REPUBLIC OF ALBANIA
-COMPETITION AUTHORITY-
COMPETITION COMMISSION

DECISION
No. 246 of 9 October 2012

Concluding the investigation into the compulsory motor third party liability (MTPL) insurance market against, and imposing fines on grounds of competition restriction on, undertakings Sigal Uniqa Group Austria Sha (Sigal), Sigma Vienna Insurance Group Sha (Sigma), Atlantik Sha, Intersig Vienna Insurance Group Sha (Intersig), Interalbanian Sha, Alb - Siguracion Sha (Albsig), Instituti i Sigurimeve Sha (Insig) and Eurosig Sha.

The Competition Commission, composed of

- Lindita Milo (Lati) Chair
- Rezana Konomi Deputy Chair
- Servete Gruda Member
- Koço Broka Member
- Iva Zaimi Member

in its meetings of 4 and 9 October 2012 reviewed the Case with:

Subject-matter: Determination whether there is a prohibited price-fixing agreement in the compulsory MTPL market.

Legal basis: Article 24 (d); Article 26; Article 4 (1); Article 74 (1) (a) and Article 75 (1) of Law no. 9121 of 28 July 2003 “On Competition Protection”; Law no. 8485 of 11 November 1999 “Administrative Procedure Code”.

After reviewing the

- Report on the in-depth investigation into the compulsory motor third party liability (MTPL) insurance market, submitted by the Competition Authority Secretariat, and the Secretary-General’s Report;
- Claims submitted by the undertakings under investigation SIGAL UNIQA GROUP AUSTRIA SHA (SIGAL), SIGMA VIENNA INSURANCE GROUP SHA (SIGMA), ATLANTIK SHA, ALB - SIGURACION SHA (ALBSIG), INSTITUTI I SIGURIMEVE SHA (INSIG), and EUROSIG SHA, in the hearings held on 4 September 2012, 5 September 2012 and 18 September 2012, and in the written responses sent to the Competition Authority by undertakings Sigma Sha, Insig Sha, Eurosig Sha, Atlantik Sha and Sigal Sha,

NOTES THAT:

I. PROCEDURE

1. Following the information on the media, according to which insurance market operators had agreed on 1 February 2012 to increase motor insurance prices, Competition Authority Market Supervision and Investigation Department inspectors carried out a monitoring of those prices on 9 February 2012 by collecting the relevant evidence from insurance agents on that market.

2. The monitoring found that all insurance companies had immediately applied the same prices on almost all domestic MTPL products.

3. The insurance market operates under Law No. 10455 of 21 July 2011 "Amendments to Law No. 10076 of 12 February 2009 "On Compulsory Insurance in the Transport Sector"." Article 10(2) of that Law provides that "insurance companies set their insurance premium tariffs on a discretionary basis in accordance with the market conditions." Therefore, the rise in, and fixing of, prices by all (eight) insurance companies immediately and at the same level could have been the result of a prohibited agreement, which is a serious violation of Article 4(1)(a) of Law No. 9121 of 28 July 2003 "On Competition Protection," amended.

4. The Competition Commission, with proposal from the Secretariat, and pursuant to Article 42(1) of Law no. 9121 of 28 July 2003 "On Competition Protection", adopted Decision No. 215 of 10 February 2012 "Initiating an inquiry into the compulsory motor third party liability (MTPL) insurance market," whereby it decided to initiate an inquiry into that market in order to determine whether there were any indications of competition restriction, distortion or prevention.

5. The inquiry found that all the undertakings operating on the domestic MTPL market had increased their insurance premiums for all domestic MTPL product classes by the same degree in 1-16 February 2012, which could be a prohibited agreement under Article 4(1)(a) of Law 9121 of 28 July 2003 "On Competition Protection," as amended.

6. Based on the Inquiry Report, the Competition Commission, pursuant to Articles 24(d) and 43(1) of Law no. 9121 of 28 July 2003 "On Competition Protection" and Article 12 of the Regulation on the functioning of the Competition Authority, adopted Decision No. 222 of 11 April 2012 "On initiating the investigation into the compulsory motor third party liability (MTPL) insurance market."

7. Following that, the Competition Authority Secretary General notified the undertakings under investigation of Competition Commission Decision No. 222 of 16 April 2012. Sigal Sha sent Letter 2556 of 24 May 2012 to the Competition Authority, whereby it applied for a revocation of the Decision. After reviewing the Application, the Competition Authority adopted Decision No. 226 of 8 June 2012 whereby it decided not to approve it.

8. In the next step of the procedure, the Competition Authority Secretariat submitted to the Competition Commission its Report on the in-depth investigation into the compulsory motor third party liability (MTPL). The Report was also communicated to the undertakings under investigation.

9. Pursuant to Article 39 of the Law, the Competition Commission held hearings wherein the parties under investigation submitted their oral and written claims in relation to the Investigation Report. Their written claims were admitted to the Competition Authority protocol-archive, and were taken into consideration by the Competition Commission.

10. The Competition Commission organized a round table with the Financial Supervisory Authority, the participants of which discussed the findings of the Report on the investigation into the MTPL market, which falls into the regulatory remit of that Regulator.

11. The investigation procedure is pursuant to Chapters II and III of Part II of Law no. 9121 of 28 July 2003 “On Competition Protection,” and Law No. 8485 of 11 November 1999 “Administrative Procedure Code”.

II. INVESTIGATION PERIOD AND UNDERTAKINGS UNDER INVESTIGATION

12. Competition Commission Decision no. 222 of 11 April 2012 “On initiating the investigation into the compulsory motor third party liability (MTPL) insurance market” specified the investigation period as 1 January 2011-30 April 2012.

13. The abovementioned Competition Commission Decision listed the following undertakings under investigation:

    SIGAL UNIQA Group AUSTRIA SHA (SIGAL), an Albanian legal person, with head office at: Bulevardi Zogu I, Nr. 1, Tirana. Its control shares are owned by UNIQA Int.Bet.Ver (68.64%) and the Albanian-American Enterprise Fund "AAEF" (13.30%), with the rest of the shares owned by Albanian shareholders.

    SIGMA VIENNA INSURANCE GROUP SHA (SIGMA), an Albanian legal person, with head office at: Rruga “Komuna e Parisit”, pallati “Lura”, kati.2, Tirana. Most of its shares are owned by VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe (87.01%), with the rest of them being owned by Albanian shareholders.

    ATLANTIK SHA, an Albanian legal person, with head office at: Rruga Themistokli Germenji, Nr. 3/1, Tirana. It is entirely owned by a sole Albanian shareholder.

    INTERSIG VIENNA INSURANCE GROUP SHA (INTERSIG), an Albanian legal person, with head office at: Rruga e Durresit, godina INTERSIG, prane Pallatit te Sportit "A.Rusi", Tirana. Most of its shares are owned by VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe (75%), with the rest of them being owned by Albanian shareholders.

    INTERALBANIAN SHA, an Albanian legal person, with head office at: ZAYED BUSINESS CENTER, Tirana. Most of its shares are owned by VIENNA INSURANCE GROUP AG Wiener Versicherung Gruppe (78.33%), with the rest of them being owned by Albanian shareholders.

    ALB - SIGURACION SHA (ALBSIG), an Albanian legal person, with head office at: Rruga “George W.Bush”, Tirana. Its shares are owned by several Albanian shareholders.

    INSTITUTI I SIGURIMEVE SHA (INSIG), an Albanian legal person, with head office at: Rruga e DIBRËS Nr. 91, Tirana. The Government owns all the stocks of this company through the Ministry of Finance.

    EUROSIG SHA, an Albanian legal person, with head office at: Rruga Papa Gjon Pali II, Vila Nr. 5, Tirana. Its shares are owned by several Albanian shareholders.

III. RELEVANT MARKET

14. Pursuant to Law No. 9121 of 28 July 2003 “On Competition Protection,” and Competition Commission Instruction No. 76 of 7 April 2008 “On approving the guidelines on the

determination of the relevant market", the relevant market is determined to be *"… the products that are deemed as substitutable by consumers or other clients in terms of their features, prices and functions, and which are supplied or demanded by undertakings in a geographic area under the same competition conditions that is separate from other bordering areas."*

The relevant market includes:

- The product market, and
- The geographic market

III.1 Relevant Product Market

15. "Insurance" means the transfer of an eventual risk, financial loss or material damage from the insured to the insurer under an insurance contract. Insurance is further classified as "compulsory insurance" which means statutory insurance, and "voluntary insurance", which means insurance for which there is no statutory obligation.[1]

16. Compulsory domestic MTPL insurance is a contract concluded between an insurer (insurance company) and a vehicle owner who accepts the insurance terms and conditions. The insurance terms and conditions are an integral part of the insurance contract, and are approved by the Financial Supervisory Authority. This product is part of the compulsory insurance class, and does not have any substitute.

17. Compulsory insurance in the transport sector includes:
    a) accident insurance of passengers in public transport;
    b) insurance of the owner or user of the vehicle, the owner or user of an aircraft, and the owner or user of a motorboat or yacht against liability for damage caused to third parties.

18. The MTPL product is classified by engine power classes, and is provided by eight insurance companies: Insig, Sigal, Sigma, Intersig, Albsig, Atlantik, Eurosig, and Interalbanian. The domestic MTPL product is typical of high substitutability on both supply and demand sides. On the demand side of the domestic MTPL product, its qualities, features and the statutory obligation imposed on policy holders make it a fully substitutable product.

19. Since the main feature of this product is insurance against liability for any damage caused to third parties (and not damage caused to the policy holder), its price remains the main criteria in determining its substitutability. Pursuant to the Relevant Market Guidelines, substitutability on the demand side happens when a price increase makes a product less attractive for consumers, who decide to purchase less of it and more of alternative substitutes. The domestic MTPL insurance faces a high demand elasticity, which means that if a company increases its prices or maintains them unchanged while other companies reduce their prices sales should fall for the former.

20. On the supply side, too, there is the element of substitutability among the eight companies providing domestic MTPL with features, prices and qualities that make it completely substitutable for customers. There are no statutory restrictions on access to

1 Pursuant to Article 3 of Law no 9267 of 29 July 2004 "On the Activity of Insurance, Reinsurance and Intermediation in Insurance and Reinsurance", as amended by Law No. 9338 of 16 December 2004 and Law No. 9685 of 26 February 2007.

the domestic MTPL market in Albania for other companies. Therefore, given that a potential competitor can have access to this market in a relatively short period of time, it can be said that there is substitutability on the supply side as well.

21. In terms of other features and qualities of the domestic MTPL product it can be said that a vehicle owner or another person involved in an accident resulting in damage is interested in the characteristics (company, service quality, speed and method of claim assessment, etc.) of the compulsory insurance product covering the vehicle causing the damage, and not in the characteristics of the MTPL insurance product covering the vehicle he owns or uses. Thus an insurance policy price remains the determinant factor with regard to its substitutability on the demand side, especially in the case of domestic MTPL, which is compulsory for vehicle users.

22. In conclusion, pursuant to the Guidelines on the relevant market and based on the product characteristics, **the relevant product market is the domestic MTPL.** So, it is clear that this product cannot be substituted with another product offered by insurance undertakings due to a specific statutory obligation imposed on vehicle users to have such compulsory insurance.

II.2 Geographic Market

23. In this case the Republic of Albania is the geographic market, as this product is valid only in the territory of the Republic of Albania.

III. MARKET CHARACTERISTICS

24. Eight companies operated in the domestic MTPL market during the period under investigation. The market is a regulated one under Law No. 10076 of 12 February 2009 "On Compulsory Insurance in the Transport Sector," as amended, and the Financial Supervisory Authority is its regulator.

25. Through our correspondence[2] with the Financial Supervisory Authority we learned that pursuant to Article 10 of Law No. 10076 of 12 February 2009 "On Compulsory Insurance in the Transport Sector," as amended, it adopted Regulation No. 110 of 28 July 2011 On setting the level of technical provisions for compulsory motor insurance, and the tables with the risk premiums used in the calculations of technical provisions related to compulsory MTPL insurance. In addition, the Financial Supervisory Authority informs that under the provisions of Law No. 10076 of 12 February 2009 "On Compulsory Insurance in the Transport Sector," as amended, insurance companies set their own compulsory insurance premium tariffs (selling price) in accordance with the market conditions, and that the Authority does not set any expenses or charges added to the risk premiums.

26. Article 7 of Regulation No. 110 of 28 July 2011, On setting the level of technical provisions for compulsory motor insurance, provides that the Financial Supervisory Authority, after reviewing and consulting with the materials from the Association of Actuaries, prepares the risk premium tables in relation to compulsory insurance and submits them to the Board of the Financial Supervisory Authority for approval.

27. The Association of Actuaries, which is composed of eight representatives from insurance companies and one representative from the Financial Supervisory Authority, adopted the

2 Letter No. 178/1 of 19 March 2012.

domestic compulsory TMPL insurance risk premium table in July 2011. When determining the domestic MTPL insurance risk premium insurance companies use individual information from each company in relation to claims, claim frequency, claim processing expenses, unpaid claims, pending claims, average claims, etc.

28. Thus, AFSA approves risk premiums, which enables the establishment of the necessary provisions that are required to cover claims. Expenses known by the term “charge on risk premium” is added to the risk premium, which are related to operational expenses and company income. A VAT of 20% is applied to the total amount. Those are the components of the selling price. This information remains confidential and it is up to a company to set is selling prices for its domestic MTPL product.

IV. UNDERTAKING BEHAVIOUR ON THE MARKET

29. In the period 1 January 2011-September 2011, the Financial Supervisory Authority approved in advance compulsory motor insurance premium tariffs in accordance with the Law on Compulsory Insurance in the Transport Sector, as amended. At the time policy prices had not been liberalized and the insurance premium was approved by the Financial Supervisory Authority in advance, which was the reason why prices were almost the same for all domestic MTPL insurance classes.

30. After the liberalization of the market in August 2011 insurance companies submitted to the Financial Supervisory Authority their selling prices for all the classes of domestic MTPL, which varied among the undertakings. Following entry into force of Law No. 10455 of 21 July 2011 (as amended) insurance premiums were set by the insurance undertakings. The Law opened, thus, the path to free competition on this specific market.

31. The Financial Supervisory Authority estimated that selling prices applied by companies in relation to domestic MTPL insurance were 50-60% lower than the risk premium.3 This shows that the undertakings were free and independent to individually set the end price of the product and the related risk premium.

32. For this reason the Financial Supervisory Authority asked insurance companies to apply the general statutory rules, which in the case of selling prices below risk premiums require the application of technical provisions for the unearned premium and the submission of a new business plan on the income to cover those provisions.

Domestic MTPL insurance premiums in February 2012

33. The evidence collected during the investigation shows that from 1 February 2012 to 8 February 2012 the undertakings increased and fixed their domestic MTPL selling prices for all insurance classes.

34. As the Table below shoes, the categories and classes with the largest percentage are category B1 (classes B1/1 and B1/2) and categories D1 and D2 (classes D1/1 and D2/1). Category B1 accounts for about 76% in 2010 (B1/1 25.39% and B1/2 50.54%, respectively) and categories D1 and D2 account for about 14.43%.

3 Based on the data published in the Statistical Bulletin of January-April 2012 by the Financial Supervisory Authority, www.amf.gov.al

Table 1. Domestic MTPL selling prices, by undertaking and class, 1 February 2012[4]

CATEG	Class	Types	Sigal	Interalb	Insig	Atlantik	Sigma	Intersig	Eurosig	Albsig
A 1		***Motorbikes***								
	A1/1 -150	under 150 cm3	4,100	0	0	4,100	4,100	4,100	4,100	0
	A1/2	under 150 cm 3	7,000	0	0	0	7,000	0	0	0
B 1		***Motor-cars***								
	B1/1	under 1600 cm 3	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
	B1/2	over 1600 cm3	14,600	14,600	14,600	14,600	14,600	14,600	14,600	14,600
B 2		***Minivans***								
	B2/1	from 5-8 seats	20,300	0	20,300	20,300	20,300	20,300	20,300	20,300
	B2/2	over 8-15 seats	12,000	27,900	0	0	0	12,100	0	0
C 1	C1/1	***Buses over 15 seats***	20,000	44,400	20,000	44,400	0	16,000	0	0
D1	D1/1	Pick-up trucks	19,500	19,500	19,500	19,500	19,500	19,500	19,500	19,500
D2	D2/1	Trucks	32,600	32,600	32,600	32,600	32,600	32,600	32,600	32,600
E	E1/1	***Trailers***	9,400	9,400	9,400	0	9,400	9,400	9,400	0
F	F	***Agricultural vehicles***	7,300	0	0	7,300	0	7,300	7,300	0
G	G	***Fire trucks***	0	16,800	0	0	0	0	0	0

35. According to the information of the Financial Supervisory Authority, it was not before 8 February 2012 that the Regulator instructed insurance companies to apply Article 9 of Regulation No. 110 of 28 July 2012, quoting that "… the Authority will consider as communicated tariffs those tariffs that you started to apply on 1 January 2012." Thus the Financial Supervisory Authority formalized the prices that the companies had been applying from 1 February 2012.

36. Under the Regulation On setting the level of technical provisions for compulsory motor insurance, insurance companies should have informed the Financial Supervisory Authority ten days before the application of the new compulsory motor insurance tariffs.

37. Proof of this fact is the following Table, which shows that INSIG sh.a. did not apply the same prices as the rest of the undertakings operating in the relevant market to classes B1/1 and C1/1. Table 2. MTPL policies issued by the undertakings in 1-8 February 2012[5]

4 The source data for this table are Letters No. 343/1 of 17 May 2012 from Intersig Vienna Insurance Group, No. 346/1 of 18 May 2012 from Albsig Sh.a, No. 344/1 of 18 May 2012 from Eurosig Sh.a, No. 345/1 of 22 May 2012 from Insig sha, No. 342/1 of 22 May 2012 from Atlantik Sh.a, No. 340/1 of 1 June 2012 from Sigma Vienna Insurance Group, No. 339/ of 16 May 2012 from Sigal Uniqa Group Austria, and No. 341/1 of 15 May 2012 from Interalbanian Vienna Insurance Group.

5 The source data for this table are Letters No. 343/1 of 17 May 2012 from Intersig Vienna Insurance Group, No. 346/1 of 18 May 2012 from Albsig Sh.a, No. 344/1 of 18 May 2012 from Eurosig Sh.a, No. 345/1 of 22 May 2012 from Insig sha, No. 342/1 of 22 May 2012 from Atlantik Sh.a, No. 340/1 of 1 June 2012 from Sigma Vienna Insurance Group, No. 339/ of 16 May 2012 from Sigal Uniqa Group Austria, and No. 341/1 of 15 May 2012 from Interalbanian Vienna Insurance Group.

Table 2: Domestic MTPL selling prices, by undertaking and class, 1-8 February 2012[6]

CATEG	Class	Type	Sigal	Interalb	Insig	Atlantik	Sigma	Intersig	Eurosig	Albsig
A 1		***Motorbikes***								
	A1/1 -150	under 150 cm3	4,100	4,100	4,100	4,100	4,100	4,100	4,100	4,100
	A1/2	over 150 cm 3	7,000	7,000	7,000	0	7,000	7,000	7,000	7,000
B 1		***Motor-cars***								
	B1/1	under 1600 cm 3	14,000	14,000	**10,000**	14,000	14,000	14,000	14,000	14,000
	B1/2	over 1600 cm3	14,600	14,600	14,600	14,600	14,600	14,600	14,600	14,600
B 2		***Minivans***	0	0	0	0	0	0	0	0
	B2/1	under 5-8 seats	20,300	20,300	20,300	20,300	20,300	20,300	20,300	20,300
	B2/2	over 8-15 seats	27,900	27,900	27,900	27,900	0	27,900	27,900	27,900
C 1	C1/1	***Buses over 15 seats***	44,400	44,400	**20,000**	44,400	44,000	44,400	44,400	44,400
D1	D1/1	Pick-up trucks	19,500	19,500	19,500	19,500	19,500	19,500	19,500	19,500
D2	D2/1	Trucks	32,600	32,600	32,600	32,600	32,600	32,600	32,600	32,600
E	E1/1	***Trailers***	9,400	9,400	9,400	9,400	9,400	9,400	9,400	9,400
F	F	***Agricultural vehilcles***	7,300	0	7,300	7,300	7,300	7,300	7,300	7,300
G	G	***Fire trucks***	0	16,800	0	0	0	0	0	0

All in all:

38. The domestic MTPL insurance market is a liberalized market which is regulated by the Financial Supervisory Authority only in relation to the determination of the risk premiums, with the final motor insurance policy selling prices being individually set by the insurance companies.

39. An analysis of the post-liberalization insurance premiums in September 2011-January 2012 finds two main characteristics of the domestic MTPL insurance market: (a) insurance companies communicate to the Financial Supervisory Authority applied premiums at about 50-60% less than risk premiums; and (b) selling prices vary among the undertakings under investigation.

40. In 1-8 February 2012, insurance companies increased their MTPL insurance selling premiums and fixed them to the same level for each class, thus not allowing for any individual differences among companies related to establishing operational expenses. Through this coordinated behaviour the undertakings under investigation have restricted competition among themselves, and have thus reduced the choice for consumers.

The analysis above shows that the undertakings under investigation operating in the domestic MTPL insurance market provisionally increased and fixed the insurance premiums across domestic MTPL classes in 1-8 February 2012, with the exception of undertaking INSIG SHA in relation to class B 1/1. This behaviour represents **a concerted practice, which under Article 3(4) of the Competition Protection Law is considered as an agreement, and under Article 4(1)(a) of the same Law is considered as a prohibited agreement, which is a serious violation of competition.**

6 The source data for this table are Letters No. 343/1 of 17 May 2012 from Intersig Vienna Insurance Group, No. 346/1 of 18 May 2012 from Albsig Sh.a, No. 344/1 of 18 May 2012 from Eurosig Sh.a, No. 345/1 of 22 May 2012 from Insig sha, No. 342/1 of 22 May 2012 from Atlantik Sh.a, No. 340/1 of 1 June 2012 from Sigma Vienna Insurance Group, No. 339/ of 16 May 2012 from Sigal Uniqa Group Austria, and No. 341/1 of 15 May 2012 from Interalbanian Vienna Insurance Group.

FOR THESE REASONS:

The Competition Commission, pursuant to Articles 4(1)(a), 24(d), 45(1), 74(1)(a) and 80 of Law no. 9121 of 28 July 2003 “On Competition Protection”,

DECIDED TO:

I. Conclude the investigation into the compulsory motor third party liability (MTPL) insurance market against undertakings SIGAL UNIQA GROUP AUSTRIA SHA (SIGAL), SIGMA VIENNA INSURANCE GROUP SHA (SIGMA), ATLANTIK SHA, INTERSIG VIENNA INSURANCE GROUP SHA (INTERSIG), INTERALBANIAN SHA, ALB - SIGURACION SHA (ALBSIG), INSTITUTI I SIGURIMEVE SHA (INSIG), and EUROSIG SHA, which participated in the prohibited agreement in the compulsory motor insurance market.

II. Impose the following fines on grounds of participation in a prohibited agreement on:
1. Undertaking SIGAL UNIQA GROUP AUSTRIA SHA (SIGAL), ALL 22,496,193;
2. Undertaking SIGMA VIENNA INSURANCE GROUP SHA (SIGMA), ALL 14,050,348;
3. Undertaking ATLANTIK SHA, ALL 11,141,914;
4. Undertaking INTERSIG VIENNA INSURANCE GROUP SHA (INTERSIG), ALL 12,213,514;
5. Undertaking INTERALBANIAN SHA, ALL 7,271,207;
6. Undertaking ALB - SIGURACION SHA (ALBSIG), ALL 9,362,548;
7. Undertaking INSTITUTI I SIGURIMEVE SHA (INSIG), ALL 3,257,583;
8. Undertaking EUROSIG SHA, ALL 9,151,357;

III. The Secretary General shall be charged with enforcing this Decision and communicating it to the undertakings listed above.

This Decision shall enter into force immediately.

COMPETITION COMMISSION

Servete GRUDA	**Koço BROKA**	**Iva ZAJMI**	**Rezana KONOMI**
(______________)	(___________)	(____________)	(_______________)
Member	**Member**	**Member**	**Deputy Chair**

Lindita MILO (LATI)

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CHAIRPERSON