

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

RESPONSE OF ACROMAS HOLDINGS LIMITED TO THE COMPETITION COMMISSION'S
PROVISIONAL FINDINGS

I. INTRODUCTION

- 1 This response to the Provisional Findings (**PFs**) of the Competition Commission (**CC**) should be read in conjunction with Acromas' response to the notice of remedies (the **Remedies Notice**), dated 17 January 2014.
- 2 Acromas agrees with the CC's conclusions on Theories of Harm (**ToH**) 1–4, other than in relation to the findings of the MSXI study.
- 3 Acromas does not accept that the MSXI report provides a fair or accurate indication of the quality of repairs conducted by insurers. Acromas wishes to emphasise that these findings cannot and should not be extrapolated to cover repairs which it has arranged, because:
- (a) none of the repairers surveyed by MSXI was instructed by a member of the Acromas Group;
 - (b) the report has significant deficiencies, particularly in relation to the sample size of vehicles used;
 - (c) the industry has not yet had sufficient time to analyse the data which appears in the MSXI report; and
 - (d) Acromas' own "exiting" engineering inspections guarantee an extremely low ([§<]) rate of rectification.
- 4 In relation to ToH 5:
- (a) Acromas agrees with the CC's conclusion that wide MFN clauses lead to an adverse effect on competition (**AEC**), as well as the reasoning behind that conclusion; and
 - (b) as it set out in its response to the Remedies Notice, Acromas contests the CC's finding that narrow MFNs do not give rise to an AEC. This paper sets out Acromas' reasons for that contention.

II. ACROMAS STRONGLY CONTESTS THE CC'S PROVISIONAL FINDINGS IN RESPECT
OF NARROW MFNS

- 5 Acromas refers to the conclusion which the CC draws, at paragraph 9.92 of the PFs, that "*on balance, [it does] not consider there to be an AEC from narrow MFNs*". In support of this conclusion, the CC makes the following three findings:
- (a) *anti-competitive effects*: narrow MFNs may give rise to some limited anti-competitive effects, although any effects are likely to be weak;
 - (b) *pro-competitive effects*: narrow MFNs may be necessary for PCWs to survive, as they both provide credibility to PCWs and prevent free-riding by motor insurance providers; and

- (c) *competition in the motor insurance market would be weaker without PCWs*: the CC has found evidence that price elasticity of demand is five to ten times greater on PCWs than on direct channels.

6 Acromas contests findings (a) and (b), setting out its reasoning for each, below, before considering how the PFs appear to conflict with recent legal developments in this area.

III. THE ANTI-COMPETITIVE EFFECTS OF NARROW MFNS ARE GREATER THAN THE CC HAS CONCLUDED

7 The CC has provisionally found that the anti-competitive effects of narrow MFNs are "limited". Acromas considers the reasoning behind this conclusion to be flawed because:

- (a) the CC has underestimated the number of existing insurers that are affected by the loss of the direct channel;
- (b) the CC has underestimated the number of actual and potential "brand loyal" customers impacted by narrow MFNs and, in addition, has given insufficient weight to the harm caused to them;
- (c) the CC has neglected to consider the indirect anti-competitive effects of concluding that there is no AEC in respect of narrow MFNs;
- (d) the CC has failed to consider the impact of narrow MFNs on new entrants; and
- (e) in any event, the "limited" anti-competitive effect that the CC has found is sufficient for it to find an AEC.

The CC has underestimated the number of existing insurers that are affected by narrow MFNs

8 The CC found that, under certain conditions, narrow MFNs may both reduce the incentives for an insurance provider to innovate on its own website and soften competition between PCWs. The analysis it sets out in paragraphs 9.41 to 9.48 found only four brands which meet those conditions, which it summarises as:

"whether the own website is worth protecting This in turn depends on (a) the strength of the brand – the stronger the brand, the higher the value of sales on the own website because they can be achieved at low incremental cost; and (b) the margins available on alternative PCWs with which the brand has no narrow or wide MFN – the lower the commission fees on these, the less worth protecting the own site becomes."

(paragraph 9.47 of the PFs)

9 The CC makes a leap of logic between paragraphs 9.47 and 9.48 of the PFs. In paragraph 9.48 it concludes that *"there are just four brands that have significant direct sales and which the insurers are trying to maintain both on PCWs and through their own sales channels."*

10 Acromas has several concerns regarding this approach:

- (a) current direct sales are not an adequate proxy for brand strength, precisely because the effect of narrow MFNs over a number of years has reduced the attractiveness of the direct channel. If insurance providers had the freedom to set their direct prices

without the restrictions imposed by narrow MFNs they would have a greater incentive to reduce their direct prices and innovate on their own websites;

- (b) in the same way, the CC's observation at paragraph 9.48 only covers those insurers which are trying to maintain presence "*both on PCWs and through their own sales channels*". This is not evidence of the effect being minimal – only that the effect of narrow MFNs has been to limit the constraint imposed by the direct channel; and
- (c) the CC notes at paragraph 27 of Appendix 9 that "*Data from PCWs suggests that these [redacted] brands account for a small proportion ([redacted]) of all policies sold on the largest four PCWs.*" It is unclear why this figure is relevant. Subject to the two points above, a more important figure, which the CC has (by virtue of its redactions) withheld, is the proportion of direct sales accounted for by these brands.

- 11 The motor insurance industry is characterised by numerous strong direct channel brands which, if allowed to develop their direct offerings, could exercise a significant constraint on the PCWs' market power.¹

The CC has given insufficient weight to the harm caused, by narrow MFNs, to "brand loyal" customers

- 12 Narrow MFNs cause direct and quantifiable harm to "brand loyal consumers". These customers never search on a PCW, preferring instead to go direct to their regular insurance provider. In the absence of the narrow MFN, the insurance provider would be free not only to reward these customers for their loyalty (by passing on some of the commission it would have paid to the PCW) but also to attract new customers to their brand through competitive pricing.
- 13 The CC, in its provisional findings report, states that:
- (a) There are 25.7m vehicles (summary paragraph 11) and £10bn of premiums (summary paragraph 12); and
 - (b) 55-65% of new business sales are sourced through PCWs and 60% of customers renew with their existing insurer (paragraph 9.19).
- 14 It follows that $40\% \times 25.7\text{m} = 10.28\text{m}$ customers buy (as opposed to renew) motor insurance each year. Assuming 65% of those customers use a PCW (the higher estimate), then at least $35\% \times 10.28\text{m} = 3.6\text{m}$ customers do not use a PCW. This represents the current number of "brand loyal consumers" impacted by the price restrictions created by narrow MFNs. Assuming they are "typical" of the overall market, then they would be buying new motor insurance policies to a total premium of approximately £1.4bn. Both these numbers could be higher still if narrow MFNs were not currently in place, notwithstanding that the direct channel would be free to offer these customers a lower price. Acromas has calculated the theoretical cost to customers as a result of the narrow MFN as being £30m, equivalent to a [~~3~~] % premium benefit if the MFN did not exist (on which, see further below). In Acromas' view this represents a very material adverse effect on competition.
- 15 The CC's response to this concern is either:

¹ Some of these direct brands also own major PCWs, and therefore have a vested interest to reduce competition for customers who shop direct.

- (a) for insurance providers "*not to sign narrow MFN agreements at all with PCWs*" (paragraph 30 of Appendix 9 to the PFs); or
 - (b) that insurance providers should develop a multi-brand strategy. Specifically, the CC says "*It is not clear why this strategy is not available to other providers with significant brands*" (paragraph 29 of Appendix 9 to the PFs).
- 16 Despite the CC's finding (in paragraph 9.24 of the PFs) that PCWs appear to enjoy a degree of market power by virtue of the number of single homing customers they have, the CC still does not appear to recognise the difficulties that insurance providers encounter in resisting narrow MFN clauses.
- 17 The CC also fails to recognise that brands like those of Acromas create their brand strength through offering multiple products (breakdown, driving tuition, holidays etc). It is through this lifetime customer journey that brand loyal customers are created. A newly created brand, offering insurance to similar demographics, would not attract the brand loyal customers referred to above, who still lose out as a result of narrow MFNs.
- 18 Finally, the CC does not consider the fact that these brand loyal customers (a large proportion of whom, in Saga's case, are elderly) are effectively cross-subsidising those that shop on PCWs. In paragraph 5 of Annex C to Appendix 9, the CC says:
- "The only case in which a direct channel would have an absolute advantage over a PCW in risk-filtering would be if the very fact of using a PCW were an indicator of high risk. This has not been the argument of insurers and seems implausible, especially as a high and growing percentage of the market uses PCWs."*
- 19 On the contrary, this is precisely the argument which Acromas (and, indeed, many of its competitors) has made. Far from being "implausible", channel selection is itself a risk parameter. For example:
- (a) as Andrew Strong (at the time the CEO of AAIS) noted in a bilateral hearing last year (emphasis added):
- "Poorer risk selection by price comparison websites, typically when we look at the total end-to-end cost of aggregators, typically mean that [X]."*²
- (b) [X] of AAIS' [X] panel insurers, [X] when underwriting SSL, operate different parameters for the direct and PCW channels.
- 20 There are many reasons for this phenomenon. Some of the main ones are:
- (a) *Targeted marketing*: Through the direct channel an insurance provider is able to filter out high-risk potential customers from its marketing spend, allowing it to reduce its exposure to certain risk profiles, while also reducing its costs for acquiring those risk profiles;
 - (b) *The "Winners' Curse"*, which was considered in detail by a 2009 Report of the Winner's Curse GIRO Working Party³. Pages 23-25 of that report show that an

² Confidential transcript page 16, line 25 - page 17, line 6.

³ *Winner's curse – the unmodelled impact of competition*, August 2009, available at: <http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&cad=rja&ved=0CDgQFjAB&url=http%3A%2F%2Fwww.actuaries.org.uk%2Fsystem%2Ffiles%2Fdocuments%2Fpdf%2Fwinnerscurse->

insurer could expect a 3-4% poorer loss ratio on a PCW, compared to their direct site, when using the same rating structure. Page 75 applies the model to the PCW situation. The Winner's Curse turns on the fact that, all other things being equal, errors in the pricing of risk are more likely to result in a sale through a PCW than in the direct channel, so a single rating structure will result in a poorer loss ratio through PCW sales;

(c) *Excessive risk transfer:* [§<].

The CC has neglected to consider the indirect anti-competitive effects of concluding that there is no AEC in respect of narrow MFNs

- 21 Insurance providers ([§<]) have been able to resist own-website MFNs, to a large degree, due to the uncertainty that exists over their treatment under competition law. In the event that the CC does not find an AEC in respect of narrow MFNs, PCWs would perceive this as having "blessed" narrow MFNs and, through the exercise of their bargaining power, such clauses would proliferate much more widely than is currently the case. A more widespread network of narrow MFNs would also exacerbate the issues identified elsewhere in this paper.
- 22 Accordingly, when considering the anti-competitive effect of narrow MFNs, the relevant benchmark is not the current prevalence of narrow MFNs, but a market in which they are prolific. Acromas urges the CC to give due consideration to this position.

The CC has failed to consider the qualitative impact of narrow MFNs

- 23 In paragraphs 5 and 6 of Appendix 9, the CC summarises Saga's argument as follows: "*Each narrow MFN that is entered into eliminates one potentially competing channel, and if all insurers have just one narrow MFN clause, competition in the market is entirely reduced to the competition between PCWs.*"
- 24 The CC continues: "*We accept Saga's analysis, but not the conclusion drawn. ... As long as competition between PCWs is operating effectively, competition between policies is enhanced by being conducted through PCWs rather than on direct channels.*"
- 25 So the CC accepts that in a market characterised by multiple narrow MFNs the direct channel is rendered ineffective, but as long as sufficient competition remains between PCWs it is not concerned.
- 26 The CC does not, however, consider the impact of such a situation on the diversity of policies and policy features currently available through the direct channel (as compared to the "disaggregated" products offered on PCWs). For example, as narrow MFNs proliferate (on which, see above), if the PCWs are the only channel available⁴, there is a risk that the market will become "set in stone". This could have a qualitative impact, reducing the evolution of more diverse policies with new and innovative features, as competition on the PCW channel continues to be driven by the pricing of basic (i.e. "disaggregated") policies.

In conclusion, the CC should find that narrow MFNs give rise to an AEC

[mainreport.pdf&ei=htDvUoOTCILNhAfz4DACw&usq=AFQjCNHjEUioDOwrOFyVKJEHV-4Duplpag&bvm=bv.60444564.d.bGE](#)

⁴ Creating a dual branded strategy from scratch is an extremely expensive endeavour, even for an existing operator – and is therefore unlikely to be available to new entrants.

- 27 Acromas disagrees with the CC's Provisional Finding at paragraph 9.66, that if there are any anti-competitive effects from narrow MFNs, they are likely to be weak in the context of the whole motor insurance market. Rather, in light of the arguments set out above, Acromas does not consider there to be any credible basis on which, when compared to the appropriate benchmark of a "well-functioning market", narrow MFNs do not give rise to an AEC in the market for private motor insurance. It therefore urges the CC to reconsider its PFs on this point.

IV. THE PRO-COMPETITIVE EFFECTS OF NARROW MFNS ARE CONSIDERABLY LOWER THAN THE CC HAS CONCLUDED

- 28 At paragraph 9.92(b) the CC observes that narrow MFNs *"may be necessary for PCWs to survive, as they both provide credibility to PCWs and prevent free-riding by motor insurance providers."*
- 29 Acromas agrees with the CC's conclusion, at paragraph 9.78, that quote poaching offers a solution to the free rider concern (*"...quote poaching clauses may provide a less restrictive mechanism for PCWs to overcome the problems of free-riding by insurers and consumers."*) Indeed, for the reasons set out in its response to the Remedies Notice, it considers that, in the event of a prohibition on narrow MFNs, this alternative solution would emerge, quickly, efficiently, at minimal cost and without the same adverse effects on competition.
- 30 In Acromas' view, however, the CC has failed to provide adequate reasoning to support its conclusions on credibility. Acromas considers this in more detail, below.

The CC has erred in its conclusion that the "credibility" provided by narrow MFNs may be necessary for PCWs to survive

- 31 In paragraphs 9.73-4 of its PFs, the CC notes:

"PCWs argue that if consumers did not have confidence in PCWs, consumers might stop using them altogether...We think this argument has merit. In Italy, the Autorita Garante della Concorrenza (Italian Competition Authority) investigated car insurance and found that PCWs had not been able to grow in Italy because, among other reasons, there were no mechanisms to ensure that the premiums quote by PCWs were the same as the premiums quoted directly by each insurer. As a consequence, PCWs had a lower-quality search experience. This provides an example of what might happen in a market with no narrow MFNs."

- 32 Acromas does not consider it appropriate for the CC to use the Italian position to substantiate this point. No form of analysis appears to have been carried out to demonstrate that the absence of narrow MFNs can be isolated as the reason for the PCWs' failure to develop in Italy. For example:

- (a) the Italian market for private motor insurance is considerably less developed than that of the UK, with only 4.7% of all policies sold on the internet (*including* the direct channel)⁵. Not only did this prevent the Italian Competition Authority (known as the **IAA**) from collecting reliable data for its assessment, it also highlights the difficulty in comparing two markets which have fundamental structural differences; and

⁵ Source: Presentation "Gli interventi effettuati e quelli ancora da realizzare per un mercato efficiente della r.c. auto in Italia – La Distribuzione", 16 June 2013, Slide n. 19, available at <http://www.ania.it/export/sites/default/it/sala-stampa/eventi/Presentazione-al-mercato-2013/Presentazione-Vittorio-Verdone-Dir.-Centrale-ANIA.pdf>.

- (b) it is also notable that the challenges faced on fraud prevention vary significantly between countries, which may explain the reluctance of Italian insurance providers to place themselves at the mercy of an intermediary which has demonstrated itself to have poorly developed systems.
- 33 In addition, the comparison platforms referred to in the IAA's Report (the **IAA Report**) are very different to the "big four" in the UK. For example⁶:
- (a) the first platform considered by the IAA Report is known as "*TuoPreventivatore*". TuoPreventivatore is a comparison website run by the Italian insurance regulator (ISVAP or, since 2013, IVASS), on which customers are unable to actually purchase insurance. The only function of TuoPreventivatore is to allow consumers to compare the policies available in the market⁷. The ISVAP 2009 Annual Report notes that "*the complaints reported regard the behaviour of distribution networks which, in some cases, have refused to underwrite the contract on the basis of the estimate obtained by the user through the service, or have requested a higher premium on the grounds that the estimate did not contain taxes and the contribution to the Servizio Sanitario Nazionale (National Health Service)*". ISVAP (now IVASS) has referred to equivalent customer complaints in every subsequent Annual Report it has published⁸; and
- (b) The second category of platform considered by the IAA Report, those operated by the private sector, also do not permit the customer to purchase policies directly. Of these websites, the IAA says "*it is not clear whether there is the certainty that the economic conditions provided with the estimate are those actually granted when the policy is executed...*"⁹. As with TuoPreventivatore, the consumer is unable to purchase the policy at the price shown on the comparison website. Instead, the prices subsequently offered by the insurance companies (or their agents) are typically higher.
- 34 To resolve this issue, the IAA suggests that either:
- (a) the PCW should allow the client to subscribe to the policy on the same platform once he or she has completed the comparison; or
- (b) the PCW should contain a link to the website of each insurance company where the policy can be purchased on the terms suggested by the comparison platform, rather than at a higher price.
- 35 In many ways, this is the opposite of suggesting that a narrow MFN is the solution: a narrow MFN would prevent the insurance provider from offering the policy more cheaply direct, while the IAA was mainly interested in ensuring that the insurance provider does not offer the policy at a more expensive premium.

⁶ The IAA also considered traditional brokers which use website platforms to compare and sell policies directly to consumers. The IAA was concerned that these platforms are typically tied to just three or four insurance providers through "quantity forcing" deals (IAA Report, paragraph 152). Again, this lack of certainty is not related in any way to the use of own-website MFNs.

⁷ ISVAP Annual Report 2008, available at: http://www.ivass.it/ivass_cms/docs/F14506/Report%202008.pdf

⁸ ISVAP 2010 Annual Report, pag. 86 (http://www.ivass.it/ivass_cms/docs/F15913/REPORT%202010%20-%20DEFINITIVO.pdf); ISVAP 2011 Annual Report, pag. 79

(http://www.ivass.it/ivass_cms/docs/F28984/REPORT%202011.pdf) and IVASS 2012 Annual Report, pag. 71

(http://www.ivass.it/ivass_cms/docs/F19/TRADUZIONE%20RELAZIONE%202012_28_11.pdf).

⁹ IAA Report, par. 152

- 36 Further, in contrast with the Italian position, the CC has already found (at paragraph 9.24) that in the UK the PCWs have a degree of market power and barriers to entry are high. The CC does not appear to have analysed the difference between narrow MFNs being necessary to *achieve* market power and narrow MFNs being necessary to *sustain* market power. In this respect, Acromas is concerned that the analysis presented in figure 9.3 of the CC's report does not appear to reflect its own experience. Rather, the PCWs were able to achieve considerable market share without any such MFNs. For example, [§<]. As set out above, to-date [§<], on the basis that they are "anti-competitive". The CC's PFs, if confirmed, will effectively act as a blessing for these clauses, [§<].
- 37 Indeed, now that the UK PCWs have achieved market power, only one of them actually promotes the fact that the customer cannot buy cheaper direct as part of their core messaging on their website. One other refers to it if the customer clicks for more information. For the last two there is no trace. This strongly suggests that the promotion of this feature is not particularly important to the PCWs' success, and that their commercial needs are satisfied by simply making sure insurers do not free-ride, which can be achieved through a more proportionate remedy, that does not have the same adverse effect on competition as narrow MFNs.¹⁰

The CC has erred in its conclusion that the "credibility" provided by narrow MFNs cannot be provided in any other way

- 38 In its findings on credibility (paragraph 9.79), the CC observes that it has "*not been able to identify an alternative mechanism for PCWs to provide customer reassurance on their truthfulness.*"
- 39 However, in the outcome described in its response to the Remedies notice (based on quote poaching clauses), the credibility criteria would still be satisfied. The data flows and technology required for this outcome are already in place. It would allow the insurance provider and the PCW to ensure that:
- (a) where the PCW is the first point of contact for the customer, the insurance provider will pay a commission to the PCW; and
 - (b) where the insurance provider is the first point of contact for the customer, the insurance provider can reflect the requirement to pay the PCW's commission (in the event the sale is completed via the PCW) by increasing the price displayed on the PCW, if required.
- 40 In this scenario, customers that first use the comparison services of a PCW will not be able to obtain a cheaper price through the direct channel. A customer that shops direct and does not use a PCW will have a price unconstrained by the costs and wider impact of selling through PCWs. Finally, a customer that shops direct but then goes to a PCW to compare prices may see a higher price for that particular brand. If the message "can't buy cheaper direct" is important to the PCW, there is no reason why the PCW could not contract with a provider on the basis that it would show the same price on the PCW in these circumstances as it showed when the customer originally shopped direct, but without receipt of a payment should the customer then go on to buy. That would be both fair and reasonable given it was not the PCWs marketing activity that brought the brand

¹⁰ The CC's finding also seems at odds with their equivalent conclusions in relation to wide MFNs, at paragraphs 9.81-2 of the PFs (e.g. "*The fact that it does not prominently advertise the existence of the MFNs ('never knowingly undersold') does not seem consistent with this motivation.*")

to the attention of the customer in the first place. It would also create a more level playing field between PCW and direct channels, increasing competition to the benefit of consumers.

- 41 In any event, were the CC to prohibit narrow MFNs, PCWs would still be free to use their market power to force insurance providers to agree not to advertise themselves as "no more expensive" (or "cheaper", in certain circumstances) than the PCW. A similar mechanism was employed in paragraph 21 of the settlement agreed in the OFT's Online Hotel Booking case¹¹.

V. THE CC'S REASONING CONFLICTS WITH PARALLEL RECENT DEVELOPMENTS

- 42 In Acromas' view, the CC's reasoning on narrow MFNs appears to contradict recent competition law developments in both the UK and Europe, which have focused on the extent to which MFN clauses (including "own-website" or narrow MFNs) may infringe Article 101 of the Treaty on the Functioning of the European Union, or equivalent domestic laws prohibiting anti-competitive agreements.

- 43 Clearly these cases are fact-specific and, in some instances, they have been closed by way of commitments decision rather than proceeding to a final infringement decision. Nevertheless, it is clear from the paragraphs below that the anti-trust authorities have considered that own-website MFNs are capable of producing an appreciable adverse effect on competition. Acromas considers that the CC should have regard to these cases in determining whether narrow MFNs (either alone or in combination with wide MFNs) prevent, restrict or distort competition and thereby result in an AEC within the meaning of section 134(2) of the Enterprise Act 2002, even if they do not engage the rules on anti-competitive agreements.

Online Hotel Booking (UK)

- 44 In September 2010, the OFT conducted an investigation into agreements made between InterContinental Hotels Group (IHG) and both Expedia and Booking.com. The agreements contained MFN clauses preventing the online booking agents from offering IHG hotel rooms at a rate lower than that determined by IHG. The OFT closed the investigation in 2013, following acceptance of commitments. The commitments appear to capture own-website MFNs, by specifically restricting the use of "*any most favoured nation or equivalent provision*"¹².

Online Hotel Booking (Germany)

- 45 A similar investigation was conducted by the Bundeskartellamt in Germany, into the practices of Hotel Reservation Service (HRS), which benefitted from MFNs in its agreements with hotels. The MFNs in question appear to prevent the hotels from offering better prices and conditions either online, or directly at the hotel's reception desk (similar to "own-website" MFNs). The Bundeskartellamt subsequently prohibited HRS from using MFNs in new contracts, whilst also ordering their deletion from existing contracts.

¹¹ See http://www.of.gov.uk/shared_of/ca-and-cartels/hob-annexe1%282%29.pdf: "OTAs shall not enter into or enforce any most favoured nation or equivalent provision as regards Reductions offered by Hotels to their respective Closed Group Members who have made at least one Prior Booking directly with that Hotel provided that: (a) such Reductions are only available to EEA Residents in respect of Hotel Rooms at Hotel Properties located in the UK; and (b) the Hotel does not publicise Specific Information about Reductions to consumers who are not Closed Group Members, including on the Hotel's own public website(s) and via price comparison websites and meta-search sites."

¹² See footnote 10, above.

Online Hotel Booking (Switzerland)

- 46 The Swiss competition authorities have an open investigation into the use of MFN clauses in the online hotel booking market. Those MFNs require that hoteliers offer their lowest price online. This type of clause prevents the hoteliers from making their own last-minute offers when they have empty rooms, in a manner comparable to narrow MFNs.

Amazon Marketplace (Germany)

- 47 Amazon agreed with the Bundeskartellamt to stop using terms in agreements with marketplace sellers that prevented the sellers from offering lower prices on other websites, including their own.