general insurance market, including about a trillion dollars' worth of Aotearoa New Zealand assets and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as Product and Public Liability, Business Interruption, Professional Indemnity, Commercial Property and Directors' and Officers' insurance).

Please contact Jane Brown (jane@icnz.org.nz) if you have any questions about our submission or require further information.

Submission

ICNZ is pleased to see the development of Guidelines to supplement the legislation and notes that this is something we supported in our 2021 submission on the Commerce Amendment Bill.¹ We are supportive of the intended role of the Guidelines outlined on page 3, and acknowledge that the Guidelines are not law and are not legally binding.

Overall, ICNZ supports the draft Guidelines, and we only have two suggestions that we believe would improve the effectiveness of the Guidelines. The first suggestion relates to the examples provided of types of conduct that might meet the threshold of substantially lessening competition. While examples are useful, we believe the Guidelines could be improved by providing more borderline examples of misuse of market power. In ICNZ's opinion, the examples currently included are clearcut situations that section 36 has been breached. It would be helpful if the Commission could also

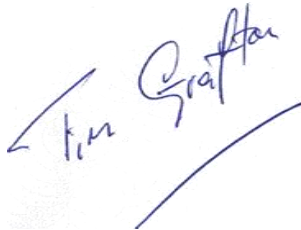
¹ https://www.icnz.org.nz/fileadmin/user_upload/ICNZ_submission_on_the_Commerce_Amendment_Bill.pdf.

include situations which demonstrate the approach when the circumstances behind the misuse of market power are not so black and white.

Secondly, in ICNZ's 2021 submission on the Bill, we wrote, "there is a risk that the proposed test if enacted, will negatively impact on insurers' ability to robustly negotiate with the essential suppliers for meeting claims obligations to customers, such as loss adjusters, panel beaters, whiteware suppliers and builders".² As the test has been left unchanged in the Act, we recommend including negotiations by a firm with downstream suppliers as an example of the type of conduct the Commission considers is unlikely to substantially lessen competition on page 27 of the Guidelines. This will ensure that insurers, and others, are able to continue having robust negotiations with suppliers to limit as far as possible, pricing impacts on consumers.

Please contact Jane Brown (jane@icnz.org.nz) if you have any questions on our submission or require further information.

Yours sincerely,



Tim Grafton
Chief Executive



Jane Brown
General Counsel

² At page 5.