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The Public Utilities Board of Manitoba
400 – 330 Portage Avenue
Winnipeg, MB R3C 0C4

Attention: Dr. Darren Christle, Executive Director and Board Secretary

Re: Insurance Brokers Association of Manitoba Application to Review and Vary Public Utilities Board Order 134/21 – CAC Manitoba Comments

Overview

The Manitoba Branch of the Consumers' Association of Canada (CAC Manitoba) appreciates the opportunity to comment on the application of the Insurance Brokers Association of Manitoba (IBAM) to review and vary the Public Utilities Board (PUB or Board) Order 134/21.

IBAM's application should be dismissed as it does not raise an error of fact that raises substantial doubt as to the correctness of the Board's Order.

The basis of IBAM's application is that it disagrees with the findings of fact made by the Board as it relates to MPI's new service agreement with brokers. The PUB made these findings of fact based on the entirety of the evidence before it, including information provided in MPI's General Rate Application, responses to information requests and cross-examination.



The legal test for a review and vary application

Under s. 44(3) of the *Public Utilities Board Act*, the board may review, rescind or vary its orders.¹

Rule 36 (4) of the Public Utilities Board Rules of Practice and Procedure indicate that:

The Board shall determine, with or without a hearing, in respect of an application for review, the preliminary question of whether the matter should be reviewed and whether there is reason to believe the order or decision should be rescinded, changed, altered or varied.

Rule 36. (5) a) of the Rules of Practice and Procedure authorizes the Board to, after its determination of the preliminary question above:

- a) dismiss the application for review if,
 - i) in the case where the applicant has alleged an error of law or jurisdiction or an error in fact, the Board is of the opinion that the applicant has not raised a substantial doubt as to the correctness of the Board's order or decision; or
 - ii) in the case where the applicant has alleged new facts not available at the time of the Board's Hearing that resulted in the order or decision sought to be reviewed or a change of circumstances, the Board is of the opinion that the applicant has not raised a reasonable possibility that the new facts or the change in circumstances as the case may be, could lead the Board to materially vary or rescind the Board's order or decision; or
- b) grant the application; or
- c) order a hearing or proceeding be held.

In essence and recognizing that the onus lies with the Applicant, the issue is not whether reasonable persons might have come to a different conclusion based on the same evidence but whether:

- a) there is an error of law, jurisdiction or fact that raises substantial doubt as to the correctness of the decision; or,

¹ *Public Utilities Board Act*, CCSM c P280, s 44(3).



- b) new facts or a change in circumstances have arisen or been learned that raise a reasonable possibility that the Board's decision might be materially changed.²

No error of fact in the Board's decision

There were no Directives or recommendations relating to brokers and broker commissions in the Board's Order 134/21. The Board's discussion with respect to brokers is limited to findings of fact of approximately one page, which are based on the entirety of the evidence that was before it. IBAM has not raised an error of fact that raises substantial doubt as to the correctness of the Board's decision.

The Board's summary of the evidence and findings are found at pages 100-101 of Order 134/21. The Board's findings on these pages are supported by the evidence presented during the hearing, including, but not limited to:

- MPI 2022 GRA, Expenses, p 62;
- CAC (MPI) I-27, Attachment A, p 8;
- PUB (MPI) I-69 d);
- CAC (MPI) I-34 c); and
- Transcript, October 13, 2021 at 505-510.

On the face of the evidence, the following can be concluded:

- There are online commission rates contemplated for brokers for both Basic and Extension in every year of the agreement until 2025/26, including 2021/22 and 2022/23. This is evident from CAC (MPI) I-27, Attachment A, p 8, which is the most recent agreement between MPI and brokers.
- MPI has assumed that online adoption rates are forecast to grow to 35% in 2025/26 and MPI is confident in these assumptions. This is seen in PUB (MPI) I-69 d), CAC (MPI) I-34 c); and Transcript, October 13, 2021 at 507-510.
- There is a possibility that some MPI customers who transact online directly with MPI will have no interactions with brokers. This was confirmed by MPI witness, Mr. Ghandi at Transcript, October 13, 2021 at 507.
- MPI witness, Mr. Ghandi, appears to indicate at Transcript October 13, 2021, p 506-507 that MPI does not expect online transactions to commence until 2023/24. This also appears to be confirmed in PUB (MPI) I-69 d) where MPI "forecasts online adoption to

² See also PUB Order 90/18, p 6-7 where the Board discusses its authority regarding review and vary applications.



start at 10% in 2023/24, increase to 25% in 2024/25, 30% in 2025/26, 35% in 2026/27 and 40% in 2027/28 and beyond.” However, on the face of the evidence, there are online commission rates contemplated for brokers for the years 2021/22 and 2022/23 in the broker agreement.

The PUB made the finding that “Under the Broker Agreement, once Project Nova is completed, any person renewing online will be required to select an agent before the transaction can be completed, and even though the broker has played no role in the transaction, that broker will receive a commission.”³

IBAM appears to argue that this finding is not grounded in evidence because an MPI witness declined to answer a question from counsel for CAC Manitoba. However, based on a review of the rest of the evidence, this finding by the PUB is supported by the evidence of MPI’s online adoption rate assumptions and the possibility that some customers who transact directly with MPI will never have any interactions with brokers. The PUB did not need a response to the specific question by MPI’s witness in order to make that finding of fact.

There are no errors of fact alleged by IBAM that would meet the test of raising substantial doubt as to the correctness of the Board’s decision, given the evidence that was before it.

While there do not appear to be any errors of fact in the PUB’s findings relating to brokers, the Board could, on its own initiative under Rule 36(1), decide that a sentence of clarification could be added. Specifically, on page 101 after the sentence that reads “The agreement also requires that a commission be paid for Basic online transactions, where brokers provide no service in the transaction, at the same rate as in-person transactions for 2021/22 and 2022/23,” it could be added that “The Corporation’s evidence was that it did not expect take-up of online transactions until 2023/24.”

IBAM chose not to intervene or provide other comments on the record of the proceeding

IBAM refers to discussions during the pre-hearing conference and during legal counsel meetings as assurances that the issue of brokers was not going to be a primary issue of the hearing and points to this as one of the reasons it chose not to intervene in the 2022 GRA. Presumably, IBAM raises this issue in support of a contention that it suffered prejudice or damage within the meaning of Rule 36, or as evidence supporting its assertion that the PUB’s process was procedurally unfair. In addition to the fact that this issue is not addressed by any of its proposed remedies, IBAM’s position is problematic in at least two ways.

³ PUB Order 134/21, p 101.



First, the issue of brokers was, indeed, not a primary issue in the hearing. This is evident from the Board's order which dedicated less than one page (out of 133) to the issue and made no recommendations or directives. This is also evident from the Interveners' closing submissions. CAC Manitoba dedicated 1 of 129 pages to the issue of brokers, including highlighting that many consumers choose to use brokers for their auto insurance purchases and transactions, and had no specific recommendations on the issue. The Taxi Coalition and the Coalition of Manitoba Motorcycle Groups did not discuss brokers in their closing submissions. No misrepresentations were made by any party in this regard.

Second, it is appropriate for legal counsel to raise any issue that is properly within the list of issues approved by the Board during the hearing. The agreement between MPI and brokers was referred to in MPI's rate application, provided in response to information requests and fell squarely within the approved issue of the reasonableness of MPI's costs. While legal counsel typically provide advance notice of the main issues on which they will focus to other legal counsel as a courtesy, this is in no way binding on legal counsel's ability to pose questions in information requests or cross-examination. Rather, it is the role of legal counsel to examine any issue that arises during the course of the proceeding on behalf of our respective clients in order to represent our clients' interests to the best of our abilities.

The evidence that commission rates for online transactions are contemplated for 2021/22 and 2022/23 was on the record of the proceeding prior to the oral hearing starting. With respect, if IBAM was concerned about the accuracy of the evidence or the way it could be interpreted, it could have applied to be a presenter before the Board or could have submitted written comments to be considered by the Board prior to the record of the proceeding closing and the Board issuing its decision.

Conclusion

In its review and vary application, IBAM disagrees with the findings of fact made by the Board relating to brokers. IBAM did not raise any error of fact that results in substantial doubt as to the correctness of the Board's decision. As such, IBAM's application should be dismissed.

CAC Manitoba acknowledges IBAM's comments about the PUB's media release. However, not constituting a decision or order, CAC Manitoba does not view a Rule 36 Review & Vary application as an appropriate venue to address the issue raised. Further, as a tool intended to make its work more accessible to the public it serves, the Board is entitled to exercise discretion in determining which of its findings most are appropriately distributed in that manner.



Sincerely,



Katrine Dilay
Attorney

KD/ck

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MPIC counsel
IBAM counsel
Counsel for Interveners



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