

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

The Private Motor Insurance Market Investigation Order 2015

Notice of making an Order under section 161 of the Enterprise Act 2002 issued under section 165 of and Schedule 10 to the Enterprise Act 2002

Background

1. On 28 September 2012, the Office of Fair Trading, in exercise of its powers under section 131 of the Enterprise Act 2002 (the Act), referred the supply or acquisition of private motor insurance (PMI) and related goods and services in the UK to the Competition Commission (CC) for investigation and report (the market investigation).
2. The CC investigated the matters referred to it pursuant to sections 131 and 133 of the Act. On 1 April 2014, the remaining functions of the CC in relation to the market investigation were transferred to the Competition and Markets Authority (CMA) under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014 (the Order).
3. The CMA concluded (a) in accordance with section 134(1) of the Act that there are features of the markets for the supply or acquisition of PMI and related goods and services in the UK which, either alone or in combination, prevent, restrict or distort competition; and (b) in accordance with section 134(2) of the Act, that there are adverse effects on competition (AECs). The CMA published its findings in a report under section 136 of the Act entitled *Private motor insurance market investigation: Final report* published on 24 September 2014 (the Report).
4. The CMA considered, in accordance with section 134(4) of the Act, (a) whether action should be taken by it for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; and (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

5. In the Report, the CMA decided on a package of remedies to be implemented by it in order to remedy, mitigate or prevent the AECs that it found arising from the following features:
 - (a) information asymmetries between private motor insurers and consumers in relation to the sale of no-claims bonus protection insurance; and
 - (b) wide most-favoured-nation clauses in contracts between providers of PMI and price comparison websites.
6. By virtue of section 138(3) of the Act, the remedies implemented by the CMA must be consistent with the findings in the Report unless there has been a 'material change of circumstances' since preparation of the Report or the CMA otherwise has a 'special reason' for deciding differently.
7. On 7 January 2015, in accordance with section 165 and paragraph 2(1)(a) of Schedule 10 to the Act, the CMA gave notice (the First Notice) of its intention to make an Order on the terms attached to the First Notice (the Draft Order). The First Notice, the Draft Order, and a draft explanatory note (the Explanatory Note), were published on the CMA website for consultation (the First Consultation).
8. The CMA received representations in response to the First Consultation from several parties, including insurers, brokers, price comparison websites and software providers. Having considered these representations, the CMA considered that, in light of the evidence submitted by a range of respondents to the First Consultation, the Draft Order required a material modification.
9. The Draft Order, in Article 1.1(a), set out that Article 3 of the Order would come into force on 1 September 2015. In light of the evidence submitted by respondents to the First Consultation, the CMA proposed that Article 3 would come into force on 1 August 2016. This was a longer implementation period than the six-month period set out in the Draft Order which had reflected paragraphs 11.60 and 11.61 of the Report. In proposing to adopt a longer implementation period, the CMA took into account the following relevant factors as amounting to a 'special reason' for making this change, and so modifying the Draft Order:
 - (a) evidence submitted in response to the First Consultation by insurers, brokers and software providers, in particular, demonstrated that preparation of the administrative and IT changes which must be implemented by insurers and brokers in order to comply with Article 3 could not be initiated before the final Order has been published;

- (b) evidence submitted in response to the First Consultation by brokers and software providers, in particular, demonstrated that administrative and IT changes which must be implemented in order to comply with Article 3 present additional complexities for brokers;
 - (c) as a result of the reasons set out above under (a) and (b), there was a material risk that a significant number of insurers and brokers would not be in a position on 1 September 2015 to comply with the Order, and therefore would be likely to cease to sell no-claims bonus protection as an additional option to a private motor insurance contract; and
 - (d) modifying the implementation date to 1 August 2016 would allow sufficient time for the issues set out above under (a) and (b) to be addressed (including providing a level playing field between brokers and insurers), whilst mitigating the risk set out above under (c).
10. In accordance with sections 138, 165, 172 and paragraph 2(4) of Schedule 10 to the Act, the CMA gave notice of its intention to modify the Draft Order on the terms attached to a notice published on 27 February 2015 (the Modified Draft Order) and invited representations on the Modified Draft Order, and specifically on the modification to Article 1.1(a) of the Modified Draft Order, from any interested person or persons (the Second Consultation).
11. In addition, following the representations received in response to the First Consultation, the CMA made some further minor modifications which it included in the Modified Draft Order. The CMA did not, however, consider any of these further modifications to be material so as to require further consultation as part of the Second Consultation.¹
12. The CMA received representations in response to the Second Consultation from several parties, including insurers, brokers and software providers. Having considered these representations, the CMA has decided that the Modified Draft Order did not require further material modification.
13. The CMA now gives notice of the making of the attached Order. The Order is made in accordance with sections 138 and 138A and in exercise of the powers conferred by section 161 of and Schedule 8 to the Act. The Order is made for the purpose of remedying, mitigating or preventing the AECs identified in the Report and for the purpose of remedying, mitigating or preventing detrimental effects on customers in so far as they have resulted from or may be expected to result from the AECs. The Order will come into

¹ In light of the representations made in response to the First Consultation, some further minor modifications were also made to the draft Explanatory Note.

force on 19 March 2015, except for Article 3, which shall come into force on 1 August 2016; and Articles 4 and 5, which shall come into force on 19 April 2015.

14. This notice, the Order, the Explanatory Note and a response to the First Consultation and Second Consultation have been published on the CMA website.

(signed) ALASDAIR SMITH

Group Chair

18 March 2015