

**Submission of The Financial Regulator in response to the public consultation by  
The Competition Authority and The Health Insurance Authority on competition  
in the private health insurance market.**

**INTRODUCTION**

The Financial Regulator welcomes the public consultation on competition in the private health insurance market. We would be happy to meet to discuss any aspects of our submission. The Financial Regulator's submission:

1. Outlines the regulatory regime currently in place for the three participants in the private health insurance market (namely VHI, BUPA and VIVAS), and
2. Discusses some associated competition issues.

**1. REGULATORY STRUCTURE OF THE IRISH PRIVATE HEALTH INSURANCE MARKET**

There are three firms offering private health insurance in the Irish market - the VHI, BUPA and VIVAS.

It is perhaps useful to look at the regulatory status of the insurance underwriting and intermediary business of each of the market participants separately.

**VHI**

**Insurance underwriting**

The VHI is not subject to regulation or supervision by the Financial Regulator in relation to its private health insurance business. This is because the EU Non-Life Insurance Directives provide a specific derogation for the VHI under the First Directive<sup>1</sup>.

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<sup>1</sup> 73/239/EEC. Exemptions were also granted to undertakings operating in the German, French, Italian and British markets.

Because the VHI is not authorised by the Financial Regulator as an insurance undertaking it is not subject to the normal capital and solvency regime applied to insurance businesses. The Financial Regulator's conduct of business rules do not apply to the VHI's health insurance activities.

The VHI's private health insurance business is covered by the Financial Services Ombudsman (FSO) scheme by virtue of a ministerial regulation<sup>2</sup>.

### **Intermediary business**

The VHI is authorised by the Financial Regulator as an insurance intermediary. In that capacity the VHI offers its customers products such as travel insurance and dental insurance underwritten by other insurers.

As an insurance intermediary the VHI is required to be solvent, i.e. its assets must exceed its liabilities. The Financial Regulator's conduct of business rules apply to the VHI when it is acting as an insurance intermediary.

The VHI's intermediary business is statutorily covered by the Financial Services Ombudsman scheme.

## **BUPA**

### **Insurance Underwriting**

BUPA Insurance Limited is authorised in the United Kingdom under the provisions of the EU Insurance Directives and is supervised by the Financial Services Authority (FSA). BUPA Insurance Limited is required to meet the FSA's capital and solvency standards, however the FSA's conduct of business rules do not apply to BUPA Insurance Limited when operating in Ireland.

BUPA Insurance Limited has established a branch in Ireland. The branch is also regulated by the FSA. The branch is not required to be capitalised separately from the Head Office. It must submit annual statistical returns to the Financial Regulator. The

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<sup>2</sup> Statutory Instrument No 191 of 2005.

Irish branch of BUPA Insurance Limited is operated and managed by BUPA Ireland Limited, an Irish incorporated subsidiary of BUPA Insurance Limited. The Financial Regulator's conduct of business rules apply to the Irish branch of BUPA Insurance Limited.

The Irish branch of BUPA Insurance Limited is covered by the Financial Services Ombudsman scheme.

### **Intermediary business**

As mentioned above, BUPA Insurance Limited has established a subsidiary in Ireland - BUPA Ireland Limited. In addition to operating and managing the Irish branch of BUPA Insurance Limited, BUPA Ireland Limited is a tied agent for health insurance of BUPA Insurance Limited. In that capacity BUPA Ireland Limited is authorised as an insurance intermediary by the Financial Regulator.

As an insurance intermediary, BUPA Ireland Limited is required to be solvent, i.e. its assets must exceed its liabilities. The Financial Regulator's conduct of business rules apply to BUPA Ireland Limited.

BUPA Ireland Limited is covered by the Financial Services Ombudsman scheme.

## **VIVAS**

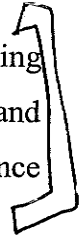
### **Insurance underwriting**

VIVAS Insurance Limited (trading as VIVAS Health) is authorised by the Financial Regulator under the provisions of the EU Insurance Directives. As an authorised insurer it is subject to the Financial Regulator's capital and solvency regime for all insurance undertakings.

The Financial Regulator's conduct of business rules apply to VIVAS Health, and the company is also statutorily covered by the Financial Services Ombudsman scheme.

## **Intermediary business**

VIVAS does not engage in any insurance intermediation. As an insurance undertaking it falls outside the scope of the Investment Intermediaries Act, 1995 (as amended) and there are accordingly no regulatory impediments to VIVAS engaging in insurance intermediation.



## **2. POSSIBLE COMPETITION ISSUES ASSOCIATED WITH REGULATORY STRUCTURES**

At the conceptual level there are a number of areas where possible competition issues arising from regulatory provisions could be identified. These relate to oversight and regulatory requirements, solvency issues, and the sale of ancillary products.

### **Oversight and Regulatory requirements**

As an insurance company, VIVAS is subject to the Financial Regulator's full regulatory regime. VIVAS must meet the Financial Regulator's capital and solvency requirements for insurers, must adhere to the Financial Regulator's code of conduct, and the directors and senior management are subject to the Financial Regulator's fitness and probity tests. VIVAS is required to submit annual statutory returns, audited accounts and quarterly management accounts.

BUPA Insurance Limited, as an insurance undertaking authorised in the United Kingdom, must meet the capital and solvency requirements established in that jurisdiction and its Irish branch must comply with the Financial Regulator's conduct of business rules.

As multi-agency intermediaries, the VHI and BUPA Ireland Limited must be solvent, must adhere to the Financial Regulator's code of conduct, and the directors and senior management are subject to the Financial Regulator's fitness and probity tests.

On the face of it, it is arguable that different regulatory regimes apply to the three market participants (as summarised in Table 1 below). However these differences are a function of the different backgrounds of each of the market participants rather than of any position adopted by the Financial Regulator.

**Table 1**

**(Health insurance business is slightly shaded)**

	VHI		BUPA Ireland Ltd		VIVAS
	Health Insurance Business	Insurance Intermediary Business	BUPA Insurance Ltd (health insurance)	BUPA Ireland Limited (insurance intermediary)	Health Insurance Business
Do the Financial Regulator's Conduct of Business Rules apply to the company?	No	Yes	Yes	Yes	Yes
Is the firm required to meet EU insurance capital and solvency requirements?	N/A	N/A	Yes <sup>3</sup>	N/A	Yes
Is the firm required to meet the Financial Regulator's intermediary solvency requirements?	No	Yes	No	Yes	N/A
Does the firm require the Financial Regulator's approval to appoint directors and managers?	No	Yes	No	Yes	Yes

<sup>3</sup> The UK Financial Services Authority establishes the capital and solvency standards that BUPA Insurance is required to meet.

## **Solvency Levels**

The Financial Regulator currently imposes solvency levels for all insurers in excess of the minimum EU standards, and in addition imposes higher solvency levels for new entrants in their first three years of operation. The higher solvency requirement expected from new entrants reflects the fact that company failures are most likely to arise in the initial three years of business and accordingly requires companies to have a sufficiently strong capital base in these initial years. At the moment VIVAS<sup>4</sup> must, like all other new market entrants, have a solvency cover equivalent to 200 per cent of the solvency margin and a solvency ratio of 50 per cent.

Because the VHI is not a regulated insurance company it is not subject to a regulatory capital or solvency regime.

BUPA Insurance Limited, as an insurer authorised in the United Kingdom, is subject to the FSA's capital and solvency regime.

The Financial Regulator, in tandem with the EU-wide Solvency II project, is working towards a regime where capital requirements will be proportionate to risk.

## **Ancillary Products**

In looking at the ability of the market participants to offer consumers products other than health insurance it is necessary to consider:

1. underwriting insurance other than health insurance,
2. intermediating in insurance other than health insurance, and
3. offering non-insurance products.

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<sup>4</sup> It is expected that the solvency cover will fall to 150 per cent after three years while the solvency ratio will be reduced to 40%.

## **VHI**

The VHI, as an unregulated insurance company, can freely underwrite classes of insurance other than health insurance. Subject to being authorised by the Financial Regulator as an insurance intermediary the VHI can intermediate in insurance other than health insurance (underwritten by other insurance companies) such as travel insurance and dental care. The VHI can also offer non-insurance products to consumers.

## **VIVAS**

The terms of the authorisation permitting VIVAS Insurance Limited to underwrite health insurance stipulate that the company is not allowed to engage in any category of general insurance other than Non-Life Insurance Classes 1 and 2. VIVAS could seek an amendment to its authorisation permitting it to write other classes of insurance. As an insurance undertaking VIVAS could intermediate in insurance other than health insurance (underwritten by other insurance companies) provided that they have informed the Financial Regulator. Article 7(2)(a) of the European Communities (Non-Life Insurance) Framework Regulations, 1994 states that an insurance undertaking “shall limit its operations to the business of insurance and to operations directly arising there from, to the exclusion of all other commercial business”. Accordingly VIVAS cannot offer non-insurance products to consumers.

## **BUPA**

BUPA Ireland Limited is not authorised as an insurance undertaking and therefore cannot underwrite insurance. The company is however authorised by the Financial Regulator as an insurance intermediary and could, without the need for amendments to its authorisation, intermediate in insurance other than health insurance. BUPA Ireland Limited can also offer non-insurance products to consumers.