

## Motor insurers avoid fines as OFT investigates data exchange

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Seven of the largest insurance companies and two IT software and service providers have avoided fines and agreed to limit the data that they exchange between them following an investigation by the OFT into the anti-competitive use of Experian's market analysis tool, What If? Private Motor.

Ageas Insurance Limited (formally Fortis Insurance Ltd), Aviva plc, AXA Insurance UK plc, Liverpool Victoria Friendly Society, RBS Insurance Group Limited, Royal Sun Alliance and Zurich Insurance plc and the software and service providers Experian Ltd and SSP Limited have all offered formal commitments to the OFT.

The OFT received information back in June 2009 that there may be a breach of the Chapter I prohibition of the Competition Act 1998 and/or Article 101 of the Treaty of the Functioning of the European Union.

The OFT investigation identified an increased risk of price coordination among motor insurers using the specialist tool, which allows insurers to access both their own pricing information and other insurers' pricing information for all the possible combinations of risks. The tool provides information to participating insurers **two to three weeks** in advance of quotation prices going 'live' in insurance policies sold by brokers. For example, prices for policies whose cover commences on 1 March would be provided to insurers through the tool weeks earlier in February.

Interestingly, the OFT have concentrated on commitments by the parties rather than the imposition of fines or a ban of the tool's use. The formal commitments include principles agreed with the OFT that the use of the market analysis tool must require the pricing information to be

anonymous, aggregated across at least five insurers and drawn from 'live' policies provided via brokers.

The OFT considered that the matter was an appropriate case for commitments in accordance with OFT guidance as the competition concerns were readily identifiable, fully addressed by the commitments and capable of effective and quick implementation. Moreover, the OFT found that the conduct investigated in this case did not constitute a secret cartel between competitors, which would have resulted in a stricter penalty.

The blanket leniency in this matter is generous considering the OFT's analysis that the information exchanged was not 'genuinely public' or 'within the public domain'. This is in line with the Commission's new horizontal guidelines (2011/C 11/01). The OFT decided that the information was not within the public domain as it enabled access to each individual insurer's confidential rating model. Additionally, although the data provided by WhatIf? could be obtained by collecting quotes from individual insurers, in practice this would be impossible due to the large number of quotes required and the consequential expense. Similarly, the OFT found that despite the market analysis tool being publicly marketed, due to the high access cost of the information to customers and non-subscribers of WhatIf?, the data was not genuinely public information.

The investigation has potentially wider implications as the Experian tool is just one of several similar products used in the motor and other insurance markets.

The OFT did consider the possible pro-competitive effect of tools such as WhatIf?, specifically that they may result in lower barriers to entry and expansion by providing information to insurers with little or no underwriting experience.

However, the OFT expects organisations in the insurance industry to review the findings of this investigation and ensure that they comply with competition law. The OFT currently has 23 active investigations, 11 of which were opened last year. They have explained that the focus on the largest players in the market and the swift one year turnaround of the investigation should act as a strong deterrent to others in the insurance market.

The OFT is currently consulting on a draft text of the commitments made by the parties and the closing date for comments was 14th February 2011. Once the commitments have been formally



accepted, the OFT will end its investigation, without making a decision on whether the Competition Act was breached.

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