

Client Alert

Antitrust Practice Group

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UK Launches Motor Insurance Market Investigation

The Office of Fair Trading (OFT) has referred the UK's private motor insurance market to the Competition Commission (CC) for an-depth investigation because it suspects that the market may not be working well for motorists. It has concerns that insurers of "at-fault" motorists appear to have limited control over the charges they pay which may be leading to increased costs for them and higher premiums.

Background

The OFT called for evidence in September 2011, following reports that motor insurance premiums had apparently increased by 40 percent in 2010 and 2011. In December 2011, the OFT launched a market study into private motor insurance in the UK. The OFT may carry out what is called a "market study" as part of its general function to obtain, compile and keep under review sufficient information to make informed decisions, including in relation to competition law and consumer protection matters.

The OFT has identified two main features of the market that it considers may be preventing, restricting or distorting competition:

First, the OFT finds that insurers of at-fault drivers that are responsible for meeting claims for the provision of repairs or replacement vehicles to not-at-fault drivers appear to have limited choice in terms of how such services are provided. Insurers of at-fault drivers appear to find it hard to assess the extent to which the costs claimed are reasonable.

Second, the OFT finds that insurers of not-at-fault drivers, insurance brokers, vehicle hire providers, and repairers that supply services to motor insurers appear to have the ability and incentive to exploit the at-fault motorists' lack of control over costs. Practices of particular concern identified by the OFT are referral fees or rebates which appear to inflate the costs that the insurer of the at-fault motorist has to meet, thereby ultimately increasing premiums.

Decision to investigate the market for private motor insurance

The OFT believes that the features of the market that it has identified as raising concerns cost private motor insurers approximately £225 million in 2011. On this basis, it estimates that consumers may be paying an extra £10 per private motor insurance than would otherwise be the case. The OFT does

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not accept that the estimated £10 overcharge is too small to warrant a referral to the CC, taking account of the number of affected policy holders.

In its market study, the OFT identified a number of possible remedies that could be applied, either individually or in combination. These ranged from a ban or cap on referral fees, various ways to control the costs that are passed on to insurers of at-fault drivers (including setting mandatory tariffs for repairs and replacement vehicles and setting up an independent monitoring and rate-setting scheme), giving insurers of at-fault drivers the first option to control the claim and changing the current liability regime. However, in the course of the market study and public consultation, the OFT was not able to find a comprehensive and implementable solution. No remedies were offered by industry to seek to avert a reference.

On September 28, 2012, the OFT therefore decided to refer the market to the CC for a fuller investigation (specifically, the market for the supply or acquisition of private motor insurance and related goods or services in the UK). The investigation focuses on vehicles used for non-business use.

Next steps

The investigation may last up to two years, while the CC considers whether, and, if so, what remedies are required. Throughout this procedure the CC will invite evidence and views from interested parties, including through written submissions and in the course of hearings with the main affected parties.

Although the precise form, scope and outcome of the CC investigation is unclear at this stage, insurers, repair garages, vehicle hire companies and even claims advisors will want to consider the possible competition issues arising, where their interests lie and what defensive and offensive strategies they might adopt. The investigation goes deep to the core of the underlying business models of many insurance companies whose revenues are predicated on the sources of income such as referral fees that will be investigated.

The investigation comes at an intense period of activity for the CC. This case is the fourth market investigation reference of the OFT in the last twelve months and the third in 2012.

How we can help

King & Spalding has extensive experience in representing clients in competition proceedings before the European competition authorities. We can assist clients in competition and market investigations in the following areas:

- Development of regulatory strategy and management of the investigation process
- Evidence assembly and legal and economic analysis, including remedies design
- Case making and submissions to the regulators and other stakeholders
- Preparation for and support at meetings with regulators

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