



CCPC Investigation

Report & Outcome

A report detailing the CCPC's investigation into suspected anti-competitive practices in the provision of private motor insurance in the State

8 February 2022



Table of Contents

1.	Executive Summary.....	1
2.	The Investigation.....	5
	Steps in the Investigation.....	5
	Industry Background.....	7
3.	Preliminary Findings.....	10
	Applicable Law	10
	Market Definition.....	11
	Assessment of evidence.....	12
	The CCPC’s preliminary finding of a restriction of competition by object	14
	The Parties’ responses to the Preliminary Findings.....	17
4.	Position of Brokers Ireland	19
5.	Outcome	22
	Available Options	22
	Commitment Agreements	23
	Previous interventions and engagement with the Central Bank of Ireland	25

1. Executive Summary

- 1.1 In August 2016, the Competition and Consumer Protection Commission (the “CCPC”) initiated an investigation into suspected anti-competitive practices in the supply of private motor insurance (“PMI”) in the State (the “Investigation”).
- 1.2 The Investigation involved an assessment of whether there was evidence to suggest that multiple operators active in the Irish insurance sector had engaged in conduct which was potentially in breach of competition law, contrary to section 4(1) of the Competition Act 2002 (the “2002 Act”) as amended and Article 101(1) of the Treaty on the Functioning of the European Union (“TFEU”), including the practice commonly referred to as price signalling. The Investigation examined evidence relating to the time period of January 2012 to September 2016.
- 1.3 The Investigation identified certain competition law concerns and on 17 September 2020, the CCPC issued preliminary findings (the “Preliminary Findings”)¹ to seven parties² (individually, a “Party”, together, the “Parties”): AA Ireland Limited, AIG Europe S.A. Ireland Branch Office, Allianz PLC, AXA Insurance DAC, Aviva Insurance Ireland DAC, FBD Insurance PLC and Brokers Ireland (which was formed in 2017 following the amalgamation of two associations, one of which was the Irish Brokers Association (the “IBA”)).
- 1.4 The Preliminary Findings set out the CCPC’s initial view that the Parties (or in the case of Brokers Ireland, its predecessor organisation, the IBA) may have engaged in conduct that potentially infringed section 4 of the 2002 Act and Article 101 TFEU

¹ Note that the term “preliminary findings” is used because, under current Irish law, only the courts may make a finding of fact in respect of breaches of competition law. The CCPC may therefore only make “preliminary findings” at the conclusion of its investigations and, where appropriate, initiate proceedings against the party under investigation before the civil or criminal courts for determination. We also note that the CCPC’s options for addressing potential competition law infringements will be enhanced with the implementation of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

² During the Investigation the CCPC requested information from a total of thirteen industry participants (eight insurers, two trade associations and three insurance brokers). Concurrently with issuing the Preliminary Findings to the Parties, the CCPC informed six other operators from which it had obtained information during the course of the Investigation that it would not be issuing preliminary findings to them.

in the period between 9 January 2015 and 9 September 2016 (the “Relevant Period”).³

- 1.5 The CCPC’s preliminary view was that certain Parties made public announcements and/or engaged in contacts with one another that reduced strategic uncertainty between them as to whether there would be increases in PMI premiums during the Relevant Period. The CCPC considered that through this conduct the Parties may have knowingly substituted practical cooperation for the risks of competition in breach of competition law.
- 1.6 Put simply, the CCPC’s concerns centred on the requirement for businesses to set their prices independently of one another. If a business has advance warning of a competitor’s intention to increase prices, then they in turn may be encouraged to also increase prices, since their customers are less likely to find a cheaper option elsewhere. The potential for consumer harm is particularly high in the motor insurance market as consumers cannot avoid taking out a policy if they are to drive legally.
- 1.7 Each of the seven Parties strongly disagreed with the CCPC’s Preliminary Findings. In their individual responses, each Party denied that they had infringed section 4(1) of the 2002 Act or Article 101(1) TFEU.
- 1.8 On issuing the Preliminary Findings, the CCPC provided each of the Parties an opportunity to respond to the CCPC’s identified competition concerns and to address those concerns by means of an offer of adequate commitments. The CCPC engaged with each of the Parties individually, between November 2020 and July 2021, to find mutually acceptable commitments which addressed the CCPC’s competition law concerns.
- 1.9 Following this period of engagement, the CCPC secured legally binding commitments from six out of seven Parties, namely: AA Ireland Limited, AIG

³ The Preliminary Findings set out a detailed summary of the key documentary evidence on which the CCPC relied in establishing the alleged infringement of competition law. In line with the CCPC’s practice at the time of the Investigation, the Parties were not provided with copies of the evidence relied upon by the CCPC at the Preliminary Findings stage in addition to this detailed summary. In the event that the CCPC had initiated enforcement proceedings under section 14A of the 2002 Act, evidence would have been accessible to the Parties through the standard court discovery process.

Europe S.A. Ireland Branch Office, Allianz PLC, AXA Insurance DAC, Aviva Insurance Ireland DAC and FBD Insurance PLC. Each of these six Parties agreed to implement and maintain an appropriate competition law compliance programme, or to enhance any existing programme to include regular competition law training on pricing practices. Each compliance programme is subject to independent expert oversight and each Party will be required to make annual submissions to the CCPC certifying compliance with the commitments.

- 1.10 The CCPC considered that the commitments agreed were a positive step in addressing the specific concerns identified in the Investigation and would assist in improving the competition compliance culture of the insurance industry as a whole.
- 1.11 At the conclusion of the Investigation, the CCPC also considered whether to pursue litigation under section 14A of the 2002 Act⁴. The potential outcomes of such litigation, if successful, are limited to an injunction to bring the activity to an end and/or a court declaration that the activity breached competition law. However, there is currently no power under Irish competition law for civil fines to be imposed by the Court. In this case, given the uncertainties and cost associated with the Court process, combined with the fact that the alleged conduct had already ceased and there would be no fines imposed in any event, the CCPC considered the commitments agreed to be the most effective outcome.
- 1.12 A single Party, Brokers Ireland, refused to enter into legally binding commitments to address the CCPC's competition concerns⁵. The CCPC's Preliminary Findings to Brokers Ireland identified specific conduct and behaviour undertaken by the IBA which raised serious competition concerns. Specifically, the Preliminary Findings alleged that the IBA was involved in making public announcements about

⁴ Under the legislation in place at the time of the Investigation, the CCPC's options as regards civil competition enforcement outcomes on the conclusion of an investigation into suspected breaches of competition law were limited to: (1) closing the investigation without taking any action; (2) settle the case by entering into a commitment agreement; or (3) seek a declaration from the Irish High Court pursuant to section 14A of the 2002 Act that a contravention of section 4 of the 2002 Act and/or Article 101(1) TFEU has occurred.

⁵ Brokers Ireland proposed to the CCPC that the CCPC should accept certain unilateral non-binding "assurances" set out in a letter to the CCPC dated 19 November 2020, and updated on 8 June 2021. As communicated to Brokers Ireland, the CCPC considered that these "assurances" amounted to a commitment not to breach competition law, which Brokers Ireland is required to do in all events, and were entirely insufficient to address the competition law concerns identified by the CCPC in the Preliminary Findings.

industry-wide premium trends, engaging in bilateral discussions with an insurer on PMI premium increases and facilitating contacts between a number of insurers to discuss PMI premium increases.

- 1.13 Although Brokers Ireland is a different and reconstituted entity to its predecessor, the IBA, the CCPC considered it entirely appropriate that Brokers Ireland would engage with the CCPC to address the CCPC's competition concerns in relation to the IBA's alleged behaviour. As set out in extended correspondence with Brokers Ireland's legal representatives, it is a well-established competition law principle that changes in the corporate structure of an undertaking do not relieve a successor entity of responsibility for the unlawful conduct of its predecessor.
- 1.14 Brokers Ireland represents the interests of a diverse range of industry participants, including 1,200 broker members, and as such has a significant voice within the industry. In the CCPC's view, Brokers Ireland's stance arguably calls into question the importance that organisation puts on demonstrating compliance with competition law and sends an unhelpful message to those organisations it represents.
- 1.15 The CCPC wrote to the Central Bank of Ireland following the closure of the Investigation. The CCPC's letter outlined its concerns regarding Brokers Ireland's failure to enter into legally binding commitments, the culture of the industry as a whole and the repeated interventions that have been needed to address issues in the sector.⁶ The CCPC is particularly cognisant of the Central Bank of Ireland's work in establishing and reinforcing accountability and conduct standards, which the CCPC believes has the potential to positively impact on all aspects of behaviours within the insurance industry.

⁶ The CCPC and its predecessor, The Competition Authority, have examined potentially anticompetitive conduct in the insurance sector on three occasions since 2003 including the Investigation. The previous investigations included the [Relay Investigation](#) which concluded in 2016; and the [Investigation into the use of Glassmatix Vehicle Repair Estimation System by insurance companies](#) which concluded in 2003. In addition three market studies have been conducted since 2005. The Competition Authority conducted two studies in the insurance sector including; [Competition in the Private Health Insurance Market](#) published in January 2007; and [Competition Issues in the Non-Life Insurance Market](#) in 2005. The CCPC published its [Public Liability Market Study](#) in 2020 which followed a request from the then Minister of Enterprise, Trade and Employment in July 2019.

2. The Investigation

- 2.1 During 2015 and 2016 Irish consumers experienced significant increases in their PMI premiums.⁷ These increases in PMI premiums drew the attention of the CCPC and gave rise to consumer complaints to the CCPC.
- 2.2 The CCPC conducted a preliminary assessment of available information, which included the examination of public statements made by a number of operators which appeared to forecast with confidence that PMI premiums would rise. Following this preliminary assessment, the CCPC was of the view that there was sufficient information to suspect that a breach of section 4 of the 2002 Act and/or Article 101 TFEU may have occurred or was occurring. In August 2016, the CCPC initiated the Investigation pursuant to section 10 of the Competition and Consumer Protection Act 2014 (the “2014 Act”).

Steps in the Investigation

- 2.3 The Investigation examined the practices of multiple operators within the PMI sector in the period from January 2012 to September 2016. During the Investigation, the CCPC gathered a substantial amount of electronic material, as well as extensive oral testimony and documentary evidence through witness summons hearings and meetings. With the assistance of digital forensic tools, the CCPC conducted a detailed review and assessment of all of the evidence gathered, including in excess of 1.4 million files received, together with information in the public domain such as press articles and financial reports.
- 2.4 In gathering evidence, the CCPC used its powers under section 18(1) of the 2014 Act. The CCPC issued 24 formal requests for information pursuant to section 18(1)(d) of the 2014 Act. The CCPC also issued 19 witness summonses to senior managers of thirteen industry participants (including the Parties) and conducted

⁷ According to the CSO data prices on average, as measured by the Consumer Price Index, were 38% higher in July 2016 compared with July 2015. See: <https://www.cso.ie/en/releasesandpublications/er/cpi/consumerpriceindexjuly2016/>

55 separate witness summons interviews pursuant to sections 18(1)(a), (b) and (c) of the 2014 Act.

- 2.5 In addition, the CCPC sought information from, and engaged with, a wide range of other relevant sources, including the Central Bank of Ireland, the Central Statistics Office (the “CSO”), the Personal Injuries Assessment Board, the Motor Insurance Bureau of Ireland, the Alliance for Insurance Reform, the Law Society of Ireland, the Bar Council of Ireland, the Department of Finance, the Norwegian Competition Authority, the UK Competition and Markets Authority, and the European Commission.

Analysis of increases in PMI premiums in the Relevant Period

- 2.6 As part of the Investigation, the CCPC analysed the increases in PMI premiums during the Relevant Period according to a number of separate datasets or sources⁸.
- 2.7 The CCPC found, following a review of the available datasets, that PMI premiums increased significantly during the Relevant Period. The increase in average PMI premiums ranged from 30% to 40% depending on the data set used. The CCPC found that:
- (a) PMI premium quotations increased by as much as 40% between January 2015 and August 2016⁹; and
 - (b) The average premium per policy actually paid by consumers increased by over 30% from January 2015 to September 2016¹⁰.
- 2.8 The CCPC also examined whether it was possible to demonstrate a relationship between the public announcements identified in the Investigation and a subsequent increase in PMI premiums. Based on the CCPC’s regression analyses, the CCPC’s preliminary view was that there was a statistically significant correlation between the public price announcements and a subsequent increase

⁸ Including: (i) the CSO’s aggregate quotation based index; (ii) the Central Bank of Ireland’s National Claims Information Database; and (iii) insurer level data on the average PMI premium.

⁹ Based on CSO data.

¹⁰ Based on the CCPC’s analysis of insurer level data.

in the (insurer) Parties' PMI premiums two months later (this timing being consistent with the application of pricing decisions by insurers).

- 2.9 The CCPC's preliminary view was that the data analysed helped to demonstrate the upward trend in PMI premiums during the Relevant Period and was indicative of the way in which the suspected conduct contributed to market conditions that did not correspond to the normal competitive conditions of the market.

Industry Background

- 2.10 All drivers in the State are required to have PMI cover under the Road Traffic Act 1961 (as amended) to drive a vehicle on the public road.¹¹ Driving without PMI is an offence.
- 2.11 PMI policies are underwritten by insurers and are sold through a number of different distribution channels (e.g., by brokers, direct online or direct by telephone). Consumers also use price comparison websites to search for the cheapest available PMI policy. Consumers are typically able to obtain quotes from a number of different suppliers before settling on a chosen provider.
- 2.12 Insurance brokers act as intermediaries between consumers and insurance companies, and use their knowledge of risks and the insurance market to find and arrange suitable policies. They usually offer products from more than one insurer.
- 2.13 PMI is usually purchased for a one-year term. There are two types of PMI cover:
- (a) Non-comprehensive PMI, which is third party cover, insures against liability for death or injury to third parties, and damage to the property of third parties. This is required by law before a vehicle can be driven. Third party, fire and theft insurance extends this cover to insure for fire and theft of the policyholder's own vehicle; and
 - (b) Comprehensive PMI, in addition to third party, fire and theft cover, also insures for damage caused to the policyholder's own vehicle and injury to the policyholder arising from accidents.

¹¹ In accordance with section 56 of the Road Traffic Act 1961 (as amended) at: <http://www.irishstatutebook.ie/eli/1961/act/24/section/56/enacted/en/html#sec56>

- 2.14 Comprehensive PMI is the most commonly sold type of PMI in the State and accounted for 84% of policy years¹² during the Relevant Period.¹³

How Premiums Are Set

- 2.15 Insurers use different methods to set PMI premium prices. Generally speaking, PMI premiums are tailored to each prospective consumer, with the price depending on the driver's risk factors (e.g., age, occupation, cover type, location, vehicle type, vehicle age, group and value, and driving and claims experience).
- 2.16 In practice, however, some insurers may allocate consumers into groups (or pools) based on their characteristics meaning that the premium will be determined for that pool, not at an individual consumer level. Insurers will often also consider the rate adequacy reports produced by their actuaries¹⁴ in determining the applicable rate for an identifiable risk or customer group.

The significance of the underwriting cycle

- 2.17 The pricing of PMI premiums is also influenced by what is referred to as an underwriting cycle (or insurance cycle). The underwriting cycle is the term given to the tendency for non-life insurance premiums to follow a cyclical pattern in which premiums fall slowly for a long period (the so-called "soft market") before rising sharply (the so-called "hard market").
- 2.18 A hard market is characterised by higher premiums, stricter underwriting criteria and (relative) profitability. In contrast, a soft market is characterised by lower premiums, looser underwriting criteria and (relative) unprofitability. An

¹² Insurance companies measure their exposure to risk in policy years (i.e. one policy year of exposure equals one vehicle on full cover for one year or two vehicles for six months).

¹³ Central Bank of Ireland "Private Motor Insurance Report 1, National Claims Information Database" published in December 2019 (the "CBI PMI Report 2019") accessible at: <https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/national-claims-information-database/private-motor-insurance-report-1---national-claims-information-database.pdf?sfvrsn=6>

¹⁴ A 'rate adequacy report' is an actuarial analysis of how a particular segment or customer group is performing. As the true cost of an insurance segment may not be known for several years, pending claims notification, defence or settlement of the claim, an increasing pattern of claims in the segment may mean the charged rate adequacy is insufficient based on General Linear Modelling ("GLIM"). GLIM is the actuarial projection of how historical performance of a segment is likely to translate into future behaviour.

underwriting cycle lasts a number of years, typically 6-9 years. Figure 1 below provides an illustration of the underwriting cycle.

Figure 1: The underwriting cycle



Source: Central Bank of Ireland PMI Report 2019

The CBI PMI Report 2019 noted that the relative trends in claims costs and premiums observed between 2009 and 2018 are indicative of an underwriting cycle.¹⁵ The CBI PMI Report 2019 also states that *“This cycle, with peaks and troughs in premiums, reserves and profitability, is a feature of all insurance markets but appears to be particularly pronounced in Ireland”*.¹⁶ The PMI market in Ireland displayed many of the characteristics of a soft market in the period pre-2014. Thereafter, the domestic PMI market began to display the characteristics of a hard market. Accordingly, it is understood that consumers could be expected to incur higher PMI premiums once the market shifted.

¹⁵ CBI PMI Report 2019, page 19. (See footnote 13.)

¹⁶ Ibid, page 19.

3. Preliminary Findings

3.1 In this section, the CCPC provides a summary of its Preliminary Findings in the Investigation. This includes an overview of: (i) the applicable law; (ii) relevant market definition; (iii) assessment of evidence; (iv) restriction of competition by object; and (v) the Parties' responses to the Preliminary Findings.

Applicable Law

3.2 The Investigation examined whether the conduct of the Parties gave rise to a breach of section 4(1) of the 2002 Act and/or Article 101(1) TFEU. Section 4(1) of the 2002 Act prohibits 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 trade in any goods or services in the State or in any part of the State.

3.3 Article 101(1) TFEU prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.

3.4 The CCPC formed the preliminary view that each of the seven Parties listed at paragraph 1.3 were undertakings for the purposes of applying section 4(1) of the 2002 Act and Article 101(1) TFEU during the Relevant Period. In addition, the CCPC formed the preliminary view that one of the Parties, the IBA, could be considered both an undertaking and an association of undertakings during the Relevant Period.

3.5 Under Irish competition law, changes in the corporate structure of an undertaking do not relieve a successor entity of responsibility for the unlawful conduct of its predecessor. Therefore, although Brokers Ireland is a different and reconstituted entity to its predecessor, the IBA, the CCPC considered that as a matter of law it was entirely appropriate for the CCPC to address its preliminary findings in relation to the IBA to Brokers Ireland.

- 3.6 The CCPC also considered that for the purposes of Article 101 TFEU, and based on established case law, trade between Member States was capable of being affected by the alleged conduct identified in the Preliminary Findings. In particular, each of the Parties provided products or services within the State and the conduct covered by the Preliminary Findings pertained to increases to PMI premiums which were applicable throughout the State.¹⁷
- 3.7 The CCPC reached the preliminary view that, during the Relevant Period, the Parties engaged in a concerted practice which involved the Parties making announcements and/or engaging in other contacts with one another that reduced strategic uncertainty between them as to whether there would be increases in PMI premiums. Reducing strategic uncertainty in respect of price increases is considered problematic because, under competition law, businesses are required to set their prices independently. The concept of a concerted practice set out in section 4(1) of the Act and Article 101(1) TFEU is a long-established feature of European Union and Irish competition law and encompasses forms of collusive contacts between undertakings, which fall short of being an agreement or decision.

Market Definition

- 3.8 Market definition is a tool to delineate the boundaries of competition between firms. The main purpose of market definition is to identify in a systematic way the competitive constraints that the firms face. A relevant market is defined according to both product and geographic factors.¹⁸
- 3.9 Based on the evidence gathered, the CCPC formed the preliminary view that the relevant market for the purposes of the Investigation was the market for the

¹⁷ The EU Courts have held on a number of occasions that an agreement extending over the whole territory of a Member State gives rise to a presumption that trade between Member States is affected (see for example: Cases T-259/02 *Raiffeisen Zentralbank Österreich v Commission* [2006] ECR II-5169).

¹⁸ A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by reason of product characteristics, prices and intended use. Products and/or services that could readily be put on the market by other producers without significant switching cost or by potential competitors at reasonable cost and within a limited time span also need to be taken into account. The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring areas.

supply of PMI in the State. The CCPC considered that the relevant product market was no wider than the supply of PMI on the basis of the following factors:

- (a) There is a legal requirement for PMI and consequently there are no substitutes. Consumers are required by law to purchase PMI before they can drive a vehicle on a public road. Driving without a motor insurance policy is an offence and cannot be considered a substitute for purchasing PMI.
- (b) Consumers cannot substitute another form of insurance policy for PMI. For example, in order to obtain commercial motor insurance an individual must demonstrate that they are a sole trader, which prohibits consumers from switching between commercial motor insurance and PMI.
- (c) PMI is a mandated complementary good to driving (i.e., in order to drive legally, PMI is a necessary supplementary purchase). As the cost of motor insurance amounts to a part of the cost of driving for a year it is unlikely that the availability of other forms of transport impose a competitive constraint on premiums.

3.10 The CCPC's preliminary conclusion was that, for the purpose of its competition analysis in the Investigation, it was not necessary to define separate markets according to the different risk factors (such as vehicle type or age) and, for this reason, it did not do so. Likewise, the CCPC did not find any evidence to suggest that the competitive conditions materially differ according to distribution channel, type of seller or individual consumer characteristics.

3.11 The relevant geographic market may be based on the location of suppliers and defined as an area covering a set of firms which compete closely because enough consumers consider them to be substitutes. In this case, the CCPC concluded on a preliminary basis that the geographic market relevant to the Investigation was the State.

Assessment of evidence

3.12 The Preliminary Findings alleged that each of the Parties engaged in anti-competitive cooperation over a 21-month period during 2015 and 2016. The suspected concerted practice investigated by the CCPC consisted of the following conduct:

- a. public announcements¹⁹ made by insurer(s), principally through the Irish news media, relating to their own future pricing intentions for PMI premiums²⁰;
- b. public announcements made by a range of industry operators relating to their expectations of increases in PMI premiums²¹;
- c. bilateral contacts between certain of the Parties which referred to individual insurer's future pricing intentions and expectations of PMI premium increases²²; and
- d. multilateral contacts between certain of the Parties, initiated by the IBA, which shared information relating to future PMI premium increases.

3.13 The CCPC's preliminary view was that the public announcements and direct or indirect contacts between the Parties identified in the Investigation may have reduced strategic uncertainty as to whether there would be increases in PMI premiums in the Relevant Period and, as such, constituted a concerted practice.

3.14 The CCPC found on a preliminary basis that the number, nature and timing of public announcements of expected increases in PMI premiums and, in some cases, future pricing intentions, together with the other contacts, demonstrated that the Parties knowingly substituted practical cooperation between them for the risks of competition. As the direct and indirect communications concerned future pricing, the CCPC took the preliminary view that insurers could not fail to take into account, either directly or indirectly, the information when considering their future pricing intentions. If there had been no communications, the Parties would

¹⁹ For these purposes, public announcements were defined as including communications through the media, speeches, presentations and panel discussions at conferences, including telecommunication conferences, as well as interviews and answers to questions through professional media, both traditional and digital. The CCPC examined over forty public announcement as part of the Investigation.

²⁰ By way of example, The Irish Times carried the following quote from the then CEO of FBD *"We need to see more increases that's for certain but I would be talking about a double-digit increase, I think [it will be] market wide but a low double-digit increase."* Similar public announcements were made by certain other Parties during the Relevant Period.

²¹ By way of example, an article published in the Sunday Independent on 17 January 2016 entitled *"Motorists will pay if action is not taken on Setanta Insurance Court Ruling"* which quotes Mr. Ciaran Phelan of the IBA *"We've spoken to people throughout the industry who say that these factors combined could result in continued increases in average motor premiums to the €1,000 mark, representing a 150pc increase on 2014 levels."* Similar public announcements were made by certain other Parties during the Relevant Period.

²² For example, the CCPC collected contemporaneous written evidence which suggested that in January 2015, an insurer told the IBA that it would be initiating an increase in premiums of 10%. This increase was consistent with the range of increases announced by the IBA in the media in mid-January 2015. Other evidence obtained from the IBA indicated that IBA met with an insurer and discussed "IBA support" in relation to "Motor Rate".

have had to compete more strongly in a market with some measure of uncertainty as to whether and to what extent PMI premiums might go up.

- 3.15 The CCPC's preliminary assessment was that these communications provided insurers with both an insight into their competitors' future pricing intentions and reassurance that competitors were also considering or initiating increases to PMI premiums. The consequences were that the usual uncertainties and risks inherent in competition were reduced or removed and the market was not as competitive as it might otherwise have been. In this way, the announcements reduced strategic uncertainty as to whether competing insurers would increase their PMI premiums. Indeed, one insurer's internal communications indicated to the CCPC that a competitor's publicly stated intention to increase premium prices provided comfort and confidence to increase their own premium prices.
- 3.16 The CCPC also considered that certain multilateral contacts (predominantly in the form of email exchanges) initiated by the IBA may have contributed to artificially increasing transparency in the pricing of PMI premiums in the Relevant Period. This in turn may have allowed Parties to take this information into account in making pricing decisions and to act in the knowledge that increasing prices may not result in a competitive disadvantage, as competitors would also raise prices.
- 3.17 The CCPC's preliminary conclusion was that the public announcements and direct or indirect contacts presented all the characteristics of a concerted practice in the sense of section 4(1) of the 2002 Act and Article 101(1) TFEU.

The CCPC's preliminary finding of a restriction of competition by object

- 3.18 The CCPC took the preliminary view that the public announcements and direct or indirect contacts between the Parties amounted to a restriction of competition by object. Restrictions of competition by object are those that by their very nature have the potential of restricting competition²³.

²³ The distinction between 'infringements by object' and 'infringements by effect' arises from the fact that certain forms of collusion between undertakings can be regarded, by their very nature, as being injurious to

- 3.19 Competition law requires each economic operator to determine independently the commercial and pricing policy which they intend to adopt on the market. That independence requirement does not deprive economic operators of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, but it does strictly preclude any direct or indirect contact between such operators by which an undertaking may influence the conduct on the market of its competitors or disclose to them its decisions or intentions concerning its own conduct on the market where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question.
- 3.20 The CCPC, in forming its preliminary view, took into account the economic and legal context in which the alleged collusion took place. The PMI sector was highly competitive in the period pre-2014. Several insurers in this period priced competitively in a strategy to capture market share. Following 2014, the PMI sector was experiencing a shift from a soft market to a hard market (see paragraphs 2.17 to 2.18 above). In response, it is reasonable to expect that insurers and brokers may have wanted PMI premiums to increase, but faced competitive uncertainty as to whether, when and to what extent competing insurers would increase their PMI premiums. Uncertainty between insurers and brokers is a vital element of competition in the PMI market. Effective competition is possible only if each competitor can keep its intentions and future actions secret. The CCPC's preliminary view was that the alleged conduct of the Parties artificially increased transparency in the PMI market in the State.
- 3.21 Without this transparency insurers would risk losing consumers should they unilaterally increase prices, given the price sensitivity of consumers and the commodity or standard nature of the PMI product. The result of this might be a decrease in business if their prices were out of line with those of others in the

the proper functioning of normal competition. The EU Courts have held that, "*there is no need to take account of the concrete effects of an agreement once it appears that it has as its object the prevention, restriction or distortion of competition*" (see for example, Joined Cases 56 and 58-64 *Établissements Consten S.à.R.L. and Grundig-Verkaufs-GmbH v Commission of the European Economic Community* [1966] ECR 299, page 342). However, the CCPC's preliminary view was that the evidence also suggested that the Parties' alleged conduct resulted in a restriction of competition by effect.

market. The CCPC's preliminary view was that the indirect and direct communications outlined in the Preliminary Findings potentially made it easier for insurers to implement price rises of their own in 2015 and 2016.

- 3.22 The CCPC's preliminary view was that in light of decreased uncertainty on the direction of prices caused by market transparency inherent in a hardening insurance cycle, the alleged conduct of the Parties was particularly damaging to competition as it was all the more important that the remaining uncertainty about the timing and quantum of competitors' independent future pricing decisions should be protected.
- 3.23 The CCPC's Preliminary Findings in relation to the evidence found that the content of the various communications was: (i) future information; (ii) related to pricing intentions; (iii) sometimes individualised; (iv) information that would otherwise have been confidential; and, (v) commercially sensitive. The information was commercially useful and of practical value to the Parties and at least sufficient to highlight that there was a general impetus towards industry-wide PMI price increases in the State.
- 3.24 The CCPC formed the preliminary view that the series of price announcements and other contacts during the Relevant Period allowed the Parties to develop a climate of mutual certainty as regards future increases in PMI premiums. Having considered all the above, the CCPC's preliminary view was that the conduct of the Parties made it possible to reduce strategic uncertainty for each of the Parties and created conditions of competition that did not correspond to normal conditions on the market and accordingly gave rise to a concerted practice, having as its object the restriction of competition within the meaning of section 4(1) of the 2002 Act and/or Article 101(1) TFEU.

The Parties' responses to the Preliminary Findings

- 3.25 Each of the Parties strongly disputed the CCPC's Preliminary Findings, both in terms of the legal framework and the assessment of the evidence relied on by the CCPC.²⁴
- 3.26 In terms of the legal framework, a number of the Parties were either sceptical of or disagreed with the CCPC's application of the law as it related to public price announcements or so-called price signalling. It was pointed out in several responses that there is no established case law, either in the European Union or at Member State level, which could be firmly relied upon to characterise price signalling as an infringement of section 4 of the 2002 Act or Article 101 TFEU. A number of Parties pointed to the *Woodpulp* case, in which a European Commission decision which condemned public price announcements was overturned on appeal by the Court of Justice of the European Union²⁵ on the basis that a concerted practice to fix prices had not been established. Responses to the Preliminary Findings also noted another European Commission case which investigated price signalling amongst undertakings active in the container shipping sector and which was closed on the basis of commitments without any finding of infringement²⁶. The Parties' responses also mentioned the fact that while price signalling had also been considered in other jurisdictions such as the United States and the United Kingdom, there was no decisional practice establishing it as an infringement of competition law.
- 3.27 In addition, a number of the Parties pointed to external factors as being relevant to the context of both the public announcements and any contacts between the Parties. These factors included, inter alia, the rising cost of claims and the impact of the decision by the Department of Finance that the Motor Insurance Bureau of

²⁴ A number of Parties also requested access to the file and underlying documentary evidence relied upon by the CCPC in the Preliminary Findings. However, the CCPC explained to these Parties that such access would only be provided by way of the standard court discovery process in the event that enforcement proceedings were taken in the High Court under section 14A of the 2002 Act.

²⁵ Joined cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *A. Ahlström Osakeyhtiö and Others v Commission*.

²⁶ Case AT.39850 *Container Shipping*, Commission Decision of 7.7.2016 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement

Ireland (“MIBI”) was liable to pay an estimated €90 million of outstanding claims against Setanta policyholders following Setanta’s insolvency in March 2014.²⁷ The Department of Finance’s MIBI decision was subject to challenge in the Courts and was upheld by the High Court in September 2015²⁸ before it was ultimately reversed by the Supreme Court in 2017.²⁹ However, the CCPC understands that in the period between the High Court ruling and the Supreme Court’s decision, the issue caused a great deal of uncertainty for insurers. Insurance Ireland and MIBI claimed that finding MIBI liable in the event of insolvency would result in an additional €50 being added to every PMI policy. Some of the Parties’ responses were critical of the CCPC’s Preliminary Findings for, in their view, not attaching adequate weight to these factors in its assessment of the conduct.

²⁷ MIBI was established in 1955 for the purpose of compensating victims of road traffic accidents by uninsured and unidentified vehicles. MIBI pays 100% of eligible claims. MIBI is funded by a levy on insurers which are proportionate to their market share, in the year in which such claims arise. In March 2014, Setanta (a Malta-based insurance company) operating in Ireland became insolvent leaving an estimated €90 million of outstanding claims against Setanta policyholders.

²⁸ *The Law Society of Ireland v The Motor Insurers' Bureau of Ireland* [2015] IEHC 564.

²⁹ *The Law Society of Ireland v The Motor Insurers' Bureau of Ireland* [2017] IESC 31.

4. Position of Brokers Ireland

- 4.1 The CCPC's Preliminary Findings to Brokers Ireland identified specific conduct and behaviour undertaken by one of its predecessor organisations, the IBA, which raised serious competition concerns. The Preliminary Findings indicated to the CCPC that the IBA played a role in coordinating and facilitating cooperation between the Parties over a 21-month period that may have amounted to anticompetitive conduct.
- 4.2 The suspected anti-competitive cooperation consisted of public announcements of future premium rises as well as the facilitation of other contacts between competitors, all of which may have reduced strategic uncertainty between the Parties as to whether there would be increases in PMI premiums. In particular, the Preliminary Findings alleged that the IBA was involved in the following conduct that raised concerns: making public announcements about industry-wide premium trends; engaging in bilateral discussions with an insurer on PMI premium increases; and, facilitating contact between a number of insurers to discuss PMI premium increases.
- 4.3 Brokers Ireland strongly disagreed with the CCPC's Preliminary Findings. It denied that the IBA had infringed section 4(1) of the 2002 Act or Article 101(1) TFEU.
- 4.4 Brokers Ireland represents the interests of a diverse range of industry participants. Brokers Ireland's membership includes 1,200 broker members and it also counts a number of insurers among its corporate partners, with these insurers contributing significant funding to the organisation. As one of the primary trade associations for the insurance sector in Ireland, Brokers Ireland has a significant voice within the industry and, in the CCPC's view, is in a position of influence with respect to regulatory compliance by its members.
- 4.5 Brokers Ireland argued that it was not responsible for the activities of a predecessor organisation (i.e. the IBA) and, accordingly, would not accept that it would be appropriate for it to give legally binding commitments in the Investigation.

- 4.6 As set out by the CCPC in correspondence with Brokers Ireland’s legal representatives on a number of occasions, it is a matter of settled case law that changes in the corporate structure of an undertaking do not relieve a successor entity of responsibility for the unlawful conduct of its predecessor. Therefore, although Brokers Ireland is a different and reconstituted entity to its predecessor, the IBA, the CCPC considered that as a matter of law it would be appropriate for Brokers Ireland to engage with the CCPC to address the CCPC’s competition law concerns in relation to the IBA’s alleged behaviour.
- 4.7 Brokers Ireland also advanced additional arguments in its response to the Preliminary Findings. In common with the other Parties, Brokers Ireland strongly disputed the CCPC’s Preliminary Findings, both in terms of the legal framework and the assessment of the evidence relied on by the CCPC.
- 4.8 The CCPC sought to engage constructively with Brokers Ireland at all times both during the Investigation and following the issuing of its Preliminary Findings. The CCPC’s position was communicated to Brokers Ireland on a number of occasions, including by letter dated 17 September 2020, 19 November 2020, 22 January 2021, 25 May 2021 and 14 July 2021. The CCPC facilitated extensive dialogue with Brokers Ireland and its advisors during this period while seeking to reach a mutually acceptable agreement which would resolve the CCPC’s competition concerns as set out in the Preliminary Findings.
- 4.9 Brokers Ireland was not willing to enter into legally-binding commitments and instead chose to submit unilateral, non-legally binding “assurances” to the CCPC, which the CCPC considered to be insufficient to address the competition law concerns identified by the CCPC in the Preliminary Findings.
- 4.10 Brokers Ireland also publicly stated that, in seeking to ensure that Brokers Ireland committed to putting in place a competition law compliance programme which would be subject to external oversight and scrutiny, the CCPC placed unreasonable demands on Brokers Ireland.
- 4.11 The CCPC considers that entering into similar legally binding commitments, of the kind agreed with the other six parties in the Investigation, but tailored to Brokers

Ireland, would be entirely reasonable and proportionate. The commitments sought would have resulted in a legally binding obligation to implement a robust competition law compliance programme with independent oversight and regular reporting requirements. Entering into such commitments would have shown the importance Brokers Ireland places on demonstrating compliance with competition law and recognition of its importance as a representative body in the industry.

- 4.12 Based on both the Investigation and its other previous interventions in the sector, the CCPC considers that fundamental cultural issues persist in the Irish insurance sector which are harmful for consumers and businesses (see further below). Competition law compliance supports markets to operate in a fair and competitive way for the benefit of consumers. Legally binding commitments to implement a robust competition law compliance programme with independent oversight and regular reporting requirements, would, in the opinion of the CCPC, have signalled an understanding of the importance of having in place a compliance programme that can withstand external scrutiny and embed a culture of competition law compliance in the trade association and their members. The fact that Brokers Ireland did not address the CCPC's competition concerns through legally binding commitments, in the CCPC's view, arguably calls into question the importance the organisation puts on demonstrating compliance with competition law.

5. Outcome

Available Options

- 5.1 Under the legislation in place at the time of the Investigation, the CCPC's options as regards civil competition enforcement outcomes were limited. On the conclusion of an investigation into suspected breaches of competition law, the CCPC could do one of the following: (1) close the investigation without taking any action; (2) settle the case by entering into a commitment agreement, which may take the form of an ordinary contractual agreement between the CCPC and the party in question or which may be made an order of court pursuant to section 14B of the 2002 Act; or (3) seek a declaration from the Irish High Court pursuant to section 14A of the 2002 Act that a contravention of section 4 of the 2002 Act and/or Article 101(1) TFEU has occurred.
- 5.2 The CCPC carefully considered each of the options available to it on conclusion of the Investigation. Closure of the Investigation without taking any action was quickly ruled out, given the CCPC's Preliminary Findings in the case. In assessing its other enforcement options, the CCPC chose what it considered to be the most effective (from a consumer benefit and cost perspective) and pragmatic approach, taking account of the fact that the alleged conduct had ceased.
- 5.3 When considering the merits of pursuing litigation under section 14A of the 2002 Act, the CCPC was cognisant of the limitations of the potential outcomes which could be achieved through this process, namely an injunction or declaration of illegality. Given that the conduct had already ceased, it was not considered appropriate for the CCPC to pursue an injunction. The CCPC also considered that a declaration by the Court that the Parties had engaged in anticompetitive conduct was unlikely to have a substantial impact on the consumer, and would have limited deterrent effect given the Court's inability to levy fines or other sanctions in this process. The CCPC was also aware of the challenges it would face in proving a concerted practice before the Irish courts, particularly in a case where much of the evidence related to public announcements on price. At the time of

the Investigation, and indeed at the time of publication of this report, this was an area of competition law which was still developing; other European Commission and Member State cases involving so-called price signalling had resulted in commitments rather than a successful infringement decision.³⁰ While the CCPC considered that the evidence as set out in the Preliminary Findings raised a case to answer by the Parties, the uncertainties of litigation coupled with the limited impact for consumers of a declaration under section 14A of the 2002 Act, meant that the CCPC could not justify the potential cost of pursuing this course of action in this case.

- 5.4 The CCPC's focus turned to agreeing forward looking commitments with the Parties which would seek to address perceived shortcomings as regards compliance with competition law. A key focus of the CCPC throughout the process of agreeing commitments with the Parties was to work towards embedding a culture of competition law compliance within the Irish insurance industry, in order to best promote and protect the interests and welfare of consumers in Ireland.
- 5.5 The CCPC initially sought to agree with the Parties commitments which would be made an order of Court pursuant to section 14B of the 2002 Act. The main advantage of this process is perceived to be that a breach of the relevant Court order puts the relevant party in contempt of Court. Some Parties indicated their willingness to enter into this process. However, on further reflection by the CCPC it was decided that legally-binding contractual commitments would be more appropriate in the particular circumstances of this case.

Commitment Agreements

- 5.6 Following engagement with the Parties between November 2020 and July 2021, the CCPC entered into legally binding commitment agreements with six out of seven Parties (the "Commitment Agreements"). Under the Commitment Agreements these Parties are required to implement and maintain an appropriate

³⁰ For example, Case AT.39850 *Container Shipping*, cited at footnote 26 above and Case number: 13.0612.53 Decision of the Board of the Netherlands Authority of Consumers & Markets (ACM) within the meaning of Section 49a of the Dutch Competition Act, decision dated 7 January 2014.

internal competition law compliance programme, or to enhance an existing programme where applicable.

- 5.7 Entering into a Commitment Agreement with the CCPC in response to the CCPC's Preliminary Findings does not imply recognition on the part of any of the six Parties that they had acted in violation of the competition law prohibitions contained in the 2002 Act and/or the TFEU.
- 5.8 As the Investigation involved a suspected breach of Article 101(1) of the TFEU, the CCPC was required to notify the European Commission pursuant to the consultation process set out in Article 11(4) of Regulation 1/2003.³¹ The consultation process imposed 30 day 'standstill' provision before the CCPC could enter into a Commitment Agreement with any of the Parties.
- 5.9 Following completion of the Article 11(4) process, the CCPC proceeded to finalise the Commitment Agreements with each Party. Each Commitment Agreement took effect on the date of signature. Each of the Commitment Agreements are published on the CCPC's website [here](#).
- 5.10 The Commitment Agreements require each Party to implement and maintain an appropriate internal competition law compliance programme, or enhance any existing programmes, to include:
- (a) provision of an internal monitoring mechanism to detect, identify and report suspected breaches of the compliance programme;
 - (b) provision of a mechanism for employees reporting suspected breaches and protection for the employee that comes forward;
 - (c) appointment of a compliance officer who must report to the Board of the organisation;
 - (d) regular competition law training to specifically include training on pricing practices and communications that are not permitted under the law;
 - (e) independent expert oversight of the compliance programmes including various auditing and reporting requirements;

³¹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

- (f) an annual submission to the CCPC demonstrating conformity with the commitment.

The CCPC can take legal proceedings to enforce a Commitment Agreement should a Party fail to comply. There are certain differences in the individual provisions of each of the Commitment Agreements, reflecting the fact that each Commitment Agreement was negotiated with each Party individually and account had to be taken of each Party's individual circumstances (for example, in respect of internal reporting structures).

- 5.11 Considering the specific issues of this investigation, the CCPC considered that legally binding commitments requiring a strong competition compliance programme with independent oversight and regular compliance reporting represented an important step in addressing the competition concerns identified in the Investigation.
- 5.12 Furthermore, following the opening of this Investigation the CCPC observed a greater awareness on the part of insurance industry operators of the conduct under investigation. Importantly, since the commencement of the Investigation, the CCPC has continued to monitor industry commentary on PMI premiums and, to date, has observed no further public announcements of concern.

Previous interventions and engagement with the Central Bank of Ireland

- 5.13 This is the third investigation the CCPC has undertaken in the insurance sector since 2003. Past Investigations, such as the Relay Investigation³², also investigated potential anti-competitive information sharing between insurers. In fact, some of the same parties faced scrutiny in all three Investigations. The CCPC has also conducted three studies since 2005 into competition in the insurance sector, including the most recent market study on public liability insurance published in 2020³³. That the CCPC has had to intervene in the insurance sector on multiple

³² See footnote 6.

³³ Ibid.

occasions underpins the CCPC's belief that there are fundamental cultural issues in the insurance industry which are harmful for consumers and businesses.

- 5.14 One such issue, identified in the Investigation, relates to the status of trade associations, such as Brokers Ireland, who are not regulated while the members who they represent are. This means trade associations can act on behalf of their members, yet they are not held to the same regulatory requirements regarding conduct or fitness and probity as the entities that they represent. The CCPC believes there is merit in giving consideration to how trade associations could be incorporated, directly or indirectly within the conduct supervision regime of the Central Bank of Ireland.
- 5.15 The CCPC engaged with the Central Bank of Ireland throughout the Investigation and upon closing the Investigation, the CCPC wrote to the Central Bank of Ireland outlining its broader concerns about the culture of the insurance industry which have come to light during the Investigation which are evidenced by the need for repeated interventions in the sector. The CCPC also specifically raised the issue of the unregulated position of trade associations, including in particular Brokers Ireland. The CCPC has also engaged with the Department of Finance on the outcome of the Investigation.
- 5.16 The CCPC will continue to engage with the Central Bank of Ireland to the extent that it can assist in addressing the issues highlighted. The CCPC will also continue to monitor the activity of businesses and trade associations in the sector.



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

