



**REPUBLIC OF ALBANIA
COMPETITION AUTHORITY
COMPETITION COMMISSION**

DECISION

No. 324 of 30 July 2014

Imposing conditions and obligations on insurance companies in order to restore competition in the compulsory motor third party liability (MTPL) insurance market

The Competition Commission, composed of

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

in its meeting of 30 July 2014 reviewed the Case with:

Subject-matter: Review of the report on the in-depth investigation into the compulsory motor third party liability (MTPL) insurance market, and the claims submitted by the undertakings under investigation;

Legal basis: Articles 1, 4, 24(d) and 45(2) of Law no. 9121 of 28 July 2003 "On Competition Protection," as amended

Undertakings under investigation: SIGAL UNIQA Group AUSTRIA SHA, SIGMA VIENNA INSURANCE GROUP SHA, ATLANTIK SHA, INTERSIG VIENNA INSURANCE GROUP, INTERALBANIAN VIG SHA, ALB - SIGURACION SHA, INSTITUTI I SIGURIMEVE SHA, EUROSIG SHA, ANSIG SH.A.

Investigation period: The investigation period, as specified in Competition Commission decisions, is 1 November 2013 – 31 March 2014.

After reviewing the

- Report on the in-depth investigation into the compulsory motor third party liability (MTPL) insurance market, and the Competition Authority Secretary-General's Report;
- Claims that the undertakings operating in the insurance market submitted in the hearings of 22 and 23 July 2014 and/or submitted in writing to the Competition Authority;

THE COMPETITION COMMISSION NOTES THAT:

I. PROCEEDINGS

1. Based on some signals that the Competition Authority received from the insurance market, the Competition Authority Secretariat, upon a request from the Competition Commission, monitored the sales of compulsory motor third party liability insurance policies in November 2013.
2. The monitoring showed that from 1 November 2013 all agents had sold those policies through a system called MSHM, which was managed by an entity that had been licensed by the Albanian Financial Supervisory Authority as a brokerage company. At the time of sending the selling transaction to the agent, the system did not show all the companies licensed for the product in question but only a limited number of them, typically four or five companies.
3. 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" (hereinafter referred to as the "Law"), adopted Decision No. 297 of 18 November 2013 and Decision No. 300 of 6 December 2013, whereby it approved the opening of an inquiry into the compulsory motor third party liability (MTPL) insurance market, in order to determine whether there were any indications of competition restriction, distortion or obstruction.
4. The inquiry into the insurance market was completed on 17 January 2014. Taking into account the market sensitivity on this issue and the request from the Albanian Financial Supervisory Authority (AFSA) that the financial stability of the insurance market would benefit from giving consideration to the characteristics and fragility of the financial insurance market, especially in the area of compulsory insurance, the Competition Authority Secretariat proposed to monitor the market pursuant to Article 28 of the Law.
5. During the monitoring period, a public concern was expressed on the printed media of 12 February 2014 in relation to the rise in motor insurance tariffs the previous day. The monitoring of the market showed that the applied premiums had been increased significantly at the same time by all the insurance companies by approximate amounts.
6. Based on the above, the Competition Commission, pursuant to Articles 24 (d) and 42 of the Law, adopted Decision No. 305 of 14 February 2014 whereby it decided to extend the period of the preliminary inquiry into the compulsory TPL insurance market to 28 February 2014.
7. The inquiry found that the behaviour of the undertakings, within meaning of Article 4(1)(a), (b) and (c) of the Law, might have aimed at, or resulted in, restriction, market control (Article 4(1)(b)), market division (article 4(1)(c)) and direct or indirect price fixing for the selling of MTPL insurance policies.
8. The Competition Commission, with proposal from the Secretariat, and pursuant to Articles 24(d) and 43(1) of the Law, adopted Decision No. 310 of 31 March 2014 whereby it decided to open the in-depth investigation into the compulsory motor third party liability (MTPL) insurance market against the undertakings operating in that

market: SIGAL UNIQA Group AUSTRIA SHA, SIGMA VIENNA INSURANCE GROUP SHA, ATLANTIK SHA, INTERSIG VIENNA INSURANCE GROUP, INTERALBANIAN VIG SHA, ALB - SIGURACION SHA, INSTITUTI I SIGURIMEVE SHA, EUROSIG SHA, ANSIG SH.A.,.

9. Pursuant to the Regulation on investigation procedures implemented by the Competition Authority, the Competition Commission specified that the parties had the right to submit their views no later than 20 days from the date of the Decision.
10. The following undertakings submitted their views and commitments to the Competition Authority in writing: SIGAL SHA, ATLANTIK SHA and INSIG SHA, while hearings were organised with the managers of SIGAL SHA and ATLANTIK SHA, upon their request.
11. Following that, the Competition Authority Secretary General notified the undertakings under investigation of Competition Commission Decision No. 310 of 31 March 2014.
12. In order to collect the necessary facts and data in relation to the investigation, pursuant to Articles 33 and 34 of Law No. 9121 of 28 July 2003 "On Competition Protection", the Authority collected information from all the insurance companies under investigation and their agents, Star Broker and other licensed brokers, the Albanian Insurance Bureau (AIB) and AFSA as the regulator of the relevant market.
13. Pursuant to Articles 35 and 36 of Law No. 9121 of 28 July 2003 "On Competition Protection", Competition Commission Authorisation No. 69 of 14 February 2014 "Inspector Authorisation", the Inspection Teams carried out the necessary inspections at the undertakings under investigation during the investigation period.
14. After receiving the facts and evidence and other information necessary for conducting a full investigation into the behaviour of the undertakings in the market, an in-depth investigation report was prepared and was sent to the undertakings under investigation attached to Competition Authority Letter No. 289 of 20 June 2014.
15. Pursuant to Article 39 the Law, insurance companies Ansig, Inter-albanian, Atlantik, Intersig, Sigal, Albsig, Eurosig and Insig submitted their claims in writing, while companies Sigal, Albsig, Eurosig and Insig also attended the hearings of 22 and 23 July 2014.

II. RELEVANT MARKET

16. The Law and Competition Commission Instruction No. 76 of 7 April 2008 "On the determination of the relevant market" provide that, "... 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: (i) the product market, and (ii) the geographic market.

II.1. Relevant Product Market

17. 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 substitutes.
18. Since the main feature of the MTPL is insurance against liability for any damage caused to third parties (and not damage caused to the policy-holder), its price remains the main criterion in determining its substitutability. This product 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.
19. On the supply side, too, there is the element of substitutability among all the companies providing domestic MTPL with features, prices and qualities that make it completely substitutable for customers. There are no statutory restrictions on access to 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. A new company entered the market in 2012.
20. The product market includes insurance policies in the Republic of Albania, the Green Card (international insurance certificate) and Border Insurance (which covers the liability of the driver of a vehicle with a foreign licence plate for any proprietary and non-proprietary damages caused to the third parties while driving in the territory of the Republic of Albania).

II.2 Relevant Geographic Market

21. In this case the Republic of Albania is the geographic market.

III. UNDERTAKING BEHAVIOUR IN THE MARKET

III.1. The decisions of the General Meeting of the Albanian Insurance Bureau Members

22. The Secretariat carried out inspections in order to collect direct and indirect evidence of potential collusion agreement among competitors or of concerted practice in relation to director or indirect premium price fixing, market sharing, restrictions or control.
23. The inspection at the Albanian Insurance Bureau (AIB) found several decisions of its General Meeting, which is composed of representatives from all the insurance companies operating in the Republic of Albania. The materials that were collected during the inspection at the Albanian Insurance Bureau included:
 - 1) Decision of Members' General Meeting No. 12 of 7 February 2014 approving the joint-stock company Star Broker Sha, under which each insurance company had to make all sales (bank transactions) of compulsory MTPL insurance through the Star Broker system, in accordance with the agreements concluded between the Broker and the insurance companies pursuant to that decision.

- 2) Decision of Members' General Meeting No. 36 of 21 November 2013 on the collection of border insurance policy premiums, under which each insurance company had to make all sales (bank transactions) of border insurance policies through the Star Broker system, and deposit the receipts in an ear-marked bank account and inform the BKT that the bank account is to be managed by Star Broker pursuant to that decision
 - 3) Decision of Members' General Meeting No. 34 of 21 November 2013 approving the joint-stock company Star Broker Sha to sell Green Card policies.
 - 4) Decision of Members' General Meeting No. 25 of 26 June 2013 on the production, management and selling of compulsory Border and Green Card insurance policies; Paragraph 5 of the Decision states: "Border and green card Insurance policy premiums are deposited in an ear-marked account which is managed by the Albanian Insurance Bureau or by a legal person that is authorised by the Bureau as specified in paragraph 6 of this Decision ... at border points of sale where the border and green card insurance policies are sold through the agents of each insurance company, in line with a previously agreed schedule to that end."
24. Those documents are decisions taken by the General Meeting of the AIB members, who represent the nine companies under investigation; an examination of those decisions shows that they do not contain any written clauses of a prohibited agreement per se in terms of market sharing or price fixing; they have established, however, the conditions of communication among the undertakings in the market, thus enabling coordination of their behaviour in order to maintain a trend for market sharing and restricting consumer choices.

III.2. Relevant market sharing trend

25. MTPL may be sold through brokerage companies, which are established and operated under Law No. 9267 of 29 July 2014 "On the Activity of Insurance, Reinsurance and Intermediation in Insurance and Reinsurance". Licensed brokerage companies carry out intermediation activity in insurance and reinsurance for and on behalf of the insured. The brokerage company is responsible towards the insured for all damages caused to the insured as a result of their neglect or disinformation. The brokerage company intermediates in the conclusion of an insurance or reinsurance agreement only with licensed insurance companies in accordance with the provisions of the law.
26. The assessment of the market shares among insurance companies took into consideration the data received from the undertakings and the data collected during the inspection at Star Broker based on the MTPL invoice data. The assessment compared the market shares for each week and month during the entire investigation period, which showed that the distribution of revenues from the relevant product sales among the undertakings under investigation in the investigation period followed the same trend as that of the MTPL product market shares.
27. As shown in the following table, in the investigation period—November 2013-March 2014—the undertakings under investigation used the MSHM system, which was

managed by Star Broker, to have similar market shares, and in certain occasions the system did not display the insurance policies of the insurance companies requested by the insured.

Table 1 - *Monthly trend of market shares for the period November 2013-March 2014, from the data received from the undertakings*

III.3 Insurance tariff setting

28. The investigation showed that until 10 February 2014, the MTPL premiums were as shown in the following table:

Table 2- Premiums applied prior to the price increase on 10 February 2014 (in ALL)

(Confidential)

29. The evidence collected during the inspections at the undertakings under investigation and Star Broker shows that on 11 February 2014 there was a significant increase in the MTPL premiums and the premiums applied by all the undertakings were almost the same (with a difference of ALL 10 among the companies). The tariffs were kept fixed until 13 February 2014, as shown in the following table:

Table 3- Tariffs applied by insurance companies in the period 11-14 February 2014

(Confidential)

30. On 13 February 2014 the first to react was INSIG sh.a., which lowered its tariffs, followed on 14 February by the rest of the undertakings which lowered their tariffs in the main insurance classes (motor-cars: B1/1 and B1/2).

31. This type of behaviour of the undertakings operating in the relevant market during the investigation period was in conflict with the provisions of the Competition Protection Law, requiring free and effective market competition, because insurance tariff setting should be done individually and independently by the undertakings under investigation.

IV. INSURANCE COMPANIES' VIEWS AND COMMITMENTS

32. During the investigation, the insurance companies operating in the relevant market under investigation submitted their oral and written views, claims and commitments to the Competition Authority.

IV. Claims from Undertakings under Investigation

33. The undertakings operating in the relevant market at the opening and completion of the in-depth investigation stated their claims and views in relation to the investigation report findings and other factors and AFSA role affecting the functioning of this market. The parties did not contest any of the facts or evidence included in the insurance market in-depth investigation report, which had been sent to them upon the conclusion of the investigation.

34. The insurance companies' claims are summarised below:

(a) While the market is liberalised and the insurance companies apply different risk premiums, the AFSA continues to approve premiums at market level which do not vary among insurance companies. Recent decision by AFSA, No. 34 of 25 March 2014 approving risk premium tables;

(b) Market shares have changed dynamically;

(c) Applied tariffs vary among companies; and

(d) The agreement with Star Broker is not against the law because it does not specify any prices or market shares, but enables online selling and selling through the compulsory motor insurance policy desks.

35. INSIG Sh.a. contested the Albanian Insurance Bureau and stated that it would recognise and comply with those AIB decisions to the extent they are in accordance with the legal requirements and fall in the remit that the law grants AIB. INSIG sh.a. does not recognise the brokerage company Star Broker sh.a. as having an exclusive or preferential position in the insurance brokerage activity, including compulsory motor insurance, as established by formal letters No. 677 of 17 March 2014 sent to AIB and Star Broker, and No. 815 of 27 March 2014 sent to AFSA, and some emails from INSIG official address to AFSA.

36. In the hearing of 23 July 2014 and, after that, in its letter no. 289/7 of 24 July 2014, Insig sh.a. stated that in May-July 2013 Insig had gone through a difficult period because in its Letter No. 852/1 of 24 April 2013 AFSA set minimum and maximum tariffs, blocking the selling system if an attempt to sell outside that tariff range was made.

IV.2. COMMITMENTS FROM THE PARTIES UNDER INVESTIGATION

37. Based on the findings and evidence presented in the enquiry and investigation reports, the insurance companies (with the exception of SIGMA sh.a.) stated their commitments to implement the arrangements proposed in the in-depth investigation report.

In summarised form, the following were those commitments:

(a) Payment of claims according to the companies from which the vehicle insurance has been taken out, as also provided for in Law No. 10076 of 12 February 2009 "On Compulsory Insurance in the Transport Sector".

(b) Concrete implementation of the Bonus-Malus system for the specification of individual selling premiums for the compulsory motor insurance products.

(c) Direct handling of claims by the insurance companies would develop competition among companies for their products by encouraging competition not only in terms of offered tariffs but also in terms of the payment of claims under the insurance products, which is the main goal of each purchase of risk by insurance companies from the insured.

38. All companies confirmed that they had begun testing the individualised compulsory insurance Bonus-Malus system and that the testing would end on 22 August 2014 and become operational for the market.

39. AFSA letter no. 1494/1 of 17 July 2014, too, informed that it had taken all the actions with insurance companies, Road Transport Departments, Civil Registry Departments and that the compulsory motor insurance centre was updated in order to implement the product. The test with the agents would be carried out on 21 July 2014 and the Bonus-Malus system would become mandatory for insurance companies as of 20 August 2014.

40. Insurance companies stated for the possibility of payment of claims according the companies by which vehicles were insured, in accordance with Article 11(3) of Law No. 10076 of 12 February 2009 “On Compulsory Insurance in the Transport Sector”, which provides that, “insurers may conclude agreements among them, under which claims related to damages caused by the use of a vehicle to another vehicle may be handled by the direct insurer of the damaged vehicle owner.” Paragraph 4 of the Article provides that “the direct insurer has the right to being reimbursed by the insurer that is responsible for the payment of damages in relation to the claims within the conditions, limits and deadlines laid down in their agreement.”

41. The Competition Commission constantly assessed the on-block behaviour of the insurance companies resulting in increased prices and lack of consumer choices, which is against the principles of free and effective market competition, and took Decisions No. 50 of 21 March 2007 and 246 of 9 October 2012 imposing heavy fines against insurance companies and providing recommendations for the AFSA (Competition Commission Decisions No. 28 of 23 December 2005, No. 46 of 21 March 2007, No. 9 October 2012 On issuing recommendations to the Financial Supervisory Authority in relation to the compulsory motor third party liability (MTPL) insurance market).

42. An assessment of the dynamics of the real impact that those Decisions have had on the market show that the courts have not understood well the Competition Authority decisions and its role in the restoration of free and effective market competition.

43. On the other hand, until the completion of the investigation, AFSA did not take any efficient regulatory measures for ensuring the functioning of the market in accordance with the principles of free and effective competition in the compulsory insurance market, which remains one of the least developed markets in the region in terms of payment of claims and market size. Since 2007 the size of the compulsory insurance market has not changed, with compulsory motor insurance premiums being ALL 3,865.3 million then and ALL 3,885.8 million in 2013, while the overall insurance market increased from ALL 5.25 billion to ALL 7.51 billion in the area of voluntary insurance.

44. The data submitted to the Competition Authority show that the undertaking with the smallest specific weight in gross revenues (gross written premiums—one twentieth of the market, with the exception of the new market entrant) significantly had the highest profit.

45. **In conclusion**, pursuant to the Competition Protection Law and in line with its goal to determine undertaking behaviour in the context of ensuring free and effective market competition, the Competition Commission finds the behaviour of the undertakings in the market to be against the principles of free and effective market competition since they equally increased and fixed MTPL insurance prices for a period of three days and used a concentrated selling system through Star Broker in order to maintain their market shares. In order to have a real impact of the intervention on this market, and pursuant to Article 45(2) of the Law, the Competition Commission imposes **conditions and obligations on all the undertakings under investigation, as an instrument** of restoring free and effective competition in the compulsory motor insurance market.

FOR THESE REASONS:

The Competition Commission, pursuant to Articles 24 (d), 45, 74 and 75 of Law No. 9121 of 28 July 2003 "On Competition Protection",

HAS DECIDED:

1. The insurance companies **must comply with the following conditions and obligations within 90 days** from the date of this Decision:
 - a) Put into operation the Bonus-Malus programme for the individualised system of compulsory insurance based on the data on the insured, vehicles, and track record of caused damages and their location;
 - b) Ensure the display of the insurance company sought from the insured. The logos of all insurance companies with which the agent or broker has compulsory insurance policy selling agreements with must be displayed on the system provided by brokerage companies and insurance company agents;
 - c) Apply the legal provision on the payment of claims by the direct insurer;
 - d) Conclude agreements with more than one brokerage company in compliance with the requirements laid down by the AFSA in relation to the online compulsory insurance system and the bank payment system in accordance with the legislation in force;
 - e) Print and sell insurance policies bearing the logo of each undertaking;
2. Pursuant to Article 45(2) of the Law, failure to comply with these conditions and obligations shall be punished by a fine for serious violations of up to 10 percent of the turnover, in accordance with Article 74(1)(c) of the Law.
3. The Competition Authority Secretary-General shall notify this Decision to the undertakings.

This Decision shall enter into force immediately.

COMPETITION COMMISSION

Servete GRUDA

(_____)

Member

Koço BROKA

(_____)

Member

Iva ZAJMI

(_____)

Member

Rezana KONOMI

(_____)

Deputy Chair

**Lindita
MILO(LATI)**

CHAIRPERSON