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Competition Act, 2002

Decision of the Competition Authority  
No. E/03/001

The selection, introduction, implementation and operation of the Glassmatix motor vehicle repair estimation system by the Consortium; Allianz Ireland plc, AXA Insurance Limited, Hibernian General Insurance Limited and Royal & Sun Alliance Insurance plc, in the State.

26<sup>th</sup> August 2003  
(Case COM/202/01)

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## **SUMMARY**

The Competition Authority decided that the Acknowledgement and Undertakings given by Allianz Ireland plc, AXA Insurance Limited, Hibernian General Insurance Limited, and Royal & Sun Alliance Insurance plc, following an investigation into the manner in which these motor vehicle insurers implemented the Glassmatix vehicle repair estimation system in the State, remedy the Authority's competition concerns.

Glassmatix is an internationally recognised vehicle repair estimation system used for motor vehicle repairs, which provides reliable and objectively justified labour times for repairs and up to date manufacturer parts prices. The above four insurers formed the Consortium to introduce Glassmatix in the State.

This investigation was conducted on foot of a complaint that the above four insurers used the introduction of the Glassmatix system as a means to dictate the price of vehicle repair services. These four insurers account for 65-70% of the motor vehicle insurance market.

The Competition Authority was concerned that the four insurers may have used the implementation of the Glassmatix system as a means to fix the price of motor vehicle repair costs and thereby restrict competition in the market for motor vehicle repairs. Any such coordination with respect to costs, if it were established, would not only likely dampen the incentive to compete in the motor vehicle insurance market, but also promote conditions conducive to collusion in setting motor vehicle insurance premiums.

Each of the four insurers specifically denies breaching the Competition Act, 2002, with respect to the matters discussed herein.

The Competition Authority secured undertakings from the insurers that addressed its competition concerns while allowing the benefits of Glassmatix in terms of cost reduction and improvement in time taken to complete repair services to be realised.

## **1. THE ISSUES**

### **The Complaint**

1.1 The Competition Authority (“the Authority”) received a complaint on 13 November 2001 alleging that, from 26 November 2001, four insurance undertakings (listed below), were to introduce a motor vehicle repair estimation system that “seems to be solely designed to enable the insurance industry to dictate the price they will pay for all crash repair, comprehensive or third party, in the State”. The complainant claimed that the introduction of the new Glassmatix system (“Glassmatix”) places a cost burden of IR£4,120 upon motor vehicle repairers by requiring them to purchase computer software to operate the new system. Furthermore, it was argued that it takes up to 70 minutes longer to obtain estimates using the Glassmatix system than opinion time based methods. The complainant also alleged that a spokesperson for the insurance undertakings, at a meeting held on 5 November 2001, confirmed that the insurance undertakings met all the paint suppliers and agreed a price structure for car paints.

1.2 This Decision Note does not purport to analyse each aspect of the complaint that the Authority received, but rather focuses on those concerns that arose in the context of the investigation that ensued.

### **The Parties<sup>1</sup>**

1.3 For reasons of confidentiality the identity of the complainant is not stated.

1.4 The principal activities of AXA Insurance Limited<sup>2</sup> (“AXA”) are the transaction of motor and other non-life insurance business in both the State and Northern Ireland.

1.5 The principal activities of Allianz Ireland plc (“Allianz”) are the transaction of motor, fire, liability and marine insurance business within the island of Ireland.

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<sup>1</sup> All the information on the parties in this section is taken from publicly available sources, such as an undertaking’s website.

<sup>2</sup> Formerly, AXA/PMPA Insurance Limited.

Allianz had an annual turnover of €44.1 million in 1999. Allianz employs over 800 people and has offices located throughout the country. It claims to be the leading insurer in many key areas including construction, credit, marine and aviation insurance.

1.6 Hibernian General Insurance Limited (“Hibernian”), which is part of the Hibernian Group in Ireland, is principally active in the areas of general insurance and risk management.

1.7 The principal activity of Royal & Sun Alliance Insurance plc (“RSA”), its subsidiaries, and overseas branches, is the transaction of insurance and related financial services in the State, the United Kingdom and overseas. RSA is incorporated in the United Kingdom.

1.8 Glass’s Information Services Limited (“Glass’s”), based in the UK, is the producer and supplier of Glassmatix, a sophisticated collision repair estimating system. Glassmatix calculates the labour and materials needed for the entire repair process. It then displays an accurate estimate, which can be printed or electronically transmitted to the work provider. Glassmatix uses motor manufacturers’ parts and labour data, the Thatcham Times System (“TTS”) and Thatcham “traditional” data for all panel and paint estimates. Additional information on Thatcham is provided in paragraph 2.18 below.

1.9 Allianz, AXA, Hibernian and RSA formed a Consortium (“the Consortium”) charged with the development, introduction, implementation, and operation of Glassmatix in the State. Further details of the Consortium agreement and related agreements are presented in paragraphs 2.22 to 2.24 below.

1.10 In March 2002, one of the Consortium members approached the Authority to file a notification regarding Glassmatix pursuant to the Competition Act, 1991, as amended. Shortly thereafter, because of the abolition of the notification scheme resulting from the enactment of the Competition Act, 2002 (which became effective as of 1 July 2002), each of the insurers requested an advisory opinion of the Authority as to whether participation in the Glassmatix system would violate the Act.

1.11 In June 2002, the Authority advised the Consortium members that it was in receipt of the complaint referenced in paragraph 1.1 above and declined to issue the requested advisory opinion. The Authority informed each of the four insurers that it would be necessary for the Authority to conduct an investigation into the matters arising out of the Glassmatix system.

1.12 The four insurance undertakings provided extensive and helpful co-operation to the Authority during its investigation into the selection, introduction, implementation and operation of Glassmatix. All relevant agreements were provided as well as a large volume of e-mails and correspondence and other documentary evidence. This enabled the Authority to bring its investigation to a conclusion in a timely and satisfactory manner. Dr Francis O'Toole of Trinity College Dublin acted as an expert advisor to the Authority.

1.13 Each of the four insurers specifically denies breaching the Competition Act, 2002 (the "Act"), with respect to the matters discussed herein.

## **2. ASSESSMENT<sup>3</sup>**

### **Introduction**

2.1 Section 4 of the Act applies when undertakings are engaged in arrangements<sup>4</sup> which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State. Section 4(1) reads as follows:

Subject to the provisions of this section, all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in

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<sup>3</sup> Although some of the matters herein arose prior to the enactment of the Act, the analysis would be essentially identical under predecessor statutes on the basis that the substantive provisions of the 2002 Act are identical to those in the Competition Act, 1991 (as amended).

<sup>4</sup> The arrangement can be either horizontal (i.e., between competitors in the same market) or vertical (i.e., between undertakings at different stages in the production/distribution/retailing chain).

trade in any goods or services in the State or in any part of the State are prohibited and void, including in particular, without prejudice to the generality of this subsection, those which -

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions,
- (b) limit or control production, markets, technical development or investment,
- (c) share markets or sources of supply,
- (d) apply dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage,
- (e) make the conclusion of contracts subject to acceptance by other parties, of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.

Section 3(1) of the Act defines an “undertaking” as “a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service.”

2.2 In order to establish that there is a breach of Section 4(1) of the Act, the Authority must demonstrate in court that:

- there is an agreement, decision or concerted practice,
- the parties to that agreement, or concerted practice are undertakings, or that the decision was made by an “association of undertakings” and,
- the object or effect of the agreement, decision or concerted practices is to prevent, restrict or distort competition.

2.3 Section 4(1) of the Act is based on Article 81(1) of the treaty establishing the European Community. In applying Section 4(1) the Authority would have regard to its interpretation by Irish courts, but also that of Article 81(1) by the European Commission (“EC”), the Court of First Instance (“CFI”) and the European Court of Justice (“ECJ”).

2.4 Section 4(5) of the Act insulates any otherwise anti-competitive agreement, decision or concerted practice that,

having regard to all relevant market conditions, contributes to improving the production or distribution of goods or provision of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and does not –

- (a) impose on the undertakings concerned terms which are not indispensable to the attainment of those objectives,
- (b) afford undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

*All* of these conditions have to be satisfied in order that an anti-competitive agreement, decision or concerted practice is not prohibited under Section 4(1) of the Act.<sup>5</sup>

2.5 Determining whether or not the conditions in Section 4(5) are satisfied requires a careful assessment of the economic context of the agreement, decision or concerted practice. For example, the relevant market needs to be defined. In some circumstances, the market share of the parties to the agreement, decision or concerted practice, together with the importance of barriers to entry into the market, needs to be established. A judgment is also necessary as to whether there are terms or conditions of the agreement, decision or concerted practice that are indispensable for the attainment of its objectives.

2.6 Section 4(5) is analogous to Article 81(3) of the treaty establishing the European Community. In considering Section 4(5) the Authority has regard to its implementation by the Irish courts, but also to the implementation of Article 81(3) by the EC, CFI and ECJ. However, the Authority also has regard to its own previous decisions, since, until 1 July 2002, the Authority could grant exemptions under

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<sup>5</sup> Section 4(5) and Section 4(1) are related through Section 4(2) which reads as follows: “[A]n agreement, decision or concerted practice shall not be prohibited under *subsection (1)* if it complies with the conditions referred to in *subsection (5)* ...” (emphasis in original).

Section 4(5)<sup>6</sup> to individual agreements, decisions or concerted practices. From that date the Irish courts applied the section directly.

2.7 In any legal proceedings it would be for the Authority to demonstrate that the agreement, decision or concerted practice breached Section 4(1) of the Act. In contrast, the onus would be on the parties to the agreement, decision or concerted practice to show that it satisfied each of the conditions set out in Section 4(5) of the Act.

### **The relevant market**

2.8 The Authority identified three markets that could have been affected by activities of the insurance undertakings:

- (i) the market for private motor vehicle insurance;
- (ii) the market for motor vehicle repair services (provided to motor vehicle insurers); and,
- (iii) the market for computerised vehicle repair estimation systems.

The relationships between these three markets are illustrated in Figure 1. Motor vehicle repairers provide a service to the motor vehicle insurers who, in turn, provide a service to policyholders. The providers of computerised motor vehicle repair estimation systems facilitate the interaction(s) between these two markets, and therefore constitute a third market relevant to the Authority's enquiry.

2.9 **The market for private motor vehicle insurance** The Authority is of the view that the market for private motor vehicle insurance within the State constitutes a relevant market for the purposes of competition analysis. There is a legal requirement for the driver of a motor vehicle in the State to have at minimum third-party motor vehicle insurance. The exact boundaries of the market are less clear-cut. Separate markets arguably exist for various segments contained within the overall sector, for example, third party, as opposed to comprehensive insurance or private motor vehicle

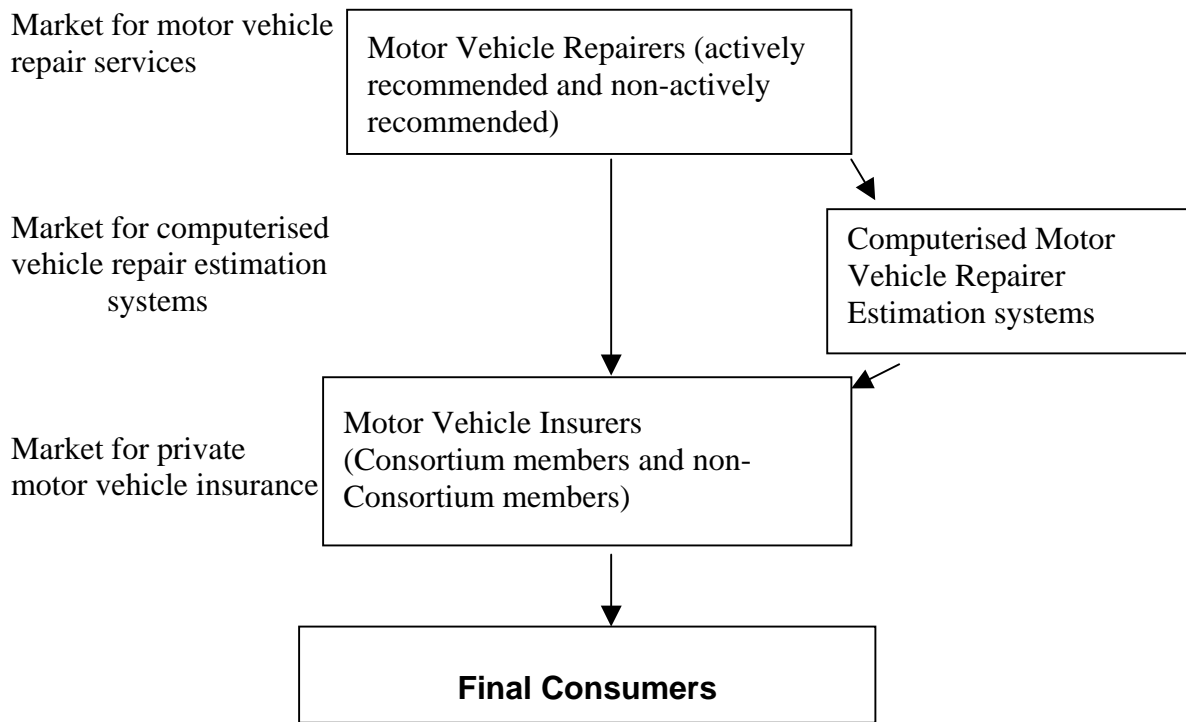
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<sup>6</sup> Under the Competition Act, 1996, the equivalent provision was Section 4(3).

insurance for young male adults. However, for the purposes of this decision, it appears unnecessary to attempt to narrow the market definition beyond the market for private motor vehicle insurance.

**Figure 1**

**Relevant Markets in Motor Vehicle Repair and Motor Vehicle Insurance**



**Source:** the Authority

2.10 Table 1 presents the individual market shares of the leading seven motor vehicle insurers in the State for each of the years 1999 to 2001. The Consortium consists of four of the largest motor vehicle insurers in the State, accounting for between 65 and 70% of the market for motor vehicle insurance. The remaining three leading insurers have expressed an interest in joining the Consortium. Should they join, then the Consortium would account for approximately 90 to 95% of the motor vehicle insurance market.



**Table 1**  
**Market Shares of the Seven Leading Undertakings in Motor Vehicle Insurance**  
**in the State, 1999, 2000 and 2001**

Undertaking	1999 (%) <sup>a</sup>	2000 (%) <sup>b</sup>	2001 (%) <sup>c</sup>
<b>Consortium Members</b>			
AXA	28	26	25
Hibernian	14*	19	27
Allianz	17	12	11
Royal Sun Alliance	8	8	7
<b>Sub-Total</b>	<b>67</b>	<b>65</b>	<b>70</b>
FBD	8	8	8
Eagle Star Ireland	8	8	9
Quinn-direct	5	7	9
Others	12	12	4
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>

**Note:** Market share is measured as earned premium income.

\* This figure excludes market shares for CGU (4.6%) and Norwich Union (6.5%), (both of which merged with Hibernian) and Friends First (2.0%) (whose books Hibernian acquired). If these market shares were included, Hibernian's market share for this period would be 27.1%.

<sup>a</sup> **Source:** Insurance Annual Report 1999, Department of Enterprise, Trade and Employment

<sup>b</sup> **Source:** Insurance Annual Report 2000, Department of Enterprise, Trade and Employment.

<sup>c</sup> **Source:** Insurance Annual Report 2001, Department of Enterprise, Trade and Employment.

2.11 **The market for motor vehicle repair services (provided to motor vehicle insurers)** Motor vehicle repairers provide services to final consumers, both directly and indirectly via motor vehicle insurers. The Authority takes the view that there is a separate market for motor vehicle repair in the State. Neither the purchase of another vehicle (as opposed to the repair of the original vehicle) nor access to the services of repairers outside the State (nor self repair nor no-repair) represent feasible alternatives for the vast majority of consumers (i.e., private motor vehicle insurers and/or drivers) of the services of motor vehicle repairers located in the State.

2.12 There are hundreds of motor vehicle repairers in the State. While the Authority does not have market data it appears that the motor vehicle repair market is unconcentrated,<sup>7</sup> certainly when compared to motor vehicle insurance. There is no evidence of any specific entry barrier in the motor vehicle repair market.

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<sup>7</sup> To the extent that market for motor vehicle repair is local rather than State wide, then the market is likely to be more concentrated.

2.13 There is a question, however, of whether there is a separate market for motor vehicle repair services provided to motor vehicle insurers. The members of the Consortium – and other motor vehicle insurers - have individually divided motor vehicle repairers into those that they actively recommend to their own policyholders and repairers that they do not actively recommend to their own policyholders. Actively recommended repairers are sometimes referred to as “panel repairers”, “aligned repairers” or “approved repairers”. Similarly, non-actively recommended repairers are sometimes referred to as “non-panel repairers”, “non-aligned repairers” or “non-approved repairers”.

2.14 Actively recommended repairers, in general, appear to offer a “discount” to the insurance companies in return for insurers directing their policyholders to them. Insurance undertakings select recommended repairers on the basis that they meet various qualitative standards. The insurance undertaking then guarantees a minimum flow of work to its recommended repairers in return for which each recommended repairer enters into a Service Level Agreement. Pursuant to this agreement the insurance undertaking obtains a discount on the labour rates it would normally expect to pay a repairer, as well as procuring for its customers the benefit of a number of additional customer services, such as towing and storage.

2.15 It is not clear, however, that there is a separate market for motor vehicle repairers that provide services to motor vehicle insurers. They would appear to be part of the wider market for motor vehicle repairers. It seems unlikely that motor vehicle repairers selected by motor vehicle insurers, acting as one unit, would be able to profitably raise their prices by 5 to 10%.<sup>8</sup> The motor vehicle insurers could, for example, switch the designation of actively recommended repairer to repairers that had not raised their prices.

2.16 Approximately 60 repairers (equivalent to approximately 20% of the total number of repairers) appear to be actively recommended by at least one member of the Consortium and a small number of repairers (approximately 10) appear to be

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<sup>8</sup> This is the standard test for defining a market known as the SSNIP test. It is discussed further, together with appropriate references, in R. Whish, 2001, *Competition Law*. 4<sup>th</sup> Edition. London:Butterworths. pp. 21-41.

actively recommended by more than one member of the Consortium. Relying on the data in Table 1 suggests, on a pro-rata basis, that motor vehicle insurance undertakings actively recommended repairers account for approximately 90 repairers, equivalent to 30% of the total number of repairers. Although actively recommended repairers may not constitute a separate market, this does not mean of course that conduct in a related market such as motor vehicle insurance cannot have an adverse competitive effect in the motor vehicle repair market.

2.17 The motor vehicle insurers state that there is no obligation on an insured driver to take their vehicle to an approved motor vehicle repairer. The driver can take their damaged car to any repairer of their choice. If this is the case then since the insured driver could go – potentially at least – to any repairer in the State, there is no separate market for motor vehicle repair services provided to motor vehicle insurers. It is the same as the market for motor vehicle repair services.

2.18 **The market for computerised vehicle repair estimation systems**

Computer-assisted motor vehicle repair estimation systems provide best practice benchmarks in terms of labour time to complete repairs to motor vehicles. These best practice times, in general, incorporate Thatcham Times. Thatcham, a U.K. based research centre, was set up and funded by insurers in 1969. “Thatcham Times System” refers to the labour hours database supplied by Thatcham. The alternative to a computerised vehicle repair estimation system is the traditional opinion time based system, which relies on the experience and subjective judgment of players in the vehicle body repair market to estimate repair times and costs. It appears that the superiority of the computer-based systems has meant that they have gradually replaced opinion time based systems.

2.19 In the Authority’s opinion, the market for computerised motor vehicle estimation systems within the State appears to constitute a relevant market for the purposes of competition law. Once a computerised vehicle repair estimation system is introduced into the general motor vehicle repair service industry within the State, the scope for, and value of, pre-existing alternatives, such as opinion time based systems, decline substantially. This approach to market definition concentrates very much on the demand-side as is conventional. It could be argued that there are

undertakings expert in computer software that might switch into computerised vehicle estimation systems should the undertakings already in that market raise their price by 5 to 10%. However, without further evidence the Authority is unable to ascertain how effective such supply side substitution might be.

2.20 There are a number of different computerised vehicle repair estimation systems. For example, Glassmatix, Motex, CCC's Pathways+, Cogsys' ARCS and Carcalc. The Consortium selected, introduced, implemented and operated the Glassmatix system in the State. Given the importance of the members of the Consortium and those motor vehicle insurance undertakings that have expressed an interest in joining the Consortium, it seems unlikely at the present time that other computerised vehicle estimation systems will be introduced in the State.

### **Agreements, Decisions and Concerted Practices**

2.21 The legislation does not define the terms "agreements", "decisions" and "concerted practices". Reference must be made to the interpretation of these terms by the Courts.<sup>9</sup> Agreements include legally binding agreements<sup>10</sup> as well as informal ones, and they may be written or not. The latter would include, for example, so-called "Gentlemen's Agreements". A concerted practice tends towards the opposite end of the spectrum from a legally binding agreement. It has been defined as follows in EU precedent,

a form of coordination between undertakings, which without having reached the stage where an agreement properly so called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition.<sup>11</sup>

The test in determining whether a decision is a decision by an association of undertakings is whether the decision can be regarded as the expression of the will of

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<sup>9</sup> For further discussion see Richard Whish, 2001 *Competition Law*, Fourth Edition, London, Butterworths. pp. 76-86.

<sup>10</sup> Of course, if such an agreement breaches Section 4 of the Act then the agreement is null and void.

<sup>11</sup> *ICI v Commission*, Case 48/69 etc [1972] ECR 619, [1972] CLMR 557, paragraph 64.

the association to co-ordinate the behaviour of its members. Although such co-ordination may, in any event, be caught by the terms "agreement" or "concerted practice", the provision prohibiting decisions of associations of undertakings which restrict competition, may in certain circumstances, facilitate anti-competitive behaviour.

2.22 In regard to the selection, introduction, implementation and operation of the Glassmatix motor vehicle repair estimation system by Allianz, AXA, Hibernian and RSA, two legally binding agreements exist. These set the legal framework for the arrangements among the four members of the Consortium and, in turn, their relationship with the owners of Glassmatix. The implementation and operation of these agreements required ongoing meetings between the parties, particularly the Consortium members. The Authority has been provided with the minutes of such meetings and related correspondence covering the period March 1999 to July 2002.

2.23 AXA, Allianz, Hibernian and RSA each signed the Consortium Agreement during June and July 2001. The Consortium Agreement is quite short and consists of only 17 clauses. The objective of the agreement is to:

set out the basis on which the Parties have agreed matters amongst themselves with respect to an agreement (the "Glass's Agreement") to be entered into with Glass's Information Services Limited ("Glass's") relating to the development of software (and related services) for a crash repair estimation system for Ireland (the "Software").

The intellectual property rights, in particular the copyright to the Software, are owned equally by the four parties and the costs of Glass's developing the Software and related costs are shared equally among the parties. There is no date on which the agreement terminates.

2.24 The agreement between the four parties to the Consortium Agreement and Glass's Information Services Limited (the "Glass's Agreement") sets out at some length and detail how Glass's would functionally specify the Glassmatix III Collision Estimation system for use in the State. A pilot project is scheduled to end by 30 April

2001. The intellectual property rights are assigned to the members of the Consortium. The contract is to last for three years, thereafter being automatically extended for a further twelve months unless it is terminated at the end of the third year or at the end of each subsequent twelve months.

### **Object or Effect of Preventing, Restricting or Distorting Competition**

2.25 Agreements, decisions and concerted practices breach Section 4(1) of the Act if they have the object **OR** effect of preventing, restricting or distorting competition. In paragraphs (a) to (e) of Section 4(1) examples are provided – e.g., price fixing - of the type of agreement that would breach the Act. However, even if the agreement, decision or concerted practice breaches Section 4(1), it could be exempt if it met the conditions – e.g., promotes economic progress - set out in Section 4(5). In some instances, of course, the agreement, decision or concerted practice may not be prohibited by the Act at all.

2.26 The Authority investigated four separate arrangements associated with the Consortium:

- (i) the selection, procurement and introduction of the Glassmatix system;
- (ii) Consortium members distinguishing between motor vehicle repairers;
- (iii) determining the level of compensation payable to approved repairers for implementing Glassmatix; and,
- (iv) co-ordination between Consortium members on the input prices (e.g., labour rates) to the Glassmatix system and indirectly the output price (i.e., motor vehicle repair price).

Each of these arrangements is considered in turn.

2.27 **(i) The agreement by Consortium members to select, procure and introduce the Glassmatix system in the State** It is apparent that the Consortium wanted to take advantage of the economies of scale/positive network externalities that would be associated with choosing and implementing one computer-assisted motor vehicle repair estimation system for/within the State. It is reasonable to accept that

there would be significant inefficiencies associated with the (more-or-less simultaneous) implementation in the State of multiple computer-assisted motor vehicle repair estimation systems or the uncoordinated implementation of a single computer-assisted motor vehicle repair estimation system by multiple motor vehicle insurers. The Consortium (apparently with the assistance of a selected repairer and an independent engineer) evaluated/investigated a number of computerised estimating systems - the peak of these investigations appeared to occur during the summer of 1999 - before choosing Glassmatix as its preferred system.

2.28 A number of the arguments made in the submissions to the Authority by the members of the Consortium and/or on their behalf by their legal representatives support the view that the activities of the Consortium with respect to choosing and implementing one computer-assisted motor vehicle repair estimation system could have been exclusively pro-competitive.<sup>12</sup>

- Glassmatix is an internationally recognised vehicle repair estimation system used for motor repairs, which provides reliable and objectively justifiable labour *times* for repairs of individual parts and up to date manufacturer *parts prices*. It does not provide any information to each of the parties on the other parties' labour *rates*. ([....], Letter, 27 May 2002, p.1, emphasis included in original).
- the increased level of transparency resulting from the introduction of the Glassmatix system will assist members of the Consortium to ensure that the cost of motor vehicle repairs is kept to a minimum, and to process insurance

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<sup>12</sup> The incentives of Glass's and the Consortium were (and remain) to at least a certain extent pro-competitively aligned in that it was (and remains) in the interests of both parties to maximise take-up of the system. For example, Glass's (and the Consortium) dropped the proposed penalty clause - which referred to the possibility that critical mass would not be reached - as it appears to have been recognised that it was in both parties' interests to exceed the critical mass. This potentially pro-competitive aligning of interests can also occur in dimensions other than maximising take-up of the present system,

In addition, there is a current business proposal – following a suggestion by SIMI – that the consortium develop an internet-based solution for lower volume users to “pay as they go” rather than pay an annual licence fee. It is proposed that the members of the consortium will pay for the development of this system. ([....], Letter, 12 August 2002, p.8)

From a competition perspective, innovations with respect to the Irish version of Glassmatix should be viewed as at least potentially pro-competitive.

claims faster and more efficiently. If this can be achieved, it is expected that the consumer will ultimately benefit. ([....], Letter, 7 February 2003, p.3).

There is nothing to limit the benefits of the Glassmatix system from being passed onto consumers through rivalry between the insurance undertakings.

2.29 To realise the benefits of the Glassmatix system, there is no need for the members of the Consortium to enter into any collective discussions or agreements with respect to *actual* labour rates or the *actual* prices charged by repairers to the insurers for parts and paints. Technically, there is no need for insurers, either with or without repairers, to enter into any collective discussions or agreements with respect to the prices charged by repairers to insurers.

2.30 The Authority is therefore of the view that the activities of the Consortium in selecting, procuring and introducing the Glassmatix system in the State on a collective basis could satisfy the conditions outlined in Section 4(5) for the exemption under Section 4(2) of the Act.

2.31 **(ii) Individually, and not following co-ordination with any other motor vehicle insurance undertakings, Consortium members reaching agreements with motor vehicle repairers.** The vertical agreements between motor insurers and approved motor vehicle repairers, where the latter are selected on the basis of objective criteria,<sup>13</sup> may yield efficiencies in the provision of motor vehicle repair services and reduce a motor vehicle insurance undertaking's costs.<sup>14</sup> Such a system may also therefore benefit consumers by improving the service package provided to insured individuals and ultimately result in downward pressure on premiums. Furthermore where the panel of approved repairers is selected and monitored by the insurer according to the objective criteria outlined, the Authority believes that this is unlikely to afford the possibility of eliminating competition between vehicle repairers to a significant extent.

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<sup>13</sup> See paragraphs 2.13 to 2.17 above

<sup>14</sup> This is consistent with the Authority's views on motor vehicle insurance undertakings selecting certain undertakings to provide windscreen replacement for motor vehicles for policyholders. For details see Competition Authority, 2002, *Competition Authority Annual Report 2001*, Dublin: Stationery Office, pp. 26-7.



2.32 Vertical agreements between a motor vehicle insurer and repairers could satisfy conditions outlined in Section 4(5) for exemption under Section 4(2) of the Act. Indeed, they might fall outside of Section 4(1) of the Act. In contrast, if there were a horizontal agreement among Consortium members to select repairers, this would not be likely to benefit from an exemption under Section 4(5). It could for example, be argued that such an agreement would impose on undertakings concerned terms which are not indispensable to the attainment of these objectives.

2.33 **(iii) Individually, and not following co-ordination with any other motor vehicle insurance undertakings, determining the level of compensation payable to its panel of approved repairers for implementing the Glassmatix system** As stated above the Glassmatix system can yield benefits to motor vehicle insurance undertakings and ultimately consumers. The Authority would also accept the Consortium's argument that a motor vehicle insurance undertaking could be justified in compensating repairers individually and not following co-ordination with any other motor vehicle insurance undertakings, for the initial costs associated with the implementation of the Glassmatix system where it facilitates a greater level of adoption of the system by repairers.

2.34 Therefore, it is the Authority's view that such a measure could be justified where it increases the probability of success of roll-out of the Glassmatix system by encouraging repairers to adopt the system. It would appear that such unilateral action by an undertaking would fall outside Section 4(1) of the Act.

2.35 **(iv) Co-ordination between Consortium members on input prices (e.g., labour rates) to the Glassmatix system and indirectly the output price (i.e., motor vehicle repair price).** There is a distinction between implementing the Glassmatix system to achieve cost reductions (discussed above) and using the introduction of the Glassmatix system as a tool to eliminate, potentially, competition between motor vehicle insurance undertakings with respect to the market for the purchase of motor vehicle repair services with consequent adverse effects on the level of competition in the market for motor vehicle insurance.

2.36 Vertical relationships generally give less cause for concern than horizontal relationships. Vertical relationships tend to align the economic incentives of upstream (i.e., motor vehicle repairers) and downstream (i.e., motor vehicle insurance) firms to the benefit of final consumers as well as the other parties, whereas horizontal relationships tend to align the economic incentives of upstream and downstream firms to the detriment of final consumers.

2.37 Notwithstanding this useful policy distinction, it is possible that vertical relationships can also give rise to anti-competitive effects (e.g., collusion and/or market foreclosure). Negative effects at the horizontal level (e.g., in the market for motor vehicle insurance) may be facilitated by vertical agreements (e.g., between motor vehicle insurers and motor vehicle repairers). Such negative effects are particularly relevant in the present context, as the four motor vehicle insurers involved in the Consortium account for between 65 and 70% of the market for motor vehicle insurance. If the remaining three leading insurance undertakings join the Consortium then the market share of Consortium members would rise to between approximately 90 and 95%.<sup>15</sup>

2.38 It should be noted that Section 4 of the Act does not make a substantive distinction between output price-fixing and input price-fixing. Indeed, Section 4(1)(a) lists among the prohibited types of anti-competitive agreements, decisions, and concerted practices the following: “directly or indirectly fix *purchase* or *selling prices* or any other trading conditions” (emphasis added). Thus, it is clear that the Act covers fixing of both output and input prices.

2.39 On the input side, the following agreements, if they were to occur between Consortium members in the context of their discussions on cost-reduction by managing/controlling input prices, could breach the Act:

- (i) Directly fixing the compensation to approved repairers for the costs of implementing the Glassmatix system;

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<sup>15</sup> See Table 1 above for details.

- (ii) Indirectly fixing the purchase price of vehicle repair services by collectively agreeing to a fixed Glassmatix time to repairers;
- (iii) Directly fixing the purchase price of vehicle repair services by collectively agreeing with repairers a fixed rate of increase of the labour rate for repairers in implementing the Glassmatix system;
- (iv) Directly fixing the mark-up on retail purchase price of paints;
- (v) Agreeing to the method of annual review of labour rates;
- (vi) Agreeing to the method of annual review of Glassmatix rates for paint and sundries; and
- (vii) Sharing of management information generated by Glassmatix that contains aggregate labour hours and average labour rates.

These arrangements raise the possibility of dampening competition downstream where all Consortium members have common costs, and in the Authority's view they would not be indispensable in achieving the potential benefits that the Glassmatix system offers. As a result, these arrangements would not satisfy the conditions provided under Section 4(5) and would therefore contravene Section 4(1) of the Act.

2.40 On the output side, in the context of discussing input prices competitors should exercise special care not to discuss output prices. For example, an internal document produced by one of the Consortium members<sup>16</sup> which appears to be related to a meeting held in July 2000 states, under the heading "PROPOSAL FOR PROGRESSION", that "[a]ny agreement should be phased in to allow for 'Premium Catch Up'".<sup>17</sup> Co-ordination with respect to premium catch up, for example, would be unlikely to meet the requirement that consumers should be allowed a fair share of any benefits associated with the co-ordinated introduction of Glassmatix and would not therefore satisfy the test under Section 4(5) as it fails to meet the conditions that consumers have a fair share of the benefits.

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<sup>16</sup> The other three Consortium members deny that they have seen this document; further, all four companies deny having discussed "premium catch up" with each other.

<sup>17</sup> The document also references discussions by the Consortium members as to the "Retail Rate." The "Retail Rate" is the labour rate paid to non-actively recommended motor vehicle repairers.

2.41 The foregoing discussion in paragraphs 2.38 to 2.40 highlights the importance of properly structured and effective competition compliance and training programmes. Properly structured compliance or training programmes should help to ensure that officers, servants and agents of an undertaking are aware of the implications of competition law and the obligations which it imposes.

2.42 In summary, the implementation of the Glassmatix agreement has the potential to create the opportunity to fix the price of motor vehicle repair costs and thereby eliminate competition between Consortium members on the one hand and vehicle repairers on the other, in the market for the purchase of vehicle repair services provided to insurance companies. More specifically, the arrangements outlined in (i) to (vii) in paragraph 2.39, if they were to occur, could create a climate in which the members of the Consortium agree to fix at least some of the costs of providing motor vehicle insurance thereby facilitating cooperation in the market for motor vehicle insurance. Co-ordination between competitors with respect to their costs (including, but not limited to, labour rates and the mark-up on the retail purchase price of paint) can be as anti-competitive as co-ordination between competitors with respect to their prices (i.e., premiums), as co-ordination with respect to costs dampens the incentive to compete with each other at the downstream level. The fixing of common prices for similar services provided to insurance undertakings, if it were to occur, would encourage behaviour that prevents, distorts, and restricts competition.

### **3. ENFORCEMENT ACTION**

3.1 The Authority does not have the power, under the Act, to impose remedies directly when it believes that undertakings have breached the Act. Instead it must convince the Court that there has been a breach of the Act and then seek to persuade the Court as to the appropriate remedy.<sup>18</sup> This then becomes an order of the Court, a breach of which can result in fines and/or imprisonment. However, prior to going to Court the Authority usually sends a letter of initiation to the parties allegedly in breach of the Act, depending on the circumstances of the case.

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<sup>18</sup> Under the Act the remedies are confined in civil cases to declaratory and injunctive relief where the Authority brings the case. Private parties that take a case can also seek damages.

3.2 This letter of initiation sets out the basis of the Authority's case, together with a set of demands that constitutes the remedial action that the Authority would seek in civil proceedings. If a party accedes to the Authority's demands, or through negotiation an arrangement satisfactory to the Authority is reached, then the Authority does not institute legal proceedings, provided of course the terms and conditions of the negotiated arrangement are adhered to by the parties.<sup>19</sup> Costly, lengthy court action with an uncertain outcome is thus avoided, and Authority resources can be deployed in other enforcement actions. If the Authority's demands are not met then unless parties allegedly in breach of the Act refute the case set out in the letter of initiation the Authority will commence proceedings.

3.3 In the Glassmatix case a letter of initiation was sent to the four members of the Consortium on 7 April 2003. Consistent with the cooperation provided throughout the investigation the Consortium members demonstrated a willingness to meet the Authority's demands. A series of meetings was held. On or about the 27 June 2003 all four members of the Consortium signed the same document entitled "Acknowledgement and Undertakings" ("A&U"). These are attached hereto as Annex A.

3.4 The A&U consists of four clauses. Paragraph 1 acknowledges that the Authority has concerns over the Consortium regarding the selection, introduction, implementation and operation of the Glassmatix system. Consortium members deny any breach of the Act. In paragraph 2 each Consortium member undertakes to comply with Section 4 of the Act with respect to agreements between and among motor vehicle insurers and repairers.

3.5 In paragraph 3 each Consortium member undertakes certain specific actions it will take either with respect solely to its own operations (i.e., 3 (a) to (f)) or as part of the Consortium (i.e., 3(g) to (h)). In 3(a) each Consortium member undertakes not to coordinate with other Consortium members or any other motor vehicle insurance undertaking on current levels of labour rates or other costs; in 3(h) the Consortium undertakes to provide reasonable access to other motor vehicle insurance undertakings

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<sup>19</sup> This does not, of course, preclude the Authority from accepting a party's A&U in the context of a court order.

to the Glassmatix system. In 3(i) the insurer commits to provide information to the Authority as to how it is complying with the Act. The undertakings in paragraph 3 address the issues raised above in the section headed “Object or Effect of Preventing, Restricting or Distorting Competition.” The Authority for its part in paragraph 4 accepts that if the insurer complies with the undertakings in paragraphs 2 and 3 then the Authority will refrain from instituting legal proceedings. Finally in paragraph 5 the insurer accepts that the A&U is binding on its successors and assigns.

3.6 In sum, the agreement reached between the Authority and the Consortium, the A&U, allows the potential benefits due to the implementation of the Glassmatix system in the State to occur. These potential benefits include cost reduction and improvement in the time taken to complete motor vehicle repairs, which may lead to lower insurance premiums when compared to opinion time based systems. At the same time, the Consortium members have agreed to refrain from conduct that could prevent the realisation of these benefits. Such conduct, if it were to occur, would dampen competition to the detriment of the consumer in the relevant markets covered by the Glassmatix system.

#### **4. DECISION**

4.1 On the basis of the facts in its possession and for the reasons set out above, the Authority has decided that for so long as the insurance undertakings are in compliance with the terms of the commitments made by them to the Authority, it shall refrain from instituting proceedings against any or all of the same with respect to the selection, introduction, implementation, and operation of the Glassmatix system.

4.2 This decision of the Authority does not affect the rights of private parties to take action under the Act.

For the Competition Authority,

Dr. Paul K. Gorecki  
Member and Director of the Monopolies Division  
28<sup>th</sup> August 2003

## **Annex A**

**The Competition Authority**

**-and-**

**Allianz Ireland plc**

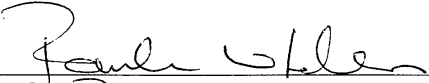
### **Acknowledgement and Undertakings**

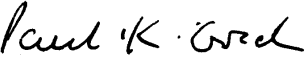
1. Allianz Ireland plc (“Allianz”) acknowledges that the Competition Authority has concerns that certain actions or arrangements involving Allianz Ireland plc, AXA Insurance Limited, Hibernian General Insurance Limited, and Royal & Sun Alliance Insurance plc (“Consortium”) regarding the selection, introduction, implementation and operation of the Glassmatix motor vehicle repair estimating system (“Glassmatix”), could breach the Competition Act, 2002 (“the Act”). Allianz denies that it has breached the Act with regard to the selection, introduction, implementation, and operation of Glassmatix and believes that, on the contrary, the Glassmatix system is overall pro-competitive and pro-consumer.
2. In the light of the matters stated in Paragraph 1 above, and in order to address the concerns of the Competition Authority, Allianz undertakes that it will neither introduce nor implement any scheme or agreement that has the object or effect of preventing, restricting or distorting competition between motor vehicle insurance undertakings on the one hand and motor vehicle repairers on the other, on the market for the purchase of repair services by motor vehicle insurance undertakings, for the purposes of the Act.
3. In addition, Allianz undertakes, for the purposes of the Act, as follows:
  - (a) not to co-ordinate with any of the other Consortium members or any other motor vehicle insurance undertaking on current and/or future levels of and/or changes in labour rates and/or other costs;
  - (b) not to provide or share with any of the other Consortium members or any other motor vehicle insurance undertaking information relating to aggregate labour hours and/or average data on prices paid to motor vehicle repairers;
  - (c) not to co-ordinate with any other motor vehicle insurance undertaking with respect to distinguishing between motor vehicle repairers;
  - (d) individually and without co-ordinating with any other motor vehicle insurance undertaking to determine the level of compensation payable to its panel of approved motor vehicle repairers for implementing the Glassmatix system;
  - (e) not to co-ordinate with any other motor vehicle insurance undertakings with respect to negotiating with motor vehicle repairers regarding possible deviations from Thatcham Times;
  - (f) not to introduce exclusivity requirements regarding the use of the Glassmatix system by either the motor vehicle insurers or motor vehicle repairers;
  - (g) not to introduce unnecessary (and therefore, not objectively justifiable) operational incompatibility between the Glassmatix system and other computerised vehicle repair estimation systems;

- (h) to offer access to other motor vehicle insurance undertakings and non-approved motor vehicle repairers for the use of the Consortium's intellectual property rights contained in the Glassmatix system in an open, proportionate, transparent, and objectively justified basis, including with regard to entry fees incurred by other motor vehicle insurance undertakings; and
  - (i) to provide information satisfactory to the Competition Authority regarding what steps Allianz will take to ensure that Allianz and its respective directors, officers, servants, and agents comply with the Act.
4. The Competition Authority accepts that the undertakings set out in Paragraphs 2 and 3 above resolve its concerns as identified in Paragraph 1 above. For so long as Allianz is in compliance with Paragraphs 2 and 3, above, the Competition Authority shall refrain from instituting proceedings against Allianz, its directors and employees, with respect to the selection, introduction, implementation and operation of the Glassmatix system.
5. The acknowledgements and undertakings provided herein shall be binding on the successors and assigns of Allianz.

Dated this 27<sup>th</sup> day of June, 2003 in Dublin, Ireland.

**AGREED TO AND ACCEPTED BY:**

Signed:   
[Print Name] PAULA WITELAN  
Secretary for and on behalf of Allianz Ireland plc

Signed:   
Dr. Paul K. Gorecki  
Member: for and on behalf of the Competition Authority



**The Competition Authority**

**-and-**

**AXA Insurance Limited**

**Acknowledgement and Undertakings**

1. AXA Insurance Limited (“AXA”) acknowledges that the Competition Authority has concerns that certain actions or arrangements involving AXA, Allianz Ireland plc, Hibernian General Insurance Limited, and Royal & Sun Alliance Insurance plc (“Consortium”) regarding the selection, introduction, implementation and operation of the Glassmatix motor vehicle repair estimating system (“Glassmatix”), could breach the Competition Act, 2002 (“the Act”). AXA denies that it has breached the Act with regard to the selection, introduction, implementation, and operation of Glassmatix and believes that, on the contrary, the Glassmatix system is overall pro-competitive and pro-consumer.
2. In the light of the matters stated in Paragraph 1 above, and in order to address the concerns of the Competition Authority, AXA undertakes that it will neither introduce nor implement any scheme or agreement that has the object or effect of preventing, restricting or distorting competition between motor vehicle insurance undertakings on the one hand and motor vehicle repairers on the other, on the market for the purchase of repair services by motor vehicle insurance undertakings, for the purposes of the Act.
3. In addition, AXA undertakes, for the purposes of the Act, as follows:
  - (a) not to co-ordinate with any of the other Consortium members or any other motor vehicle insurance undertaking on current and/or future levels of and/or changes in labour rates and/or other costs;
  - (b) not to provide or share with any of the other Consortium members or any other motor vehicle insurance undertaking information relating to aggregate labour hours and/or average data on prices paid to motor vehicle repairers;
  - (c) not to co-ordinate with any other motor vehicle insurance undertaking with respect to distinguishing between motor vehicle repairers;
  - (d) individually and without co-ordinating with any other motor vehicle insurance undertaking to determine the level of compensation payable to its panel of approved motor vehicle repairers for implementing the Glassmatix system;
  - (e) not to co-ordinate with any other motor vehicle insurance undertakings with respect to negotiating with motor vehicle repairers regarding possible deviations from Thatcham Times;
  - (f) not to introduce exclusivity requirements regarding the use of the Glassmatix system by either the motor vehicle insurers or motor vehicle repairers;
  - (g) not to introduce unnecessary (and therefore, not objectively justifiable) operational incompatibility between the Glassmatix system and other computerised vehicle repair estimation systems;

- (h) to offer access to other motor vehicle insurance undertakings and non-approved motor vehicle repairers for the use of the Consortium's intellectual property rights contained in the Glassmatix system in an open, proportionate, transparent, and objectively justified basis, including with regard to entry fees incurred by other motor vehicle insurance undertakings; and
  - (i) to provide information satisfactory to the Competition Authority regarding what steps AXA will take to ensure that AXA and its respective directors, officers, servants, and agents comply with the Act.
4. The Competition Authority accepts that the undertakings set out in Paragraphs 2 and 3 above resolve its concerns as identified in Paragraph 1 above. For so long as AXA is in compliance with Paragraphs 2 and 3, above, the Competition Authority shall refrain from instituting proceedings against AXA, its directors and employees, with respect to the selection, introduction, implementation and operation of the Glassmatix system.
5. The acknowledgements and undertakings provided herein shall be binding on the successors and assigns of AXA.

Dated this 27<sup>th</sup> day of June, 2003 in Dublin, Ireland.

**AGREED TO AND ACCEPTED BY:**

Signed: Pat J. Barry  
[Print Name] PAT. J. BARRY  
Secretary for and on behalf of AXA Insurance Limited

Signed: Paul K. Gorecki  
Dr. Paul K. Gorecki  
Member: for and on behalf of the Competition Authority

**The Competition Authority**

**-and-**

**Hibernian General Insurance Limited**

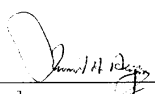
**Acknowledgement and Undertakings**

1. Hibernian General Insurance Limited (“Hibernian”) acknowledges that the Competition Authority has concerns that certain actions or arrangements involving Hibernian, Allianz Ireland plc, AXA Insurance Limited, and Royal & Sun Alliance Insurance plc (“Consortium”) regarding the selection, introduction, implementation and operation of the Glassmatix motor vehicle repair estimating system (“Glassmatix”), could breach the Competition Act, 2002 (“the Act”). Hibernian denies that it has breached the Act with regard to the selection, introduction, implementation, and operation of Glassmatix and believes that, on the contrary, the Glassmatix system is overall pro-competitive and pro-consumer.
2. In the light of the matters stated in Paragraph 1 above, and in order to address the concerns of the Competition Authority, Hibernian undertakes that it will neither introduce nor implement any scheme or agreement that has the object or effect of preventing, restricting or distorting competition between motor vehicle insurance undertakings on the one hand and motor vehicle repairers on the other, on the market for the purchase of repair services by motor vehicle insurance undertakings, for the purposes of the Act.
3. In addition, Hibernian undertakes, for the purposes of the Act, as follows:
  - (a) not to co-ordinate with any of the other Consortium members or any other motor vehicle insurance undertaking on current and/or future levels of and/or changes in labour rates and/or other costs;
  - (b) not to provide or share with any of the other Consortium members or any other motor vehicle insurance undertaking information relating to aggregate labour hours and/or average data on prices paid to motor vehicle repairers;
  - (c) not to co-ordinate with any other motor vehicle insurance undertaking with respect to distinguishing between motor vehicle repairers;
  - (d) individually and without co-ordinating with any other motor vehicle insurance undertaking to determine the level of compensation payable to its panel of approved motor vehicle repairers for implementing the Glassmatix system;
  - (e) not to co-ordinate with any other motor vehicle insurance undertakings with respect to negotiating with motor vehicle repairers regarding possible deviations from Thatcham Times;
  - (f) not to introduce exclusivity requirements regarding the use of the Glassmatix system by either the motor vehicle insurers or motor vehicle repairers;
  - (g) not to introduce unnecessary (and therefore, not objectively justifiable) operational incompatibility between the Glassmatix system and other computerised vehicle repair estimation systems;

- (h) to offer access to other motor vehicle insurance undertakings and non-approved motor vehicle repairers for the use of the Consortium's intellectual property rights contained in the Glassmatix system in an open, proportionate, transparent, and objectively justified basis, including with regard to entry fees incurred by other motor vehicle insurance undertakings; and
  - (i) to provide information satisfactory to the Competition Authority regarding what steps Hibernian will take to ensure that Hibernian and its respective directors, officers, servants, and agents comply with the Act.
4. The Competition Authority accepts that the undertakings set out in Paragraphs 2 and 3 above resolve its concerns as identified in Paragraph 1 above. For so long as Hibernian is in compliance with Paragraphs 2 and 3, above, the Competition Authority shall refrain from instituting proceedings against Hibernian, its directors and employees, with respect to the selection, introduction, implementation and operation of the Glassmatix system.
  5. The acknowledgements and undertakings provided herein shall be binding on the successors and assigns of Hibernian.

Dated this <sup>16<sup>th</sup></sup> 27<sup>th</sup> day of June, 2003 in Dublin, Ireland.

**AGREED TO AND ACCEPTED BY:**

Signed:  \_\_\_\_\_  
 [Print Name] LIONEL H. HOGAN  
 Secretary for and on behalf of Hibernian General Insurance Limited

Signed: Paul K. Gorecki 1/7/03  
 Dr. Paul K. Gorecki  
 Member: for and on behalf of the Competition Authority

**The Competition Authority**

**-and-**

**Royal & Sun Alliance Insurance plc**

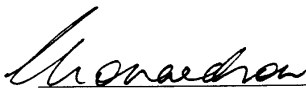
**Acknowledgement and Undertakings**

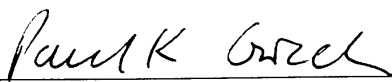
1. Royal & Sun Alliance Insurance plc (“RSA”) acknowledges that the Competition Authority has concerns that certain actions or arrangements involving RSA, Allianz Ireland plc, AXA Insurance Limited, and Hibernian General Insurance Limited (“Consortium”) regarding the selection, introduction, implementation and operation of the Glassmatix motor vehicle repair estimating system (“Glassmatix”), could breach the Competition Act, 2002 (“the Act”). RSA denies that it has breached the Act with regard to the selection, introduction, implementation, and operation of Glassmatix and believes that, on the contrary, the Glassmatix system is overall pro-competitive and pro-consumer.
2. In the light of the matters stated in Paragraph 1 above, and in order to address the concerns of the Competition Authority, RSA undertakes that it will neither introduce nor implement any scheme or agreement that has the object or effect of preventing, restricting or distorting competition between motor vehicle insurance undertakings on the one hand and motor vehicle repairers on the other, on the market for the purchase of repair services by motor vehicle insurance undertakings, for the purposes of the Act.
3. In addition, RSA undertakes, for the purposes of the Act, as follows:
  - (a) not to co-ordinate with any of the other Consortium members or any other motor vehicle insurance undertaking on current and/or future levels of and/or changes in labour rates and/or other costs;
  - (b) not to provide or share with any of the other Consortium members or any other motor vehicle insurance undertaking information relating to aggregate labour hours and/or average data on prices paid to motor vehicle repairers;
  - (c) not to co-ordinate with any other motor vehicle insurance undertaking with respect to distinguishing between motor vehicle repairers;
  - (d) individually and without co-ordinating with any other motor vehicle insurance undertaking to determine the level of compensation payable to its panel of approved motor vehicle repairers for implementing the Glassmatix system;
  - (e) not to co-ordinate with any other motor vehicle insurance undertakings with respect to negotiating with motor vehicle repairers regarding possible deviations from Thatcham Times;
  - (f) not to introduce exclusivity requirements regarding the use of the Glassmatix system by either the motor vehicle insurers or motor vehicle repairers;
  - (g) not to introduce unnecessary (and therefore, not objectively justifiable) operational incompatibility between the Glassmatix system and other computerised vehicle repair estimation systems;

- (h) to offer access to other motor vehicle insurance undertakings and non-approved motor vehicle repairers for the use of the Consortium's intellectual property rights contained in the Glassmatix system in an open, proportionate, transparent, and objectively justified basis, including with regard to entry fees incurred by other motor vehicle insurance undertakings; and
  - (i) to provide information satisfactory to the Competition Authority regarding what steps RSA will take to ensure that RSA and its respective directors, officers, servants, and agents comply with the Act.
4. The Competition Authority accepts that the undertakings set out in Paragraphs 2 and 3 above resolve its concerns as identified in Paragraph 1 above. For so long as RSA is in compliance with Paragraphs 2 and 3, above, the Competition Authority shall refrain from instituting proceedings against RSA, its directors and employees, with respect to the selection, introduction, implementation and operation of the Glassmatix system.
5. The acknowledgements and undertakings provided herein shall be binding on the successors and assigns of RSA.

Dated this 27<sup>th</sup> day of June, 2003 in Dublin, Ireland.

**AGREED TO AND ACCEPTED BY:**

Signed:   
Paul Donaldson (Chief Executive Officer—Ireland)  
Authorized Signatory for and on behalf of Royal & Sun Alliance Insurance plc

Signed:   
Dr. Paul K. Gorecki  
Member: for and on behalf of the Competition Authority