

BIPAR Update

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1. Italian Competition Authority investigates MTPL cases (price comparators and unfair practices)

In Italy, the Competition Authority (AGCM) has recently launched an **investigation into price comparators and insurance companies** for suspected agreement on motor vehicle liability policies. According to the Authority, the companies involved regularly exchanged sensitive information on the economic conditions of direct sales by sharing reports prepared and distributed by the price comparison companies.

The aim of the investigation is to ascertain whether the companies offering price comparison services and the insurance companies involved in the proceedings came to an agreement restricting competition by exchanging sensitive information on the economic conditions for the direct sale of motor vehicle liability policies. According to the Authority, the companies constantly and regularly exchanged sensitive information on the economic conditions for the sale of motor vehicle liability policies by sharing reports prepared and distributed by the price comparison companies. Furthermore, the agreement would have been in place at least since 2012 and would also have occurred during the period of the first lockdown imposed by the Government to combat the spread of Covid-19.

In particular, as a result of the agreement, insurance companies would have been able to charge consumers higher premiums for motor vehicle liability policies, through discounts mitigated by the knowledge of the commercial strategies and the price policy of competitors in the direct sales segment.

On 20 May, Authority officials carried out inspections at several companies' premises.

An English press release from the Authority with more detail on the investigation is available [here](#).

Also recently, the Italian Competition Authority imposed a **fine of EUR 2 million** on companies in the **Telepass group** (active in the provision of electronic tolling services in Europe and in particular in Italy, and which has an insurance broker license in Italy) concerning the **distribution of motor liability insurance policies**. According to the Authority, adequate information had not been provided on the processing of user data and on the methods and criteria for selecting quotes.

The Authority found that: *“Telepass shared information about their users with insurance companies and intermediaries - with whom they concluded policy distribution contracts - without having adequately informed them on the collection and use of their data, including for commercial purposes. In particular, the information provided during the presentation of the service was limited to emphasizing the simplicity, speed and economic convenience of the procedure, but not that the data were used by Telepass for commercial purposes other than those for which they were collected, i.e. the quote. Furthermore, Telepass customers did not receive clear information about the effective representativeness of the policy providers, as the companies limited themselves to reporting the partner logos on the app and website, without specifying that some of them were mere intermediaries who acted as agents of unidentified companies.”*

An English press release from the Authority with more detail on the Telepass fine is available [here](#)

2. Antitrust: European Commission of preliminary view that Insurance Ireland restricts competition in car insurance market

On 18 June 2021, the European Commission informed Insurance Ireland (association of Irish insurers) of its **preliminary view** that they breached EU antitrust rules by restricting competition in the Irish motor vehicle insurance market (see Commission press release in various languages [here](#)).

The Commission takes issue with certain conditions of access to the “Insurance Link platform”, a data sharing system, which Insurance Ireland administers. “Insurance Link” enables its users - companies offering motor vehicle insurance - to better assess risk and to detect and defend themselves against potential fraud.

The Commission considers that Insurance Ireland arbitrarily delayed or de facto denied access to the system to companies that had a legitimate interest in joining it, and that hurdles remain in place that might affect companies seeking to enter the Irish motor insurance market. The Commission finds that since at least 2009 and until today, access has been linked to membership of the association. Thus, applicants have to first be eligible for membership, meet membership criteria and go through “an unpredictable application process”. The Commission states that for several years, certain types of insurers and their agents were not eligible for membership and were therefore effectively denied access. The obligatory membership criteria delayed access for some companies for several years.



The Commission opened an in-depth investigation into Insurance Ireland's data sharing system on 14 May 2019 and has now sent Insurance Ireland a “Statement of Objections”. The Commission's preliminary view, outlined in this Statement of Objections, is that lack of access to Insurance Link has the effect of placing companies at a competitive disadvantage on the Irish motor vehicle insurance market in comparison to companies that have access to the database. This affects negatively costs, quality of service and pricing. It also acts as a barrier to entry and thus reduces the possibility of more competitive prices and choice of suppliers. Lack of access to the relevant data contained in Insurance Link also has an effect on cross border trade between Member States, resulting in the potential partitioning of the Single Market.

European Commission's Executive Vice-President Margrethe Vestager, Commissioner in charge of competition policy, said: "Motor insurance is a significant cost in the budget of every family and business. Access to data is key for insurers to evaluate the risk they take and to offer competitive contract conditions to customers. We have concerns that certain insurers and their agents were put at a competitive disadvantage because Insurance Ireland denied or delayed access to its data sharing system, compiling valuable information on insurance claims. This prevented competitive entry of new players and thus reduced Irish drivers' choice of motor insurance policies at competitive prices. Non-discriminatory access to data sharing systems is important to foster competition in markets relying on data."



Background on data pooling and data sharing arrangements

The Commission explains that depending on their design, data sharing arrangements may contribute to the efficient functioning of insurance markets. In the era of digitalisation and data reliance, data pooling and data sharing arrangements may contribute to effective competition in other sectors too. Ensuring that such arrangements, including their access conditions, are compliant with competition rules is thus of importance. The Commission's European data strategy reflects these principles. In the roadmap for the impact assessment of the revision of the [Guidelines on the applicability of Article 101 TFEU to horizontal cooperation agreements](#), the Commission recently announced that it intends to include guidance that would assist stakeholders in the self-assessment of data pooling and data sharing arrangements.



A "Statement of Objections" is a formal step in Commission investigations into suspected violations of EU antitrust rules. The Commission informs the parties concerned, in writing, of the objections raised against them. The addressees can examine the documents in the Commission's investigation file, reply in writing and request an oral hearing to present their comments on the case before representatives of the Commission and national antitrust authorities. Opening a formal antitrust investigation and sending a Statement of Objections does not prejudice the outcome of the investigations.

There is no legal deadline for bringing an antitrust investigation to an end. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertakings concerned cooperate with the Commission and the exercise of the rights of defence.

3. Irish Competition Commission's investigation into suspected anti-competitive practices in the provision of private motor insurance

In 2016, the Irish Competition and Consumer Protection Commission's (CCPC) launched an investigation into suspected anti-competitive practices in the provision of private motor insurance in Ireland, contrary to the Competition Act 2002¹.

Last year, on 17 September 2020, the CCPC published its preliminary findings to five insurers, an insurance industry trade association, Brokers' Ireland and an insurance broker (AIG Europe S.A, Allianz PLC, AXA Insurance DAC, Aviva Insurance Limited, FBD Insurance PLC, Brokers Ireland, formerly the Irish Brokers Association (IBA), AA Ireland Limited).

According to the CCPC, "the preliminary findings allege that these organisations engaged in anti-competitive cooperation over a 21-month period during 2015 and 2016. The alleged anti-competitive cooperation consisted of public announcements of future private motor insurance premium rises as well as other contacts between competitors, all of which reduced levels of competition between the parties".

The CCPC further explained that “*the anti-competitive cooperation activities under investigation include a practice which is commonly referred to as ‘price-signalling’. Price signalling occurs when businesses make their competitors aware that they intend to increase prices, in turn causing further price increases across the sector. Price signalling can happen in public, through announcements or comments on prices, or in private through direct contacts between companies. If a business knows that their competitor is increasing prices then they may be encouraged to also increase prices, since their customers are less likely to move to their competitor.*”

According to CCPC “*price signalling and other types of anti-competitive cooperation between competitors ultimately lead to increased prices for consumers. These practices are particularly harmful to consumers when they occur in sectors like private motor insurance where motorists are required by law to take out cover and cannot avoid price increases*”.

The CCPC’s findings are provisional, and no conclusion has been drawn at this stage that there has been a breach of competition law. The relevant parties have the opportunity to consider and respond to the preliminary findings. The CCPC will consider any responses before deciding if it will bring civil court proceedings or to take some other course of action (see [CCPC website](#)).



It a press release published on 17 September, Brokers’ Ireland strongly rejected the findings of the CCPC and strenuously denied that any steps taken by the IBA had as their object or effect the prevention, restriction or distortion of competition in the private motor market.

Brokers’ Ireland said that there had been a prolonged ‘soft period’ (falling premiums) in the motor insurance market, which became protracted following the last recession. By 2013 there was a change of course with diminished capacity in the insurance industry arising from the failure of a number of insurers in the Irish motor insurance market, a massive recapitalisation of the Irish arm of an international insurer and the impending application of Solvency II regulations.

Brokers’ Ireland added that by 2015, the increases in motor insurance premiums had become a frequent subject of dinner table conversation and general comment. The IBA, reacting to public interest, participated in this debate (see link to Broker’s Ireland [press release](#)).

¹ Section 4(1) of the 2002 Act and Article 101(1) TFEU prohibit anti-competitive agreements, concerted practices and decisions by associations of undertakings which have as their object or effect the prevention, restriction or distortion of competition. The investigation in question is being progressed under the CCPC’s civil enforcement regime rather than the criminal enforcement regime. Section 14A of the 2002 Act gives the CCPC the power to bring civil proceedings in respect of conduct that is caught by section 4(1) of the 2002 Act and Article 101(1) of the TFEU.