MAY 2008, RELEASE TWO

GCP
THE ONLINE MAGAZINE FOR GLOBAL COMPETITION POLICY

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It is generally recognized that information sharing can produce pro-competitive effects in markets characterized by information asymmetries, by reducing uncertainty and competitive risks. When, as it is the case in the insurance market, firms do not know their customers' characteristics, it can be beneficial to collect and pool information about customers with other firms in order to achieve a better assessment of risks. The availability of this information (that can only be made available in an aggregate way) can increase market efficiency, lower premiums, and assure better quality of services.

Indeed the Commission, in 1992, adopted a Block Exemption Regulation (Regulation 3932/92) ("BER") which was replaced, in 2003, with Regulation 358/2003 which exempts agreements that make possible the joint calculation of the average cost of claims for a specified risk (pure premiums); the joint establishment and distribution of mortality tables and tables showing the frequency of illness, accident, and invalidity; and the joint carrying out of studies on the probable impact of external factors on the frequency or scale of future claims for a given risk and the profitability of investment.

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The adoption of the BER does not imply, however, that all agreements on information exchange in the insurance sector are pro-competitive and both the Commission and national competition authorities might intervene when cooperation among firms exceeds the boundaries established in the BER. The BER, in fact, clearly identifies that the data that can be made available to individual insurance companies are aggregate statistical data, while the exchange of data allowing the identification of individual commercial strategies (such as prices) do not fall in the exemption as they might favor collusion.

In Italy, meanwhile, the Italian Competition Authority ("ICA") has dealt with several information exchange cases in the insurance sector. Beginning with a 1994 case, the ICA concluded that specific information exchanges among sixteen insurance companies sustained collusive behavior in the market because they were accompanied by binding agreements that a common pricing policy was being followed.[1] In particular, the ICA found that common policies were being established regarding commercial premiums, excess clauses, and overdrafts for certain categories of general risks. The binding character of the agreement was reinforced by a system under which compliance with the commitment was very carefully monitored. Unfortunately, the Council of State annulled the decision on the premise that the meetings were among middle managers and not among the legal representatives of the companies, a "legalistic" position that the Council of State has since then explicitly abandoned.

[1] Italian Competition Authority Decision n. 2024, Case I74—Assicurazioni di rischi di massa, Bulletin n. 23 (1994).

In July 2000, the ICA concluded a proceeding into the motor vehicle insurance sector.[2] It concerned the practice, followed by many companies, of providing insurance for fire and theft only in conjunction with mandatory car liability insurance. Furthermore, the proceeding tackled the exchange of detailed information between insurance companies.

The ICA found that the practice of providing fire and theft insurance only in conjunction with mandatory car liability insurance was anticompetitive in so far as it reduced competition on a market (fire and theft) where insurance was not mandatory, reducing the set of possible choices for consumers.

With regard to the exchange of sensitive commercial information between insurance companies, the ICA concluded that it was a facilitating practice that was prohibited, also because it was accompanied by meetings and discussions on future market developments. The exchange of information was based on the principle of reciprocity, with each company transmitting its own data to a consulting firm in order to receive the data of its competitors. The ICA found that the mechanism put in place by the parties constituted an institutionalized system for the exchange of sensitive data (e.g., rates, discounts, risk assumption procedures, contractual conditions, collections, claims, and operating costs) designed to make it easier to foresee the conduct of competitors, with the consequence of creating an artificial transparency in the market.

In reviewing the facts of the case, the ICA analyzed the aggregate and individual data that the insurance companies exchanged. The aggregate data included information

[2] Italian Competition Authority Decision n. 8546, Case I377—RC Auto, Bulletin n. 31-32 (2000).

on revenues from sales of insurance policies, on accidents disaggregated according to Italian provinces, and on standard terms of communication with the customers. More relevant, for competition assessment, was the individual data that included current prices of individual firms with a high number of risks. Risks were classified along nine dimensions obtaining an extremely fine disaggregation. Each firm named its current price for each type of risk and conveyed the data to an independent professional firm that, after receiving the information, homogenized the data and in return disseminated the results to all of the firms participating in the agreement. Evidence was found that insurance companies not only used the information to establish their retail prices, but also entertained informal contacts in order to discuss, among other things, the timing of future prices variations.[3]

The ICA's decision was appealed by the insurance companies, but it was upheld in the two higher courts (the Administrative Tribunal and Council of State).

In addition to the aforementioned cases, the ICA addressed the general competition problems of the motor vehicle insurance market[4] in a sector inquiry that concluded in April 2003. The investigation was launched in order to analyze the evolution of the market after the liberalization introduced with the Directive 92/49/EEC and it revealed a significant increase in prices, stability of market shares, and limited entry. In order to overcome these critical aspects, the ICA suggested the introduction of greater incentives for cost control and greater opportunities for competitive comparisons

[3] *Id.* at para. 257.

[4] Italian Competition Authority, Fact-finding inquiry into the motor-vehicle insurance sector, Bulletin n. 16-17 (2003).

between companies. In particular, the ICA suggested the introduction of a direct settlement system (where customers could be compensated directly by their own insurance companies) as a way to increase competition, encourage companies to compete for service quality, and eliminate some inefficiencies of the market identified with the analysis.

In September 2005, Italy adopted a new insurance code, revising all of the legislation in the field and simplifying the legislative framework applicable to the private insurance sector. One of the most important innovations of the insurance code was indeed the introduction of compulsory direct settlement. Under the new system, the injured party applies directly to his own insurance company which will be subsequently compensated by the insurance company of the person who caused the accident. In particular, this procedure is compulsory for accidents in which just the vehicles involved are damaged or their drivers suffer minor bodily injuries. The rules provide for especially rapid payment of claims. Insurance companies are thus required, unless they contest the request submitted, to pay claims rapidly. If an injured party does not consider the compensation offered to be satisfactory, he can still bring a legal action against his insurance company.

The purpose in the introduction of a direct settlement system is to simplify compensation procedures and reduce the time to settle claims. In fact, claims can be settled in the framework of the relationship between the injured party and his own insurance company, thereby simplifying the procedures (insofar as two players are involved instead of three) and making the compensation faster. The introduction of this

system can improve the competitive conditions of the market since customers will judge the efficiency of their own insurance company in dealing with compensation procedures and will better assess the quality of the service provided. Another aim of direct compensation is to reduce recourse to legal actions and thus to curb the costs incurred by insurance companies. In fact, direct compensation attenuates the risk of opportunistic behavior by the injured party and by those who play a part in determining the amount of compensation (e.g., repair shops, coach-builders, and so forth) by increasing the incentives for insurance companies to impose or suggest systems (e.g., registered repair shops) serving to reduce costs or compensation consisting in the direct repair of vehicles. Such cost reductions will hopefully be passed on in the form of lower premiums.

The settlement of claims among insurance companies is an aspect of the application of the new system where a certain degree of cooperation is necessary. The specification of the procedure for claims settlement among insurance companies is outlined in a regulation (D.P.R. n.254 of July 18, 2006) that follows some of the suggestions made by the ICA,[5] and in particular that the degree of cooperation among insurance companies should not exceed that necessary to implement the direct settlement system.

In particular, the regulation establishes that claims settlement should be performed on the basis of average costs of risks as accounted for in the past. The figures for the average costs are calculated by a Technical Committee on the basis of claims actually paid during the previous year for accidents covered by the direct settlement

[5] Italian Competition Authority, Rules on payment of damages caused by road accidents, Bulletin n. 4 (2006).

system. In this way, the exchange of information should be limited, in line with the provision of the EC BER, to the joint establishment and distribution of calculations of the average costs of covering a specified risk in the past.