

# **Decision to accept binding commitments to modify a data exchange tool used by Motor Insurers**

December 2011

OFT1395

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# CONTENTS

<i>Chapter</i>	<i>Page</i>
1 Introduction	7
2 The OFT's investigation	8
3 Background - the private motor insurance market	17
4 The OFT'S competition concerns	25
5 The Commitments	32
6 The OFT's Decision	57

## *Annexe*

**Annex 1** Commitments text

**Annex 2** Aggregation analysis

**Annex 3** Additional issues regarding modification of the WhatIf? Private Motor product

**Annex 4** Analysis of data sample

## EXECUTIVE SUMMARY

This Decision is addressed to seven insurers and two IT software providers.<sup>1</sup> It relates to an information exchange product sold by Experian and known as WhatIf? Private Motor. WhatIf? Private Motor is an information product consisting of an information exchange which enables insurers to access other insurers' pricing information for any risk profile. In particular, WhatIf? Private Motor allows insurers to know in detail what their rivals' future prices will be, provides them with the opportunity to adjust their own quotation prices in advance of such prices going 'live' in the market, and through batch analysis<sup>2</sup> enables them to determine the detailed structure of their rivals' pricing strategies/models.

The Office of Fair Trading ('the OFT') was concerned that the information exchange might constitute an infringement of the Chapter I prohibition under the Competition Act 1998 ('the Act') and/or of Article 101(1) of the Treaty of the Functioning of the European Union (TFEU) and has had particular regard to the fact that the information exchange can be properly characterised as an exchange of future information (in the sense that competitors can adjust their prices in response to their competitors' stated intentions). In articulating its concern the OFT has also had particular regard to features of the information exchange<sup>3</sup> which could be facilitative of co-ordination. This includes the highly individualised, commercially sensitive, non public, highly disaggregated nature of pricing information exchanged and the fact that the information is exchanged through WhatIf? Private Motor on a frequent and consistent basis and that the companies involved account for a large part of the private motor insurance market.

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<sup>1</sup> The seven insurers are Ageas Insurance Ltd (formerly Fortis UK Ltd), Aviva Insurance UK Ltd; AXA Insurance UK plc, Liverpool Victoria Insurance Company, RBS Insurance Group Ltd, Royal & Sun Alliance plc and Zurich Insurance plc – UK Branch. The IT software providers are Experian Ltd and SSP Ltd. The insurers, Experian and SSP are referred to in Chapters 1-4 of the Decision as 'Parties'.

<sup>2</sup> Batch analysis involves accessing the pricing information in the product by inputting a very large number of risk profiles at one time. For a fuller description of batch analysis see paragraph 3.13 below.

<sup>3</sup> The information exchange relates to a potential infringement in the whole of the UK. It is therefore possible that, in addition to Chapter I of the Act, Article 101 TFEU may also apply : see paragraph 3.2 Commission Notice *Guidelines on the effect on trade concept contained in Articles [101] and [102] of the Treaty* (2004/C101/07).

In order to address the competition concerns of the OFT in relation to the WhatIf? Private Motor product, the parties subject to the OFT's investigation offered commitments (the 'Commitments') to the OFT that they would only exchange (or facilitate the exchange) of information through the WhatIf? Private Motor (or successor) product(s) if this product complies with certain Principles.<sup>4</sup>

The OFT, pursuant to s31A Competition Act 1998, conducted a consultation exercise (the 'Consultation') to seek views on the Commitments offered by the parties. This took the form of publication of a Notice to accept binding Commitments issued on 13 January 2011 (OFT1301).

In the light of evidence submitted to the OFT pursuant to the Consultation and the OFT's subsequent further analysis of this market, the OFT requested from the Insurers,<sup>5</sup> and received, amended Commitments (the 'Amended Commitments'). Specifically, in light of evidence presented to the OFT during the Consultation, including evidence as to potential value of exchange of certain information to market entrants in some circumstances, the definition of 'Relevant Data' contained in the Commitments was amended to refer to data which is six months old, rather than 36 months old (the 'Amendment'). The OFT was of the view that this revised duration contained in the Amendment addressed its competition concerns. At the same time, it ensures that the commitments are not unnecessarily restrictive, which the OFT recognises can be helpful for third parties, notably small insurers and new entrants, and hence encourages healthy competition in this market.

The OFT conducted a second consultation exercise (the 'Second Consultation') to seek views on its intention to accept the Amended Commitments offered by the Parties. This took the form of publication of a Notice of intention to modify proposed binding commitments issued on 30 September (OFT1377).

The OFT, having taken account of representations made during the Second Consultation, considers that the Amended Commitments<sup>6</sup> offered by the Parties

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<sup>4</sup> Principles means the principles as set in Annex 1 to this document.

<sup>5</sup> Six of the seven original insurer parties have offered the Amended Commitments to the OFT. The seventh insurer, whose identity is already in the public domain, is bound by an immunity agreement under the terms of which it must refrain from further participation in the reported activity. The original Commitments offered to the OFT by the IT software providers, Experian Ltd and SSP Ltd, did not require change.

<sup>6</sup> The text of the Amended Commitments is at Annexe 1 of this document.

fully address the OFT's competition concerns and it has, therefore, decided to accept the Amended Commitments. A decision by the OFT accepting binding commitments does not amount to or imply any finding as to the legality or otherwise of the conduct by the Parties under investigation either prior to acceptance of the commitments or once the commitments are in place.

It is proposed that these commitments will remain in force for five years. It should also be noted, where the OFT has accepted binding commitments it may for the purpose of addressing its current competition concerns, accept a variation of or substitution for the commitments.

# 1 INTRODUCTION

- 1.1 In this document, the OFT accepts the Amended Commitments offered by the companies<sup>7</sup> under investigation in case CE/9388/10 and set out at Annex 1. Formal acceptance of the commitments by the OFT results in the termination of our investigation, without the need for any decision on whether or not the Competition Act 1998 and/or Article 101(1) TFEU has been infringed by any of the companies under investigation.
- 1.2 The remainder of this document describes the OFT's investigation, the market context in which the investigation has been carried out, the parties involved and the nature of the information exchange and of the information exchanged. The OFT's competition concerns are summarised, together with details of the commitments offered by the parties and why the OFT considers that these address its competition concerns. This document also includes an overview of the representations made in response to the OFT's Notice of intention to accept binding commitments and the Notice of intention to modify proposed binding commitments and a description of how we have taken account of the significant issues raised.

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<sup>7</sup> As offered by six of the seven Insurers and the two IT software providers.

## **2 THE OFT'S INVESTIGATION**

- 2.1 In June 2009, the OFT received information suggesting that certain arrangements between a large number of insurance companies operating in the broker insurance market might be in breach of the Chapter I prohibition of the Competition Act 1998 (the 'Act') and/or Article 101 of the Treaty of the Functioning of the European Union ('TFEU').
- 2.2 In January 2010, the OFT launched a formal investigation under section 25 of the Act through the issue of section 26 notices, on the basis that it had reasonable grounds to suspect that Chapter I of the Act was being infringed. In particular, the OFT suspected that insurers were indirectly exchanging commercially sensitive price information through certain third party IT software providers, facilitated by third party service providers, and that such arrangements might have the object or effect of preventing, restricting or distorting competition.

### **OFT's prioritisation**

#### **OFT's general approach to prioritisation**

- 2.3 The OFT's objective is to make markets work well for consumers. Markets work well for consumers when businesses compete vigorously and fairly to win customers' business. The OFT will only intervene in markets when they do not work well and, by doing so, will seek to promote open competition, and to encourage unrestricted availability of products and services.
- 2.4 In order to make the best use of its resources in terms of real outcomes for UK consumers, the OFT needs to ensure that we make appropriate decisions about which projects and programmes of work we undertake across all areas of our responsibility.
- 2.5 In seeking to target both the OFT's resources and enforcement strategy, the OFT generally prioritises its work according to the impact on consumers and the work's strategic significance, amongst other considerations. The OFT balances such considerations against the risks



and resources involved. Further information on the OFT's prioritisation strategy can be found at: *OFT Prioritisation Principles, October 2008* (OFT953).<sup>8</sup>

### **Application of OFT's prioritisation principles in this case**

2.6 The OFT considered that the features of this case were such that it was appropriate to take the case forward as meeting its prioritisation criteria. The following factors were of particular relevance in this regard:

Impact:

- the insurance sector is significant, both in terms of size (i.e. value) and reach (the sector is one that touches most consumers, motor insurance being one example), such that any finding of harm and/or change in market behaviour resulting from an investigation could have a correspondingly large impact.

Strategic significance:

- the case presented novel facts in relation to information exchange, and therefore any finding (infringement or non-infringement) by the OFT would not only deter anticompetitive exchange of information between competitors but also provide business with some indication as to types of information exchange that may raise competition concerns.

### **Scope of the OFT's investigation**

2.7 In deciding on the most appropriate scope for its investigations, the OFT aims to strike the optimal balance between achieving the greatest possible impact and using its resources as efficiently and effectively as possible.

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<sup>8</sup> [www.offt.gov.uk/shared\\_offt/about\\_offt/oft953.pdf](http://www.offt.gov.uk/shared_offt/about_offt/oft953.pdf).

- 2.8 In this case, it was suggested to the OFT that the alleged information exchange could be occurring indirectly between a large number of insurers operating in the broker insurance market through the use of several data analysis products, and in relation to several insurance lines.
- 2.9 Mindful of the widespread use of information exchange tools in the insurance sector and the likely resource and timing implications of a wide-ranging investigation, the OFT was careful to adopt an appropriately scoped investigation from the outset. It therefore decided to focus on one insurance line, one data analysis product and a subset of insurers that subscribed to that data analysis product during the relevant period of investigation.
- 2.10 The following paragraphs describe how the OFT went about narrowing the scope of its investigation (so as to strike the optimal balance between impact and efficient use of OFT resources).
- **Narrowing by insurance line:** the evidence available to the OFT indicated that the alleged behaviour it would be investigating was likely to be similar for private motor insurance, household insurance, motorcycle insurance and commercial vehicle insurance sold via brokers. Given the larger size of the private motor insurance line (and therefore the corresponding larger direct impact of its investigation), the OFT focused its investigation on private motor insurance.<sup>9</sup>
  - **Narrowing by data analysis provider:** the OFT focused on Experian Ltd's ('Experian') WhatIf? Broker data analysis product for private motor insurance (WhatIf? Private Motor). The rationale for this was that: (a) the OFT understood the WhatIf? Private Motor to be the leading available data analysis product for the broker channel, (b) there was good evidence relating to WhatIf? Private Motor, and (c)

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<sup>9</sup> Datamonitor reports estimate the respective market sizes to be £9.2 billion for private motor insurance (*UK Private Motor Insurance 2010*), £7.5 billion for household insurance (*UK Household Insurance 2010*), £176 million for motorcycle insurance (*UK Motorcycle Insurance 2010*), and £3.3 billion for commercial vehicle insurance (*UK Commercial Vehicle Insurance 2010*).

the OFT understood that most insurers active in the UK subscribe (or have subscribed in the past) to WhatIf? Private Motor.

- **Narrowing by number of insurers:** Given the number of insurers involved, the OFT focused its investigation on the top nine insurers by revenue in private motor in 2009, the year before the start of the OFT's investigation. The OFT identified these insurers using revenue information for the overall market for private motor insurance (that is including sales through the direct, affinity and broker channels).<sup>10</sup> The reason for selecting the top nine insurers was that there was a clear gap between the turnover of the ninth and tenth insurance companies in 2009.<sup>11</sup> In addition, the OFT noted that these nine insurance companies comprised a number of different profiles namely, UK-based insurers, international insurance companies, a mutual insurance company and considerable variation in terms of size and resource. Since the top nine insurers based on turnover already captured a range of profiles no further widening of the group for deterrence or other purposes was warranted.

Following this approach, the insurance companies<sup>12</sup> that were within the initial scope of the OFT's investigation were Ageas Insurance Ltd ('Ageas'), formerly known as Fortis Insurance Ltd, Aviva Insurance UK Ltd ('Aviva'), general insurance subsidiaries of AXA Insurance UK plc ('AXA Insurance'), Liverpool Victoria Insurance Company Ltd ('Liverpool Victoria'), RBS Insurance Group Ltd ('RBS Insurance'), Royal & Sun Alliance Insurance plc ('RSA') and Zurich Insurance plc – UK Branch ('Zurich').<sup>13</sup>

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<sup>10</sup> In the absence of available revenue information for the broker channel, the OFT considered that information on total private motor insurance was a reasonable proxy subject to excluding any insurer that did not operate in the broker segment.

<sup>11</sup> The turnover of the ninth company was 50 per cent higher than that of the tenth company and this was the biggest 'break' between consecutively ranked companies.

<sup>12</sup> Referred to collectively as 'Insurer Parties'.

<sup>13</sup> Two further insurers that were within the initial scope of the investigation were subsequently excluded from the investigation scope following confirmation by them that they had not received

- 2.11 In summary, the OFT's investigation covered the alleged anticompetitive exchange of private motor broker pricing information between certain insurers through Experian and, as explained further below, SSP Ltd ('SSP').<sup>14</sup>
- 2.12 By adopting this narrow scope, the OFT was able to conduct its investigation in an efficient and effective manner, and within a shortened time-frame.

### **Process**

- 2.13 On 29 January 2010, the OFT issued Notices under section 26 of the Act ('Section 26 Notices') to the insurers identified in paragraph 2.10 above, as well as to IT software providers SSP and Experian. The Section 26 Notices requested information on, in particular, the indirect exchange of information between insurers through WhatIf? Private Motor.
- 2.14 Having considered the evidence gathered in response to the Section 26 Notices, the OFT sent the parties that remained within the scope of its investigation (collectively referred to as the 'Parties') a state of play letter on 17 June 2010, updating the Parties on the OFT's ongoing investigation and briefly outlining the OFT's competition concerns.
- 2.15 Following a series of separate meetings and discussions between the OFT and each of the Parties, each Party indicated its willingness to offer commitments as a way of addressing the OFT's competition concerns. Accordingly, the OFT, in accordance with paragraph 4.18 of OFT407 (Enforcement) (the 'OFT Guidance') proceeded to discuss with each Party the scope of any commitments which would be necessary to address the concerns it had identified.

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the WhatIf? Private Motor product and/or had not provided private motor insurance in the relevant period.

<sup>14</sup> SSP is a software provider through which Experian obtains data for its WhatIf? Private Motor product.

- 2.16 By way of background, the OFT notes that it has the power to accept commitments offered to it pursuant to section 31A of the Act where it is satisfied that the commitments offered meet its competition concerns. The OFT Guidance describes the circumstances in which it may be appropriate to accept binding commitments, and the process by which parties to an investigation may offer commitments to the OFT.
- 2.17 The Parties having indicated their willingness to offer commitments, the OFT (in accordance with paragraph 4.17 of the OFT Guidance) sent a Statement of Competition Concerns (SOCC) to the Parties on 6 September 2010 as a precursor to a possible commitments outcome.
- 2.18 Following the receipt of the Parties' responses to the SOCC, the OFT (pursuant to the OFT Guidance) further discussed with the Parties the form and content of the commitments that would be necessary to address the competition concerns it had identified.
- 2.19 The Parties offered formal commitments in final form to the OFT on a range of dates in December 2010 and January 2011.
- 2.20 On 13 January 2011, the OFT issued a Notice of an intention to accept binding commitments to modify a data exchange tool used by Motor Insurers<sup>15</sup> ('Commitments Notice') in which it invited interested third parties to make representations on the proposed commitments. The consultation process officially concluded on 14 February 2011.
- 2.21 Having considered the Parties' proposed commitments, the responses to the Commitments Notice<sup>16</sup> and the OFT's subsequent further analysis of this market, the OFT requested from the insurers, and received, amended commitments. Specifically, in light of evidence presented to the OFT during the Consultation, including evidence as to potential value of exchange of certain information to market entrants in some

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<sup>15</sup> OFT 1301: Notice of an intention to accept binding commitments to modify a data exchange tool used by Motor Insurers, 13 January 2011

<sup>16</sup> A summary of the responses and of the account taken by the OFT of issues raised is set out below at Chapter 5 of this document.

circumstances, the definition of 'Relevant Data' contained in the Commitments was amended to refer to data which is six months old, rather than 36 months old. The OFT was of the view that this revised duration contained in the amendment would address its competition concerns, whilst remaining helpful to third parties, notably small insurers and new entrants, and hence encourages healthy competition in this market.

2.22 The OFT conducted a Second Consultation<sup>17</sup> exercise to seek views on its intention to accept the Amended Commitments offered by the Parties. This took the form of publication of a Notice of intention to modify proposed binding commitments issued on 30 September.

2.23 The OFT, having taken account of representations made during the Second Consultation, considers that the amended commitments offered by the parties are sufficient to address the OFT's competition concerns. As a result, the OFT hereby accepts the amended commitments as offered by the parties in the form set out in Annex 1 and has closed its file in respect of this investigation.

## **The Parties**

2.24 Ageas (formerly Fortis Insurance Ltd) is part of the international insurance company Ageas SA/NV. In the UK, Ageas provides general insurance through subsidiaries of Ageas (UK) Ltd, which include Ageas Insurance Ltd, and life insurance through Ageas Protect Ltd.

2.25 Aviva is part of Aviva plc, the UK's largest insurer and the world's sixth-largest insurance company based on gross worldwide premiums in 2009. For the UK insurance market, Aviva offer motor, property, health and related insurance services to individuals and small to medium sized enterprises.

2.26 AXA Insurance is wholly owned by AXA SA, one of the world's largest insurers. AXA Insurance underwrites a range of products such as motor,

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<sup>17</sup> OFT1377: Notice of intention to modify proposed binding commitments, 30 September

home and travel insurance. AXA Insurance also underwrites a number of products for some of the UK's best known brands.

- 2.27 Experian is a global information services company, providing market data and analysis products. In the UK, Experian supports a range of vertical markets, including financial services, retail, home shopping, telecommunications, utilities, media, property, automotive, leisure, charity and insurance. On 9 August 2004, Experian acquired ISL Ltd (ISL). ISL provided a number of data analysis products aimed at the insurance market, including the WhatIf? Private Motor product.
- 2.28 Liverpool Victoria is part of the Liverpool Victoria Friendly Society, a mutual society providing life insurance, general insurance, investment products, savings, lending and advisory services to its members. It primarily operates in the UK under Liverpool Victoria Insurance Company Ltd and Highway Insurance Company Ltd.
- 2.29 RBS Insurance is a subsidiary of the Royal Bank of Scotland Group PLC. Within this subsidiary there are four main UK general insurance companies, such that, collectively, RBS Insurance is the UK's second-largest provider of general insurance selling car, home, pet, travel and commercial insurance through a number of brands including Direct Line and Churchill. RBS Insurance's broker based insurer is the National Insurance and Guarantee Corporation Ltd (NIG), which is a commercial and personal lines insurer providing products through a network of independent brokers. In August 2010, NIG announced its decision to exit the personal lines business (which includes private motor) and to focus solely on its commercial lines of business.
- 2.30 RSA is the largest commercial insurer in the UK, and the third-largest personal lines insurer. RSA's commercial business focuses on property, motor, liability and marine insurance. RSA's personal lines insurance is distributed through brokers, direct channels and affinity organisations.
- 2.31 SSP is a provider of IT systems and services to the UK insurance industry. Relevant to this case, SSP offers quote engines to brokers in order to access quotes from their panel of insurers for the purposes of

calculating premiums and providing policy details to customers, relevant to each customer's specific demands and needs. SSP also provides the same data to Experian for incorporating into its WhatIf? Private Motor product.

- 2.32 Zurich is part of Zurich Financial Services Ltd, a multinational insurance group with insurance operations throughout the world. In the UK, Zurich Insurance provides private motor insurance business, together with other general insurance, both directly and through intermediaries.



### 3 BACKGROUND - THE PRIVATE MOTOR INSURANCE MARKET

#### Routes to market

- 3.1 Private motor insurance is a subcategory of general retail insurance. Total gross written premiums in private motor insurance in the UK in 2010 amounted to £9.5 billion (£9.2 billion in 2009).<sup>18</sup> In 2010 the largest ten companies accounted for approximately 77 per cent of total sales.<sup>19</sup>
- 3.2 As with other general insurance categories, private motor insurance is sold in the following ways:
- a. **directly** to the final customer, for example through an insurer's website, through price comparison websites or by telephone,
  - b. through **affinity** relationships with, for example, other financial firms, such as high street banks or major retailers, such as supermarkets or department stores. These firms are not involved in the provision of insurance themselves but they have existing relationships with customers and wish to offer those customers a portfolio of financial products including insurance. Some affinity partners use only one supplier whilst others use a panel of different suppliers. The underlying insurance contract is between the insurer and the customer (not the affinity partner). However, the policy documentation is likely to have the affinity partner's branding, and
  - c. through **brokers** who are able to purchase services for their clients from a range of different insurers. As with the affinity channel, the broker does not enter into the contract with the customer, but acts as an intermediary, placing the customer with the insurer.

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<sup>18</sup> Datamonitor: UK Private Motor Insurance 2011

<sup>19</sup> See footnote 18.

3.3 The difference between the broker and affinity channels resides primarily in the type of company marketing the insurance – the affinity firms are more likely to be financial institutions or major retailers. In addition, affinity relationships are more likely to have sole suppliers.

3.4 In addition, the broker channel can be split into two broad categories:

- a. **Large brokers**, who tend to market insurance policies under their own brand (although these are underwritten by insurers), and
- b. **Small and regional brokers**, who make up the large majority of independent brokers operating throughout the UK.

Sales through all brokers made up approximately 30 per cent of private motor insurance sales in 2010 (31 per cent in 2009).<sup>20</sup> The OFT understands that the information in WhatIf? Private Motor is more useful for the small and regional broker channel since larger brokers have greater flexibility in their pricing strategies. In addition, it notes that insurers may write different proportions of policies for each channel: while some write most of their business through large brokers, others may operate a more balanced portfolio or sell more policies through small and regional brokers.

## How insurance premiums are calculated

3.5 Insurers selling high volume products need to be able to quickly and easily calculate an insurance premium for any potential customer. Insurance premiums are typically calculated on the basis of three broad categories: the cost of the underlying risk (sometimes referred to as 'expected claims costs'), a need to recover expenses (which may include fixed expenses and commissions), and a wider commercial strategy (including adjustments made to premiums and rates to increase or decrease the volume of business that an insurer writes for any given sector).

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<sup>20</sup> See footnote 18.

- 3.6 The first of these categories (expected claims costs) will be based on a significant number of variables (known as risk or rating factors), which affect the risk to an insurer. For example, the age of a driver would be a risk factor for private motor insurance.<sup>21</sup> There are a number of risk factors which contribute towards a private motor insurance price. This, in addition to the fact that some risk factors (for example, postcodes) can themselves comprise a large number of variables (for example, there are over 10,500 postcode sectors in the UK), results in a very large number of possible premium permutations.
- 3.7 Expected claims costs will also take account of demand conditions and, in particular, consumer price sensitivity at the individual insurer level, which is influenced by insurers' price competitiveness with their key rivals. Account is also taken of technical risk factors, which reflect an insurer's expertise and experience of the degree to which any given risk factor has led to claims arising in the past, and the expectation that any particular factor will increase the likelihood and/or scale of claims in the future.
- 3.8 These costs, coupled with expense recuperation and commercial considerations, which will include allowance for consumer price sensitivity, as influenced by insurer's price competitiveness with their key rivals, are combined together in each insurer's rating model which calculates premiums – in other words, an insurer's rating model constitutes the insurer's underlying pricing model or strategy for any given risk profile. For the broker market, where the broker will be acting as an intermediary for a number of different insurers, this is the premium a broker should charge a customer based on the values of the different risk factors for that customer, as set by each insurer on the panel.

### **Provision of information by insurance companies to brokers**

- 3.9 In order for brokers to be able to quote insurance prices to their customers, brokers need to have access to insurers' up-to-date rating

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<sup>21</sup> There are approximately 30 risk factors for private motor insurance.

information and be able to provide policy details to their customers. It is the OFT's understanding that, in particular for small and regional brokers to have access to insurer information, insurers independently submit their underwriting rules and rating models ('pricing information') to IT software providers, such as SSP, for incorporation in insurance quote engines for onward provision to brokers. These quote engines are purchased by such brokers in order for them to access prices from their panel. The SSP software, therefore, enables each panel insurer to trade through its respective brokers, in particular its small and regional brokers who tend to have less flexibility than larger brokers as regards their pricing strategies.

- 3.10 Insurers update their pricing information on a monthly basis and this is usually provided to IT software providers approximately six weeks prior to the rates going 'live' with brokers as regards the start date of the policies they sell to consumers. The 'live' date is defined as the inception date of policies which brokers sell to consumers. Thus prices for policies incepting on 1 March are provided to IT software providers six weeks earlier in January. The OFT considers the insurer pricing information is provided to brokers by IT software providers, such as SSP, for a specific and legitimate reason, that is, to enable brokers, in particular small and regional brokers, to provide accurate information on the insurance products they offer to customers.

### **WhatIf? Private Motor**

- 3.11 In addition to providing insurers' pricing information to insurance brokers, at a similar time, SSP also provides the same pricing information to Experian. Experian then incorporates the insurer pricing information it receives from SSP into its market data analysis product for the broker channel, WhatIf? Private Motor. WhatIf? Private Motor was purchased by, or was made available for purchase to, most insurers operating in the broker channel (the OFT understands that this amounted to approximately 55 subscribing insurers in 2007-8).
- 3.12 The OFT understands that it is possible for insurers to adjust the rates they provide to SSP before they go live. For example, the OFT

understands that this happens where insurers realise that there are some errors in the rates contained in WhatIf? Private Motor or through SSP.

3.13 By obtaining the WhatIf? Private Motor product insurers:

- are not only able to access their own pricing information (that is, the data that brokers use to quote for their own products), they are also able to access other insurers' pricing information (for the broker market) in respect of almost all combinations of risks that each insurer would price for before they make their final pricing decision,<sup>22</sup> and
- by inputting very large numbers of risk profiles (sometimes referred to as 'batch processing' or 'batch analysis'), insurers are able to reverse engineer their rivals' rating models (and therefore their pricing model or strategy for any given risk profile). For example, by holding constant all the risk factors but one, it is possible to test the effect on price resulting from varying the value for that single risk factor, thereby identifying the underlying pricing model/strategy for that particular risk factor.

3.14 Diagram 1 provides a summary of the information flows described above:

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<sup>22</sup> The OFT understands that it is possible that some risk factors relevant for insurers' pricing models will not appear in WhatIf? Private Motor.

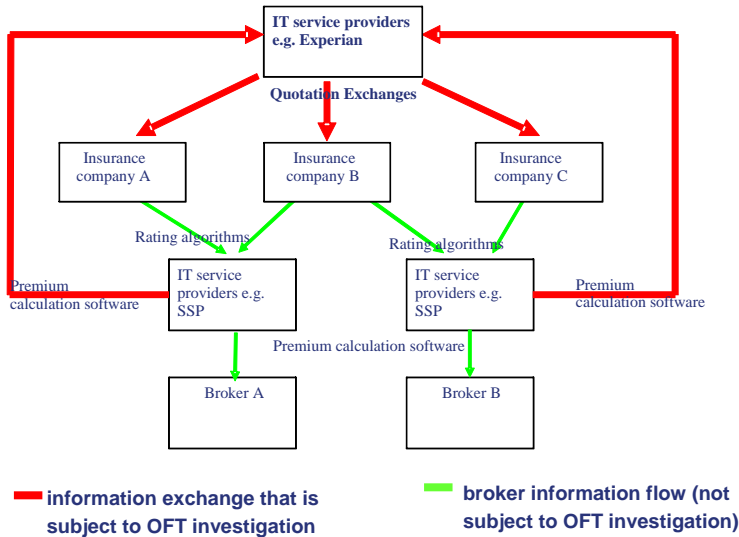


Diagram 1

## The exchanged information

- 3.15 This section describes the characteristics of the information that is made available to insurers through purchasing WhatIf? Private Motor. As stated above, the OFT notes that through WhatIf? Private Motor, insurers have access to other insurers' pricing information for any risk profile. Furthermore, WhatIf? Private Motor not only allows insurers to know in detail what their rivals' future prices will be, it can also allow them, through batch analysis, to determine the detailed structure of their rivals' pricing strategies/models.
- 3.16 In summary, for the reasons described below, the information exchanged may be characterised as: future, commercially sensitive, non public, individualised and highly disaggregated. The information is exchanged on a regular and frequent basis.
- 3.17 **Future information:** insurers receive the upcoming month's pricing information through the WhatIf? Private Motor product some two to three weeks before the rates become 'live' (that is, before cover commences for those policies using these rates (that is, before cover commences for those policies using these rates)). The OFT understands that during the month it is possible for insurers to adjust the rates they

provide to SSP. For example, the OFT understands that this happens where insurers realise that there are some errors in the rates contained in WhatIf? Private Motor or through SSP. This indicates that insurers can (and do) adjust their prices during this period, implying that the prices exchanged are future pricing intentions rather than firm commitments.<sup>23</sup> In addition, because the WhatIf? product provides them with the ability to interrogate<sup>24</sup> the database of competitors' prices, insurers may be able to extrapolate from the current data to obtain a view about their competitors' future pricing strategy and thereby also allow them to signal their future pricing strategies. There is also some indication that insurers can use the WhatIf? Private Motor information to inform their pricing strategy in the direct channel where prices can be changed immediately.

**3.18 Commercially sensitive information:** The information exchanged is commercially sensitive. The information is not in the public domain and enables a user to access each individual insurer's confidential rating model. The data that can be generated through WhatIf? Private Motor is pricing information and reflects extremely detailed data in relation to most types of risk factors.

**3.19 Non-public data:** the information exchanged is not genuinely publicly available, nor is it exchanged publicly – that is, it is not available to all at no cost. While insurers could, in theory, replicate the contents of the WhatIf? Private Motor product themselves by asking for prices from all insurers, in practice it would be almost impossible as it would necessarily entail requesting huge numbers (thousands if not millions) of quotes. In addition, while the WhatIf? Private Motor product has been publicly marketed and its contents and use are known throughout the insurance industry, given the costs involved in obtaining and using the

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<sup>23</sup> Correcting errors in the prices for the month sent to SSP following reconsideration of the insurers own data is unlikely to give rise to concern. Concern arises where prices may be amended following consideration of data relating to other insurers' prices.

<sup>24</sup> By using 'batch processing' or 'batch analysis' to reverse engineer rivals' rating models. See paragraph 3.13.

product, the OFT does not consider that the information is exchanged within the public domain.

- 3.20 **Individualised data:** the WhatIf? Private Motor product gives access to highly disaggregated data enabling access to actual prices for any combination of risk factors. Furthermore these prices are provided at an individual firm level for almost all insurers that provide quotes to the broker channel through SSP. For example, WhatIf? Private Motor permits insurers to analyse many hundreds of thousands of different risk profiles by insurer product and to assess price changes. Large batches of these data can be analysed, which, in turn, enables the reverse engineering of highly granular data as to individual rating models within the market.
- 3.21 **Frequency of the information exchange:** insurers receive the WhatIf? Private Motor product on a monthly basis. The frequency and consistency of an exchange is relevant to the degree of reliance which can be placed on the information, and therefore to the extent to which information exchanged may be used to reach clarity on competitors' existing and intended pricing strategies.
- 3.22 **Market coverage:** the companies involved in the data exchange together account for a very large part of the private motor insurance market in the UK. WhatIf? Private Motor was purchased by, or contained data relating to, all of the largest 10 insurers and most other insurers operating in the broker channel for motor insurance at some point during the relevant period.



## 4 THE OFT'S COMPETITION CONCERNS IN RELATION TO THE INFORMATION EXCHANGE

### Existence of a concerted practice

- 4.1 Agreements or concerted practices<sup>25</sup> between undertakings that have as their object or effect the prevention, restriction or distortion of competition are contrary to Article 101 TFEU and Chapter I of the Act.<sup>26</sup>
- 4.2 It is clear from the European Courts' case law, that a concerted practice between undertakings does not require undertakings to have established a plan of coordination.<sup>27</sup> In *Suiker-Unie*, the ECJ defined the concept of a 'concerted practice' as 'a form of coordination between undertakings, which, without having been taken to the stage where an agreement properly so-called has been concluded, knowingly substitutes for the risks of competition, practical cooperation between them which leads to conditions of competition which do not correspond to the normal conditions of the market, having regard to the nature of the products, the importance and number of the undertakings as well as the size and nature of the said market.'
- 4.3 The concept of a concerted practice must, therefore, be understood in light of the principle that an economic operator cannot coordinate on the

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<sup>25</sup> The ECJ has confirmed that it is not necessary, for the purposes of finding an infringement, to characterise conduct exclusively as an agreement or as a concerted practice (see for example Case T-7/89 Hercules Chemicals v European Commission [1991] ECR II-1711, at paragraph 264. The concepts of agreement and concerted practice are not mutually exclusive and there is no rigid dividing line between the two. They are intended "to catch forms of collusion having the same nature and are only distinguishable from one another by their intensity and the forms in which they manifest themselves" (see Case C-49/92P Commission v Anic Partecipazioni SpA [1999] ECR I-4125, at paragraph 131 ('Anic')). In this case, the OFT has, in articulating its concerns, analysed the information exchange as a concerted practice.

<sup>26</sup> Chapter I and Article 101(1) TFEU will only apply to an agreement or concerted practice which has an appreciable effect on competition; in the case of Article 101(1) the agreement or concerted practice must also have an appreciable effect on trade between Member States.

<sup>27</sup> Cases 40/73 etc. *Suiker Unie v Commission* [1975] ECR 1663, at paragraph 173 ('Suiker Unie').

policy and conduct it intends to adopt on the market. In particular, as the ECJ also held in *Suiker Unie*: 'Although it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, it does however strictly preclude any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.'

- 4.4 The OFT considers that the information exchange may amount to a concerted practice raising competition concerns given that:
- a. each of the Insurers was acquiescing to the provision of its information to SSP in the knowledge that its information would be passed on to their competitors and has so been provided on a regular basis
  - b. the Insurers received confidential competitor information on future pricing intentions via Experian/SSP, and
  - c. the nature of the information exchanged is such that it discloses to competitors the course of conduct that each of the Insurers intends to pursue.

### **The Information Exchange as a restriction of competition**

- 4.5 Certain types of information exchange may enable competitors to behave in a coordinated manner. This is why the European Court has confirmed, on numerous occasions, that exchanges of certain types of information between competitors can constitute infringements under Article 101(1) TFEU.<sup>28</sup>

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<sup>28</sup> See for example *Anic*, and , Case T-25/95 *Cimenteries CBR SA v Commission* [2000] ECR II-491.

- 4.6 The European Commission has summarised the legal position in relation to information exchanges as articulated by the European Courts in its *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements*<sup>29</sup> (the 'EC Guidelines'). The OFT has, therefore, used the EC Guidelines as a framework when articulating its competition concerns and assessing the proposed commitments in this case.
- 4.7 The EC Guidelines state that exchanges of information on companies' individualised intentions concerning future conduct regarding prices should be considered to constitute restrictions of competition by 'object'. This is on the basis that these exchanges are particularly likely to lead to a collusive outcome, and therefore negatively impact competition.
- 4.8 The EC Guidelines also describe certain market conditions that may have a restrictive 'effect' on competition. For example, the exchange of commercially sensitive, non-public, individualised, highly disaggregated information on a frequent and consistent basis, can also facilitate firms in reaching a coordinated outcome, especially if those firms account for a sufficiently large part of the relevant market.
- 4.9 The OFT is, therefore, concerned that the information exchange may constitute an infringement under Chapter I of the Act and/or Article 101(1) TFEU. In articulating this concern, the OFT has had regard to the following features of the information exchange:<sup>30</sup>
- it is the view of the OFT, as explained above (see paragraph 3.17) that the information exchange can be properly characterised as an exchange of future information (in the sense that a competitor can adjust its prices in response to its competitors' stated intentions). It is clear that the information exchanged does give detailed indications as to competitors' future pricing and strategic intentions. This is because insurers have the ability, through

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<sup>29</sup> OJ C 11/1 14/01/2011

<sup>30</sup> See footnote 3 above

interrogating WhatIf? Private Motor, to obtain detailed information about their competitors' pricing structures. While pricing structures may change over time, competing insurers obtain an understanding of their competitors' intended pricing structures, and have the opportunity to respond or take action on the basis of such information before insurers are fully committed to offering those prices. This facilitates coordination; and the OFT has concerns that the nature of the information exchanged through the WhatIf? Private Motor product, in the context of the private motor insurance market, is also facilitative of coordination. In particular, the exchange concerns commercially sensitive, non-public, individualised, highly disaggregated information available on a frequent and consistent basis, with the companies involved accounting for a large part of the private motor insurance market.

- 4.10 Given that the commitments offered in this case address the OFT's competition concerns, it was not necessary to conduct a detailed assessment of the economic effect of the information exchange. The OFT did, however, provide an overview of its concerns in its Notice to accept binding Commitments (OFT1301) in order to allow potential respondents to understand the OFT's concerns.

### **Application of Article 101(3) TFEU or section 9 of the Act<sup>31</sup>**

- 4.11 Article 101(3) TFEU and section 9 of the Act provide for an exemption to Article 101 TFEU or section 2 of the Act if the practice in question:
- a. contributes to improving the production or distribution of goods or to promoting technical or economic progress, i.e. leads to efficiency gains
  - b. allows consumers a fair share of the efficiency gains stipulated in (a)

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<sup>31</sup> The practice under consideration does not fall within any of the exclusions set out in section 3 of the Act.

- c. does not impose restrictions that go beyond what is necessary to achieve the efficiency gains stipulated in (a), and
  - d. does not afford the parties the possibility of eliminating competition in respect of a substantial part of the goods in question.
- 4.12 The OFT recognises that there may be some pro competitive benefits stemming from the information exchange, for example in helping to facilitate entry or expansion.
- 4.13 Indeed, the European Commission recognised some of the potential benefits of information exchange in its renewal of the Insurance Block Exemption Regulation in March 2010.<sup>32</sup> For example, the Commission recognises that the sharing of certain information ‘makes it possible to improve the knowledge of risks and facilitates the rating of risks for individual companies. This can in turn facilitate market entry and thus benefit consumers.’
- 4.14 Specifically, in relation to writing risks, market analysis products such as WhatIf? Private Motor may result in lower barriers to entry and expansion by providing information where the insurer has little or no underwriting experience and is therefore unable accurately to rate the risk. This may, therefore, enable insurers to expand or enter into the writing of policies where otherwise they may have been reticent, for example due to the potential cost of future claims. In this respect, having taken account of information submitted to the OFT during the consultation process, including evidence as to potential benefits of this exchange to market entrants in some circumstances, the OFT is of the view that the sharing of Relevant Data no less than six months old, rather than no less than 36 months old, would satisfy its competition concerns.

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<sup>32</sup> Commission Regulation (EU) No 267/2010 of 24 March 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreement, decisions and concerted practices in the insurance sector.

- 4.15 In relation to whether the criteria for the fulfilment of Article 101(3)/section 9 of the Act are met, however, the OFT notes the following:
- a. the Parties have not adduced sufficient evidence to discharge the evidential burden of any efficiency gains, and
  - b. the OFT is of the current view that not all of the information exchanged appears indispensable for any pro-competitive purpose and considers that it is unlikely, therefore, that the current arrangements could benefit from an exemption.
- 4.16 In order to fulfil the condition of indispensability, the Parties would need to prove that the type of data exchanged (for example, as to the level of its aggregation, its age, its commercial sensitivity and its frequency) is necessary for creating any efficiency gains. In the OFT's view the frequent sharing of highly disaggregated, individualised and future data in this case is unlikely to be indispensable, especially if they are related to prices. The OFT considers that in this case, the sharing of future individualised data can facilitate a common understanding of the market and punishment strategies, by providing the coordinating companies with the ability to signal focal points and single out deviation or new entry.
- 4.17 Therefore, the OFT is of the view that it is unlikely that the Information Exchange would fulfil the criteria set out in section 9 of the Act or Article 101(3) TFEU.

### **Non-application of the insurance block exemption regulation**

- 4.18 The Information Exchange falls outside the Insurance Block Exemption Regulation. This permits the exchange of certain information on, amongst other things, the number of claims during a certain period; the number of individual risks insured in each risk year of the chosen observation; and the total amounts paid or payable in respect of claims during the relevant period. However, the Insurance Block Exemption Regulation explicitly excludes the exchange of compilations, tables or study results which contain any indication of the level of commercial

premiums.<sup>33</sup> As a result, the OFT's current view is that the information exchange in question would not be exempted under the Insurance Block Exemption Regulation.<sup>34</sup>

## Potential infringements of the Act

- 4.19 The OFT's investigation has sought to establish whether the Information Exchange raises competition concerns. On the basis of the above analysis, the OFT has concerns that the WhatIf? Private Motor product may be expected to prevent, restrict or distort competition.
- 4.20 However, following consultation with the Parties,<sup>35</sup> the OFT has decided that its competition concerns would be addressed by the Amended Commitments proposed by the Parties. It is important to note that the purpose of commitments is to remove the OFT's concerns that the information exchange could constitute an infringement under Chapter I of the Act or Article 101 TFEU. Formal acceptance of commitments has resulted in the OFT terminating its investigation, so that it is not necessary for the OFT to decide whether or not the Act has been infringed by any of the companies under investigation.

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<sup>33</sup> Article 3(2)(c) of the Insurance Block Exemption Regulation.

<sup>34</sup> The OFT considers that this analysis would also apply under the previous Insurance Block Exemption Regulation (Commission Regulation (EC) No 358/2003 of 27 February 2003 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector).

<sup>35</sup> See footnote 5.

## 5 THE COMMITMENTS

5.1 In order to address the OFT's concerns that the information exchange could constitute an infringement under Chapter I of the Act and/or Article 101 TFEU, the Parties<sup>36</sup> have offered Amended Commitments to the OFT (in the form set out in Annex 1) that they will only exchange (or facilitate the exchange) of information through the WhatIf? Private Motor (or successor) product(s) if such product complies with certain principles. The Amended Commitments offered are addressed in detail below.

5.2 As stated, the purpose of the Amended Commitments offered by the Parties is to remove the OFT's concerns that the information exchange could constitute an infringement under Chapter I of the Act and/or Article 101 TFEU. For the avoidance of doubt, even though the OFT considers that the Amended Commitments fully address its competition concerns, it does not consider the Principles<sup>37</sup> in this Annex 1 to be an exhaustive set of solutions to the competition concerns it has identified. Furthermore:

- a decision by the OFT to accept the binding commitments in this case does not amount to or imply that the OFT has reached any conclusion as to the legality or otherwise of the conduct by the Parties under investigation either prior to acceptance of the commitments or once the commitments are in place
- this investigation has demonstrated that the nature of commitments needed to satisfy concerns are likely to be highly specific to the facts and circumstances of this case.

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<sup>36</sup> For an explanation of capitalised terms used in section 5 see Annex 1, Definitions. For example, from this point forward 'the Parties' will mean the six insurers and two IT software providers that have formally offered the Amended Commitments.

<sup>37</sup> Principles means the principles as set out in Annex 1 to this document.



## Appropriate case for commitments

### The OFT Guidance

- 5.3 The OFT Guidance (OFT 407) states that the OFT is likely to consider it appropriate to accept binding commitments only in cases where (a) the competition concerns are readily identifiable, (b) the competition concerns are fully addressed by the commitments offered, and (c) the proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time.<sup>38</sup> In this case, as stated above, the purpose of the commitments offered is to address the OFT's concerns that the information exchange potentially infringes Chapter I of the Act and/or Article 101 TFEU.
- 5.4 In addition, the OFT will not accept, other than in very exceptional circumstances, binding commitments in cases involving secret cartels between competitors which include price-fixing, bid-rigging (collusive tendering), establishing output restrictions or quotas, sharing markets and/or dividing markets. Nor will the OFT accept binding commitments in cases involving serious abuse of a dominant position.<sup>39</sup>
- 5.5 Moreover, the OFT will not accept commitments where compliance with such commitments and their effectiveness would be difficult to discern, and/or where the OFT considers that not to complete its investigation and make a decision would undermine deterrence.<sup>40</sup>

### Appropriateness of this case for commitments

- 5.6 The OFT considers that this is an appropriate case for commitments for the following reasons:

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<sup>38</sup> Paragraph 4.3

<sup>39</sup> Paragraph 4.4

<sup>40</sup> Paragraph 4.5

- **Identifiable competition concerns:** the OFT is concerned that the information exchange may allow Insurers to reach a coordinated outcome.
- **Competition concerns are fully addressed by the commitments offered:** the commitments would prevent the Parties from exchanging information unless the exchange complies with certain conditions. An explanation of why these conditions are likely to remove the exchange from the scope of Chapter I of the Act and/or Article 101 TFEU, and therefore meet the OFT's concerns is set out below in paragraphs 5.11 to 5.22.
- **The commitments offered are capable of being implemented effectively and, if necessary, within a short period of time:** the Parties can cease exchanging the data immediately (i.e. by ceasing to use the current version of the WhatIf? Private Motor product), and the OFT understands that the WhatIf? Private Motor product can be modified relatively easily in order to comply with the commitments in future.

5.7 In addition, and as noted above, the conduct investigated in this case does not constitute a secret cartel between competitors.<sup>41</sup> It is notable in this regard that the WhatIf? Private Motor product is publicly marketed.

5.8 Finally, the OFT does not consider that a commitments decision would undermine deterrence in this case. Whilst the OFT is terminating its investigation into the concerns addressed by the commitments, this would not preclude it from investigating the agreement or concerted practice in respect of which the commitments have been accepted in the future in certain circumstances. For example, this might be appropriate where the OFT has reasonable grounds for believing that there has been a material change of circumstances since the commitments were accepted, if it has reasonable grounds for suspecting that a person has

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<sup>41</sup> See footnote 31.

failed to adhere to one or more of the terms of the binding commitments, or reasonable grounds for suspecting that information which led it to accept the binding commitments was incomplete, false or misleading in a material particular.<sup>42</sup>

- 5.9 As far as general deterrence is concerned, the OFT considers that the proposed decision will assist in promoting compliance with competition law by indicating the sorts of considerations to which those engaged in comparable information exchanges should have regard when assessing whether such exchanges constitute infringements under Chapter 1 of the Act and/or Article 101 TFEU.<sup>43</sup>
- 5.10 In light of the above, therefore, the OFT's conclusion is that this is an appropriate case for it to accept binding commitments from the Parties.

### **The OFT's assessment of the commitments**

- 5.11 The OFT has carefully considered the proposals for commitments set out in Annex 1, the arguments for and against these commitments fully addressing the OFT's competition concerns and why the arrangements between the Parties, as modified by the commitments, would fall outside Chapter 1 of the Act and/or Article 101 TFEU. These are set out below in relation to each Principle.

#### **Experian and SSP commitments**

- 5.12 The commitments by Experian and SSP are designed to ensure that neither will facilitate any information exchange between insurers through the use of the WhatIf? Private Motor product or any successor product, save in certain specified ways.

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<sup>42</sup> Paragraph 4.9

<sup>43</sup> It is proposed that the commitments will remain in force for five years. Where the OFT has accepted binding commitments it may for the purpose of addressing its current competition concerns, accept a variation of or substitution for the commitments.

## Insurer commitments

- 5.13 The Insurers have each proposed to commit that (a) no insurer will allow SSP to provide its data to Experian where it is aware (or ought reasonably to be aware) that the insurer's data is transmitted (either directly or indirectly) to other UK insurers unless the information is exchanged in a form compliant with the Principles; and (b) they will not directly or indirectly acquire other UK insurers' data from WhatIf? (or successor products) unless the information is exchanged in a form compliant with the Principles.
- 5.14 The Principles in question are the following:
- users of WhatIf? Private Motor must not be able to access individualised Future Data through WhatIf? Private Motor,
  - users of WhatIf? Private Motor must not be able to access Relevant Data through WhatIf? Private Motor unless this is:
    - i. Anonymous Data, and
    - ii. averaged across at least five UK Insurers.
- 5.15 The OFT's views on each of these requirements is as follows:
- **No access to individualised Future Data:** as discussed above, the EC Horizontal Guidelines state that exchanges of information on companies' individualised intentions concerning future conduct regarding prices should be considered to constitute restrictions of competition by 'object'. This is on the basis that these exchanges are particularly likely to lead to a collusive outcome, and therefore negatively impact competition. The commitment not to exchange individualised data relating to future conduct therefore allays the OFT's concerns in this respect, although it is not of itself sufficient to remove the information exchange from the scope of Chapter I of the Act and/or Article 101 TFEU altogether, so as to address all of the OFT's competition concerns regarding the potential of WhatIf? Private Motor to facilitate coordination.

- **No access to Relevant Data unless anonymous and averaged across five insurers:** the Parties agreed that preventing the exchange of Relevant Data would help ensure in the circumstances of this case that the information exchange falls outside the scope of Chapter I of the Act and/or Article 101 TFEU. The Parties have therefore offered to modify the data exchange in certain additional respects, so that the data is anonymised and that it is averaged across five insurers. The OFT believes that averaging prices across five insurers<sup>44</sup> on an anonymous basis should be sufficient to remove competition concerns because insurers will not be able to reach a coordinated outcome. This is for the following reasons:
  - **A Product<sup>45</sup> complying with the Principles would significantly reduce the prospects of Insurers reaching a common coordinated understanding:** Aggregating the prices of the five cheapest Insurers for each quote would not enable Insurers to signal pricing intentions and hence reach a common understanding on the terms of co-ordination. This is because no Insurer will know precisely what each of its rivals will charge for any possible combination of risks but will only have an average of the prices offered by a group of five insurers. In addition, average prices will ensure no insurer will be able to reverse engineer an individual competitor's rating model and view the underlying pricing model. The proposed commitments will therefore mean that Insurers will not be able to discern individual competitors' pricing strategies and hence will not be able to identify and signal profitable price increases.

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<sup>44</sup> See Annex 2 for a discussion of the analysis conducted by the OFT in assessing the Parties' commitments offers and which, in the view of the OFT, provides support for the proposition that aggregating quotes over not fewer than five insurers is highly unlikely to have the effect of restricting competition. The OFT expects Insurers will average across the five cheapest quotes. However, the commitments do not prescribe this so, for example, it would be possible to see the average of the sixth to eleventh cheapest quotes.

<sup>45</sup> In this section, the term Product refers to WhatIf? Private Motor product as currently supplied by Experian and any successor products which relate to the Data quoted in the broker market for private motor insurance.

- **A Product complying with the Principles would also make co-ordination highly unlikely:** Averaging prices across five insurers will not allow the Insurers to monitor whether rivals are deviating from the terms of a coordinated understanding. This is because, in this industry, an average of five would not allow insurers to identify whether there has been any deviation so that such a deviation could be disciplined. The OFT's analysis of a dataset from WhatIf?,<sup>46</sup> indicates that there is sufficient variation between the quotes of the five cheapest insurers such that the identification of a price deviation would not be possible. Aggregating quotes to a minimum of five insurers ensures that a price cut by any one party of 20 per cent<sup>47</sup> could not be statistically distinguished from normal variations in price for over 95 per cent of the analysed risks. This is in contrast to using the cheapest insurer alone, where a price cut of even 10 per cent would be detected more than 50 per cent of the time. The OFT is therefore of the view that averaging to five insurers (and at the same time anonymising their identities) will be sufficient to prevent identification either of the fact that a firm has deviated, or the identity of the deviator.
  
- **A Product complying with the Principles would not allow external sustainability of the co-ordination:** a Product complying with the Principles will not allow insurers to monitor and target new entrants. This is because price cuts associated with new entrants will not be easily identifiable as discussed above. In addition, because the group of insurers whose prices will make up the average will be anonymous and potentially different every month, it is not possible to target or even identify new entry.

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<sup>46</sup> See Annex 2

<sup>47</sup> A 5-10 per cent price cut is usually considered sufficient to constrain a hypothetical monopolist active in the same relevant market. The OFT has, however, looked to be more conservative by ensuring that a 20 per cent price cut will remain undetectable.

## The definition of Relevant Data

- 5.16 In the light of evidence submitted to the OFT pursuant to the first Consultation and the OFT's subsequent further analysis of this market, the OFT requested from the Insurers, and received, Amended Commitments. Specifically, an amendment was made to the period which would need to expire before the exchange of Relevant Data should be permitted through the WhatIf? Private Motor product.
- 5.17 The original definition of Relevant Data, which restricted the availability of data less than 36 months old, was based on concerns that prices for many risk factors would remain constant, and would therefore provide an indication of future pricing strategies, until such information was at least 36 months old. There was, however, a divergence of views from the insurer parties as to when the information would become less commercially sensitive.<sup>48</sup>
- 5.18 In proposing modification to the definition of Relevant Data, the OFT took account of the views expressed by respondents to the first consultation, particularly in relation to the potential benefits of the information exchange to market entry, in particular to market entry by new competitors and to entry by smaller competitors to new product areas. The OFT has, therefore, taken the view that restricting the availability of data less than six months old, rather than 36 months old, would sufficiently address its competition concerns.<sup>49</sup>
- 5.19 The OFT is of the view that this less restrictive, revised duration would be sufficient to avoid constraints on market entrants, and hence encourage healthy competition in this market.

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<sup>48</sup> In this regard, while some insurer parties were of the view that information would lose its relevance within a matter of a few months, other Insurer Parties expressed the view that prices for many risk factors would remain constant, and therefore provide an indication of future pricing strategies, until the information was at least 36 months old.

<sup>49</sup> See Annex 4.

## The evidential basis for the Amendment

- 5.20 The OFT, having evaluated the data provided to it, came to the conclusion that restricting the availability of data which was up to six months old was likely to satisfy the OFT's competition concerns. In reaching this conclusion, the OFT was concerned to ensure that the sharing of data more than six months old would not enable insurers to reach a coordinated outcome and, accordingly, to ensure the data exchanged via WhatIf? Private Motor could not facilitate an infringement of the Act and/or the TFEU.
- 5.21 Specifically, for coordination between undertakings to be sustainable, the undertakings generally need to be able to signal focal points, and identify and punish any deviations from the coordination within a timely fashion, thereby reducing the gains from deviation, and hence increasing the stability of a coordinated outcome. Our analysis suggested that, despite the concern that prices for some risk factors would remain constant for up to 36 months, most insurers tended to alter their prices on a two to three month basis.<sup>50</sup>
- 5.22 When the majority of insurers can and do change their prices on a two to three month basis and, in addition, have the ability to change their prices on a more regular basis than this, the sharing of data which is more than six months old is highly unlikely to facilitate a collusive outcome. This is because a firm's ability to signal, monitor and react to deviation or market entry is significantly reduced.<sup>51</sup> In these circumstances, the fact that some insurers only make major changes in their pricing strategies once or twice a year does not, in itself, significantly raise the likelihood of a collusive outcome.

### **Additional issues**

- 5.23 In making their commitments offers, the Parties raised a number of additional issues regarding the modification of the WhatIf? Private Motor

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<sup>50</sup> See Annex 4.

<sup>51</sup> See Annex 4.



product. The following points, a fuller account of which is at Annex 3 below, were raised by the Parties:

- If aggregation were required across all insurers' prices (as opposed to across five prices) pro-competitive benefits would be lost; the OFT accepted for the reasons set out above at paragraph 5.15 that aggregation should be across five prices.
- That to minimise the risk of distortion that might arise where prices entered by some insurers were deliberately unrealistically high, the average of five insurers should be drawn from comparator set rather than from all insurers. While this is not a requirement in the Amended Commitments, the circumstances in which a Comparator Set may be used are set out in the Principles (see Annex 1).
- How the modified product would operate if there were fewer than five insurers quoting for a particular risk. Options discussed with the parties were the possibility the product would give no return where fewer than five insurers quoted for a risk, and the possibility (subject to technical feasibility) of allowing the product to provide for an average of five for the 'next level' – for example, if there were only three insurers quoting for a particular risk profile for someone living in EC4Y 8JX, then an average of five insurers might be provided for EC4Y. Neither option is precluded or preferred by the Amended Commitments.<sup>52</sup>

5.24 In conclusion, therefore, the OFT considers that the commitments offered by the Parties are sufficient to address its competition concerns in this case.

### **Comments on additional limitations**

5.25 The OFT does not consider the Principles in Annex 1 to be an exhaustive set of solutions to the competition concerns it has identified. It notes,

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<sup>52</sup> See Annex 3 at C.3 for a fuller discussion of this issue.

however, that certain types of modifications to the Product which were proposed by some insurers were not sufficient to address the OFT's competition concerns or to meet the OFT's requirement that commitments be capable of being implemented effectively and, if necessary, within a short period of time:

- **Exchange of purely anonymised data (but not averaged across firms):** the OFT accepts that the exchange of purely anonymised data could make a coordinated outcome more difficult to reach and sustain, as signalling and monitoring might become more difficult given that price movements are not attributable to a particular competitor. However, it also considers that the exchange of purely anonymised data would still entail certain risks in relation to a coordinated outcome insofar as the data is highly disaggregated price data that is not averaged across firms. This is because insurers could still, through interrogating the Product, obtain detailed indications of their competitors' pricing structures and strategies (even if they were not able to identify which firm it was).
- **Exchange of cheapest quote:** similar concerns arise if insurers were allowed to see the cheapest quote in respect of all combinations of risk factors. The concern here, as noted in our analysis summarised above at paragraph 5.15, is that in these circumstances, even relatively modest price cuts could be detected more than 50 per cent of the time and therefore could be punished and deterred.
- **Position of each insurer within the average:** the OFT is concerned that allowing each insurer to know its own rank within the average would entail some coordination risks. This is because by controlling their own data, insurers could manipulate their own quotes so as to identify when they were the cheapest/second cheapest and therefore identify the cheapest price. As discussed in paragraph 5.15 above, this would entail coordination risks.

## **Responses to the Notice of intention to accept binding commitments - issued 13 January 2011**

5.26 The first consultation on the commitments offered by the Parties, issued by way of the Commitments Notice, was completed on 14 February 2011. The OFT received six responses. The main points made by the respondents fell into four areas or sets of issues. We have grouped them accordingly for the purpose of this overview. Areas of comment in the responses were as follows:

### **Issue: Pro-competitive benefits of the WhatIf? Private Motor product would be lost as a result of modifications to the product required by the commitments**

5.27 One respondent said that, in general, perfect information encourages competition and price minimisation. Restricting the price information available through the WhatIf? Private Motor product would therefore be detrimental to competition. A number of respondents said that the information exchange has the pro-competitive effect of facilitating entry and expansion, especially for small insurers and new entrants who typically, to assist in setting premia, would not have access to significant claims data and would be more reliant therefore on the information in the product. The commitments would, therefore, make the market less competitive, as they reduce the functionality of the product and make the data less useful.

### **OFT response**

5.28 The OFT recognises that there may be some efficiency justifications for the information exchange, for example in helping to facilitate entry and/or expansion. The OFT's goal however is to ensure that the competition concerns to which the WhatIf? Private Motor product gives rise are addressed. The primary requirement for the Amended Commitments is to achieve this by removing the possibility that the exchange constitutes an infringement under Chapter I of the Act and/or Article 101 TFEU.

- 5.29 In order to fulfil the condition of indispensability under Section 9 of the Act and/or Article 101(3) TFEU, it would need to be shown that the type of data exchanged (for example, as to the level of its aggregation, its age, its commercial sensitivity and its frequency) is necessary for creating any efficiency gains. The consultation respondents have not provided evidence that the information exchange is indispensable to achieve the pro-competitive effects they have identified. In the OFT's view, the frequent sharing of highly disaggregated, future prices at an individualised level is unlikely to be indispensable to achieve the pro-competitive effects argued by the parties.
- 5.30 However, having taken account of information submitted to the OFT during the consultation process, including evidence as to potential benefits of this exchange to market entrants in some circumstances, the OFT is of the view that its competition concerns would be sufficiently addressed if the sharing of Data up to six months old was subject to the anonymisation and aggregation requirements, rather than 36 months old Data. The OFT is of the view that this, less restrictive, revised duration will not constrain market entrants, and hence encourage healthy competition in this market.
- 5.31 In light of the OFT's view, the Insurers offered to revise the definition of Relevant Data, contained in the original offer of commitments, to refer to Data which is six months old.

**Issue: Respondents' views on certain modifications that the commitments require be made to the WhatIf? Private Motor product**

- 5.32 Some respondents highlighted particular modification requirements in the original commitments. In this regard more than one respondent was concerned about the aggregation requirement. These concerns were both general, that is, that aggregation would make the information less useful for benchmarking and for market entry and specific, about the limits on information that would be available to assist with pricing in niche markets where, because there may be fewer than five companies quoting, the WhatIf? Private Motor product may not provide an

aggregated price. In addition, one respondent said that where there were fewer than 20 insurers quoting for a particular risk, the potential benefits of a comparator set would not be available and this would make the information from the product less reliable.

## OFT response

- 5.33 With regard to the concerns about modifications highlighted by respondents, these had, in each case, been considered previously by the OFT and had been discussed with the parties when considering possible commitments.
- 5.34 With regard to the effect that aggregation may have on the usefulness of the information exchanged through the WhatIf? Private Motor product, in response to commitments suggested by the parties, the OFT did consider whether anonymisation alone would be sufficient to address its concern that the WhatIf? Private Motor product could facilitate coordination. The OFT concluded that (see paragraph 5.15 above) aggregation was necessary in addition to anonymisation in order to address its concern. With regard to the OFT's consideration of the extent of aggregation necessary to address its concern (i.e. that averaging across no fewer than five prices was an appropriate degree of aggregation), see paragraph 5.15 above and Annex 2 below.
- 5.35 The question of how a modified product would operate if there were fewer than five insurers quoting for a particular risk was raised by and discussed with the parties. The position reached on this issue is set out in Annex C below (see in particular C.3). The OFT discussed with the parties whether there was any alternative to a requirement that the product should give a nil return where there were fewer than five insurers quoting for a particular risk. One possibility explored was aggregation to the 'next level', for example if there were only three insurers quoting for a particular risk profile for someone living in EC4Y 8JX, then if it were technically possible an average of five insurers might be provided for EC4Y. The commitments do not impose a particular approach beyond requiring that averaging takes place across no fewer

than five prices, the level of aggregation at which the OFT's competition concerns could be appropriately addressed.

- 5.36 With regard to the issue of the availability of a Comparator Set in the event that fewer than 20 insurers are quoting for a particular risk, the OFT is aware from discussion with parties, that retaining the ability to make like for like comparisons especially in niche markets, could be beneficial to competition between insurers and that Comparator Sets could contribute to like for like comparison. Therefore, it was prepared to accept that the commitments should make provision for the possibility of drawing the average of five insurers from a comparator set of, say, 20 like for like insurers or insurer products, provided that the manner in which a Comparator Set was established did not contribute to preventing restricting or distorting competition, for example, by allowing other aggregation principles, in particular anonymity and aggregation to be undermined (discussion of the kinds of conditions that might be placed on a Comparator Set in order to ensure that it would not give rise to a risk that competition would be restricted is at Annex 3, C.2). Ultimately, and subject to the need to avoid creating a potential restriction on competition, the form of the Comparator Set, including the number of insurers or insurance products contained within it, remains a matter for the Parties.

**Issue: The WhatIf? Private Motor product does not allow for a sufficiently sophisticated analysis in order for the OFT's competition concerns to be justified**

- 5.37 There were a number of points made by respondents in relation to this issue. The majority of respondents considered that the level of analysis that can be conducted through the WhatIf? Private Motor product had limitations and that specifically, that reverse engineering of batches of any considerable size, due to the number of permutations involved and the amount of time this analysis would take is not technically feasible. As a result they considered that the pricing information exchanged via the WhatIf? Private Motor Product cannot give rise to a restriction on competition and that in particular, it cannot be considered future pricing

information as it is not possible to use it to ascertain competitors' future pricing intentions. An additional point made by one respondent in this regard was that the prices available via the WhatIf? Private Motor product were only indicative of the final price offered to consumers and that, because, for example, larger brokers have the discretion to apply discount, the price information exchanged did not relate to actual prices and could not therefore be used to restrict competition.

## OFT Response

### Batch analysis

- 5.38 The OFT considers that absent modification, the WhatIf? Private Motor product is capable of enabling insurers to undertake the analysis as described in paragraph 3.13 above and it has received persuasive evidence to this effect from parties in the course of its investigation. As stated, the evidence made available to the OFT, in this case, indicates that by inputting very large numbers of risk profiles (sometimes referred to as 'batch processing' or 'batch analysis'), insurers are able to analyse the data so as to enable the reverse engineering of rivals' rating models (and therefore their pricing model or strategy for any given risk profile) – for example, by holding constant all the risk factors but one, it is possible to test the effect on price resulting from varying the value for that single risk factor, thereby identifying the underlying pricing model/strategy for that particular risk factor.

### The future element

- 5.39 With regard to the extent to which the information exchanged is future pricing information the OFT's concern is set out at paragraphs 3.17 and 4.09 above. It is clear that the information exchanged does give detailed indications as to competitors' future pricing and strategic intentions. This is because insurers have the ability, through interrogating WhatIf? Private Motor, to obtain detailed information about their competitors' pricing structures. While pricing structures may change over time, competing insurers obtain an understanding of their competitors' intended pricing structures, and have the opportunity to respond or take

action on the basis of such information before insurers are fully committed to offering those prices.

- 5.40 It should be noted however that having taken account of information submitted to the OFT during the consultation process, including evidence as to potential benefits of this exchange to market entrants in some circumstances, the OFT is of the view that its competition concerns would be sufficiently addressed if the sharing of Data up to six months old was subject to the anonymisation and aggregation requirements, rather than 36 months old Data. The OFT is of the view that this, less restrictive, revised duration will not constrain market entrants, and hence encourage healthy competition in this market.

### Indicative prices

- 5.41 The OFT's understands that the pricing information available via the WhatIf? Private Motor product is more useful for the small and regional broker channel since larger brokers have greater flexibility, for example they can alter commission levels, in their pricing strategies.
- 5.42 However, the OFT's concern is that the WhatIf? Private Motor product facilitates the sharing of insurers' wholesale prices to brokers, rather than final retail or selling prices. In this regard, the pricing information being exchanged can constitute an infringement under Chapter I of the Act and/or Article 101 TFEU.

### **Issue: Procedural concerns including concerns about wider applicability of the commitments**

- 5.43 A number of general procedural concerns were raised by one or more respondents. Two respondents were concerned that that the OFT's scoping of the case had excluded small insurers and one respondent considered that the consultation period, of four weeks, was too short. A small number of respondents raised the question of the wider applicability of the commitments and what the commitments would mean for comparable information exchange products operating in insurance markets.



## OFT Response

### Scoping

- 5.44 In deciding on the most appropriate scope for its investigations, the OFT aims to strike the optimal balance between achieving the greatest possible impact and using its resources as efficiently and effectively as possible.
- 5.45 Mindful of the potentially widespread nature of the alleged infringements and the timing and resource implications of conducting a wide-ranging investigation, the OFT used its discretion to adopt an appropriately scoped investigation from the outset. It therefore decided to focus on one insurance line, one data analysis product and a subset of insurers that subscribed to that data analysis product during the relevant period of investigation. The subset of insurers selected were drawn from the larger insurers, they included a number of different insurance company profiles including UK-based insurers, international insurers and a mutual insurance company. Points made by small insurers in response to the consultation were generally made by one or more of the parties in the course of the investigation.
- 5.46 The OFT, by adopting this scope, was able to conduct its investigation in an efficient and effective manner, and within a relatively short time-frame.

### The length of the consultation period

- 5.47 With regard to the duration of the consultation, where Notice is given of an intention to accept proposed commitments the statutory period is 11 days. Additional time was provided in this case in recognition of the complexity of the issues.

### Wider applicability of the commitments

- 5.48 This decision, and the commitments offered, are in response to the specific issues the OFT has identified for the WhatIf? Private Motor

product and its operation in the motor insurance market. It is intended that, by articulating the OFT's assessment of how the commitments address the OFT's competition concerns, this may assist with self assessment of similar arrangements in other contexts. Other exchanges may however have other characteristics distinct from those outlined above. It will be for those engaged in such exchanges to assess for themselves whether relevant similarities exist between the product with which they are involved and the WhatIf? Private Motor Product.

5.49 Furthermore, for the avoidance of doubt, the OFT does not consider the Principles in Annex 1 to be an exhaustive set of solutions to ensuring that this or any other information exchange will not infringe Chapter I of the Act and/or Article 101 TFEU. For the OFT to reach a definitive view on the compliance with competition law of any other information tool operating in an insurance sector, is likely to require careful assessment of the conduct and likely effects of the product in question. In particular, the OFT notes that:

- this investigation has shown that any conclusion as to what amount to 'future prices' will depend of the particular product in question
- its primary duty in considering commitments is to address competition concerns and that this should not be seen as indicating that a fuller investigation under Article 101(3) would not reach a different outcome.

### **Responses to the Notice of intention to accept modified binding commitments - issued 30 September 2011**

5.50 The consultation on the Amended Commitments offered by the Parties, issued by way of the Notice of intention to modify proposed binding commitments, was completed on 28 October 2011. The OFT received three responses which, in the main, advocated either increasing or decreasing the age of the data that can be exchanged via WhatIf? Private Motor:

## Issue: OFT's economic analysis

- 5.51 All respondents to the consultation commented on the revised duration to six months in the definition of Relevant Data. One argued that the period was too long and should be reduced, another that it was too short and should be increased. Two respondents questioned whether the use of 2009 data by the OFT was appropriate. The respondent that considered that six months was an insufficient period to address the OFT's competition concern and argued that a coordination risk would remain because the WhatIf? Private Motor product could be used in conjunction with third party data sources and this would increase price transparency and the ability to coordinate.

### The use of 2009 data

- 5.52 The respondent that argued that the period was too long considered that 2010 would be a better reference year and produced some analysis based on 2010 data suggesting that the higher volatility in prices in 2010 (in particular due to price increases) indicated that a three month duration should be sufficient to meet the OFT's coordination concerns. The other respondent argued, to the contrary, that 2009 data might display greater volatility than subsequent periods because the WhatIf? Private Motor product was still in use and insurers might have been using the artificial transparency it provided in order to vary prices.

### The OFT's response

- 5.53 The OFT considered the appropriateness of 2009 data as a basis on which to reach its conclusions. The OFT considered that volatility is likely to be greater absent the WhatIf? Private Motor product and that the use of 2009 data is likely therefore to be a conservative benchmark. The OFT, furthermore, received information in the course of the consultation that indicated that the 2009 data is likely to be a conservative benchmark. As the OFT's primary objective is to address its competition concerns by ensuring that data exchanged will not enable insurers to reach a coordinated outcome, the OFT considers that it is appropriate to rely on data that is likely to be conservative in terms of

volatility. Having considering that data, the OFT was satisfied that its concerns would be met by restricting the availability of data which is up to six months old, but that a lesser period, such as three months, would not be sufficient to address its competition concerns.

### **Issue: WhatIf? Private Motor used in conjunction with third party sources**

- 5.54 The respondent that considered six months to be an insufficient period argued that the use of WhatIf? Private Motor, in conjunction with other information exchange products, increased price transparency and therefore the risk of coordination. It argued that the period in which **signalling** may be possible, may be reduced to six months where insurers look at other products that are in real time (such as price comparison websites) in order to verify whether the price had changed or not in the six months since the signal. The respondent also argued that **deviation** from a coordinated agreement can be spotted immediately by firms looking at quotes from third parties such as aggregator websites.

#### The OFT's response

- 5.55 With regard to **signalling**, the OFT considers that in order to draw these conclusions, the respondent has had to make assumptions that the OFT does not consider to be valid:
- (i) that the retail products and prices are perfectly correlated with broker products – the OFT understands that this is often not the case
  - (ii) that the firms could not cut the price of their broker products without cutting the price of their retailer products – the OFT understands that they can do this.
- 5.56 Most importantly, even with only six months delay to signalling, there is still a significant amount of volatility across time, as shown by the OFT's analysis in Annex 4. This volatility makes signalling a coordinated price with even six months data a high risk for firms. The OFT therefore

remains of the view that exchanging six month old WhatIf? Private Motor data does not significantly increase the likelihood of coordination relative to not providing the data at all.

5.57 With regard to **deviation** we note the following:

- (i) That the retail products and prices are perfectly correlated with broker products – the OFT understands that this is often not the case.
- (ii) That the firms could not cut the price of their broker products without cutting the price of their retail products – the OFT understands that they can do this.
- (iii) Simply seeing one or two quotes (such as a price comparison website allows) is unlikely to be sufficient to verify whether a firm is still coordinating across risks. If a firm coordinates on one risk, then all quotes containing that risk will be more expensive. However coordinating on one risk is unlikely to be sufficient to create coordination if there is competition on the other risks. In this situation a firm could cut the price on one (or more) of the other risks, whilst continuing to coordinate on the risk. In this scenario it will not necessarily be evident to the rival whether the firm has deviated given it is still coordinating on the first risk. Thus coordination is likely to require coordinating on more than one risk. The more risks that coordinating is required on, the more quotes that are required, and the less that small snap shots from a real time source are suitable to verify coordination.

5.58 With this in mind the OFT remains of the view that six month old WhatIf? Private Motor data does not significantly increase the likelihood of coordination relative to not providing the data at all.

**Issue: In order to make the commitments consistent with EU Law, the OFT would need to extend the period of delay to beyond six months**

- 5.59 One respondent considered that if WhatIf? Private Motor data is exchanged between insurers with a delay of just six months, insurers will have access to indications of competitors' future pricing behaviour. In its view, this was the case because, by inputting very large numbers of risk profiles (sometimes referred to as 'batch processing' or 'batch analysis'), insurers are able to reverse engineer their rivals' rating models (and therefore their pricing model or strategy for any given risk profile). For example, by holding constant all the risk factors but one, it is possible to test the effect on price resulting from varying the value for that single risk factor, thereby identifying the underlying pricing model/strategy for that particular risk factor. In the respondent's view, this continues to be true for data that is six months old. The OFT needed, therefore, to extend the period of delay beyond six months if the modification is to be consistent with principles of EU law.

**OFT Response**

- 5.60 The European Commission has summarised the legal position in relation to information exchanges as articulated by the European Courts in its *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements*. It follows from the OFT's economic analysis, and its subsequent conclusion that six months delay is sufficient to address its competition concerns, that the OFT does not consider that permitting the exchange of WhatIf? Private Motor data that is more than six months old gives rise to an indication of competitors' future pricing intentions such that there is or may be an appreciable risk that competition will be restricted. Specifically, the OFT considers<sup>53</sup> that

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<sup>53</sup> See Annex 4.

sharing of data which is more than six months old is highly unlikely to facilitate a collusive outcome. This is because a firm's ability to signal, monitor and react to deviation or market entry is significantly reduced. The OFT does not therefore consider that permitting the exchange of six month old price information on this basis is incompatible with EU law in the way argued by the respondent.

**Issue: The wider applicability of the commitments and what the commitments would mean for comparable information exchange products operating in insurance markets**

- 5.61 Two respondents to the consultation were concerned that the commitments decision would adversely affect products similar to WhatIf? Private Motor operating in either the motor insurance market or other insurance markets. In addition, one respondent had concerns over how a modified product would operate if there were fewer than five insurers quoting for a particular risk or line of insurance.

**OFT response**

- 5.62 The concern over the wider applicability of the decision to similar products or other insurance markets is dealt with under paragraphs 5.48 and 5.49 above. As noted there, the OFT considers that, as other exchanges may have other characteristics distinct from those outlined above, it will be for those engaged in such exchanges to assess for themselves whether relevant similarities exist between the product with which they are involved and the WhatIf? Private Motor Product. Moreover, for the avoidance of doubt, the OFT does not consider the Principles in Annex 1 to be an exhaustive set of solutions to ensuring that this or any other information exchange will not infringe Chapter I of the Act and/or Article 101 TFEU.
- 5.63 With regard to the question of how a modified product would operate if there were fewer than five insurers quoting for a particular risk or line of insurance, this issue is considered at paragraph 5.23 above and in Annex 3 (see C.3). The points made in paragraph 5.62 apply here too.

- 5.64 It is proposed that the commitments will remain in force for five years. It should also be noted, where the OFT has accepted binding commitments it may for the purpose of addressing its current competition concerns, accept a variation of or substitution for the commitments.

**Issue: That the commitments will unfairly disadvantage smaller players in the market and are, therefore, restrictive of competition**

- 5.65 Two respondents said that the information exchange has the pro-competitive effect of facilitating entry and expansion, especially for small insurers and new entrants who typically, to assist in setting premia, would not have access to significant claims data and would be more reliant therefore on the information in the WhatIf? Private Motor product. In addition, one respondent was concerned that, following the OFT's investigation, larger insurers are now more competitive than new entrants and smaller insurers.

**OFT response**

- 5.66 The concern that the commitments may unfairly disadvantage new entrants and smaller players in the market is dealt with under paragraphs 5.27 to 5.31 above.



## **6 THE DECISION**

- 6.1 In light of the above, the OFT considers that the commitments offered by the Parties as set out in Annex 1 of this document fully address the OFT's competition concerns and it has therefore decided to accept the commitments.

## **A ANNEX 1 – COMMITMENTS TEXT**

### **WHEREAS:**

- A.1 The OFT has indicated to the Insurers, Experian and SSP that, it considers that the Amended Commitments (as set out below), are sufficient to allay its concerns in this case and, subject to any comments it receives during consultation which may require further amendment to the Amended Commitments, the OFT will close its investigation after having accepted the Amended Commitments.
- A.2 The Amended Commitments shall be binding on the Insurers, Experian and SSP and on any organisation which in the future carries on the business of the Insurers, Experian and SSP and/or which is jointly owned and/or controlled by the Insurers, Experian and SSP.
- A.3 The Amended Commitments shall remain in force for a period of five years.

### **COMMITMENTS FROM EXPERIAN**

- A.4 In order to address the OFT's competition concerns and assist with bringing this investigation to a close, Experian has agreed to the following under section 31A of the Act:
- a. not to in any way supply WhatIf? Private Motor, unless WhatIf? Private Motor complies with the principles set out in Annex 1,
  - b. to use best endeavours to ensure, through its contractual arrangements with SSP, that the Data it receives from SSP is in such a format and is accompanied with such instructions that Experian is able to supply UK Insurers with a product that complies with the principles set out in Annex 1.

### **COMMITMENTS FROM SSP**

- A.5 In order to address the OFT's competition concerns and assist with bringing this investigation to a close, SSP has, in relation to any supply

by SSP to Experian of Data, agreed under section 31A of the Act to consider in good faith any request from Experian for:

- a. reasonable assistance in helping Experian to modify its WhatIf? Private Motor in order for it to comply with the principles set out in Annex 1, or
- b. any reasonable modification to the format of the Data supplied by SSP to Experian and/or the provision of any instructions in order to facilitate Experian in supplying UK insurers with a product that complies with the principles set out in Annex 1.

## **COMMITMENTS FROM INSURERS**

A.6 In order to address the OFT's competition concerns and assist with bringing its investigation into the provision and use of WhatIf? Private Motor to a close, each Insurer has agreed to the following under section 31A of the Act:

- a. to use best endeavours to ensure that SSP does not provide the Insurer's own Data to Experian when the Insurer is aware (or ought reasonably to be aware) that its Data is to be transmitted (either directly or indirectly) to other UK Insurers, unless the form in which its Data is provided to other UK Insurers complies with the principles set out in Annex 1,
- b. not to directly or indirectly acquire or otherwise obtain WhatIf? Private Motor, or any Data from WhatIf? Private Motor, unless this complies with the principles set out in Annex 1.

## **WHATIF? PRIVATE MOTOR COMPLIANCE PRINCIPLES**

A.7 WhatIf? Private Motor must comply with the following principles:

1. Users of WhatIf? Private Motor must not be able to access Future Data through WhatIf? Private Motor.

2. Users of WhatIf? Private Motor must not be able to access Relevant Data through WhatIf? Private Motor unless this is:
  - a. Anonymous Data, and
  - b. averaged across at least five UK Insurers.
3. Insurers may instruct Experian to select a Comparator Set within which Insurers can derive quotes from WhatIf? Private Motor.

## DEFINITIONS

'Act' means the Competition Act 1998.

'Amended Commitments' means the revised commitments offered by the Parties in light of the responses to the OFT's Notice of intention to accept binding Commitments issued on 13 January 2011 (OFT1301).

'Anonymous Data' means Data that in no way discloses the identity of each UK Insurer providing such Data, including the rank of any UK Insurer within the average price.

'Ageas' means Ageas Insurance Ltd (formally Fortis Insurance Ltd).

'Aviva' means Aviva Insurance UK Ltd.

'AXA Insurance' means the general insurance subsidiaries of AXA Insurance UK plc.

'Comparator Set' means a group of at least 20 UK Insurers or UK Insurers' products that: (a) do not include any products of the Insurer selecting the Comparator Set, (b) are under no circumstances selected by reference to the prices of UK Insurers' products, and (c) can only be altered every twelve months.

'Data' means each UK Insurer's private motor quote available for brokers to quote for any set of Risk Factors that each UK Insurer quotes for.

'Experian' means Experian Ltd.

'Liverpool Victoria' means Liverpool Victoria Insurance Company Ltd.

'Future Data' means Data relating to policies that are or will be available to brokers to quote for policies incepting in the future (but Future Data does not include Data that is available for brokers to quote for policies incepting with immediate effect).

'Insurers' means Ageas, Aviva, AXA, Liverpool Victoria, RBS Insurance and Zurich.

'Parties' means Insurers, Experian and SSP.

'RBS Insurance' means RBS Insurance Group Ltd.

'Relevant Data' means Data that would have related to any policy incepting in the six months prior to a WhatIf? Private Motor user accessing the Data and which would have been available for brokers to quote.

'Risk Factor' means each rating factor that UK Insurers take into account when compiling their pricing model and which are used in combination to enable a quote for a specific risk to be generated.

'SSP' means SSP Ltd.

'UK Insurers' means those firms that are authorised pursuant to the Financial Services and Markets Act 2000 (or any successor legislation) or pursuant to equivalent legislation in their home member state of the EU to effect or carry out contracts of general insurance in the United Kingdom.

'WhatIf? Private Motor' means the WhatIf? Private Motor product currently supplied by Experian and any successor products which relate to the Data quoted in the broker market for private motor insurance.

'Zurich' means Zurich Insurance plc.

## **B ANNEX 2 - AGGREGATION ANALYSIS**

- B.1 The OFT conducted an empirical analysis to determine the minimum level of aggregation such that a significant price deviation is undistinguishable from the normal price movements for a given risk. To conduct this analysis the OFT obtained data from WhatIf? Private Motor for monthly quotes by 21 insurers for a set of 46,399 risk profiles covering the period January to December 2009.
- B.2 The OFT used the data to construct a time series of the average value of the cheapest quotes for each of the 46,399 risk factors, using different numbers of insurers to calculate the average price. For example the OFT looked at the cheapest quote, the average of the cheapest two quotes, the average of the cheapest three and so forth. The OFT did this to see how variability over time responds to changes in the number of insurers used to calculate the average cheapest quote.
- B.3 The OFT calculated the average value and standard deviation for each series. Standard deviation measures how much variation there is from the average value. A low standard deviation means quotes tend to be closer to the average value, whereas high standard deviation implies quotes are spread out over a large range of values. The OFT then used these two measures to define a 95 per cent confidence interval for the average of each series. Finally the OFT used these measures to calculate the maximum fall in average price that would be indistinguishable from normal variability for each series. The OFT defined this price cut as the largest reduction in average price that was still within the 95 per cent confidence interval defined above.

## **C ANNEX 3 - ADDITIONAL ISSUES REGARDING MODIFICATION OF THE WHATIF? PRIVATE MOTOR PRODUCT**

- C.1 The OFT received arguments from the Parties that if all Insurers' prices were aggregated the pro-competitive benefits of the product would be lost. In particular, they argued that the current version of WhatIf? Private Motor tended to facilitate market entry (both by new entrants and by firms expanding to cover new risks); and they argued that it also assisted firms in benchmarking. For example, it enabled Insurers to be aware when their prices were out of line with the cheapest prices on the market. For the reasons set out above at paragraph 5.15, the OFT considers that averaging across five insurers is sufficient to address its competition concerns.
- C.2 The Parties raised with the OFT the possibility of drawing the average of five insurers from a comparator set of, say, 20 insurers or insurer products. The OFT did not, in principle, object to such a limitation, as long as appropriate restrictions were put in place to prevent likely anti-competitive effects arising from the possibility of coordination. The Parties offered the following restrictions: (a) not including any products of the Insurer selecting the comparator set (to avoid the possibility of one insurer 'flooding' the comparator set with its own products so as to be able to decipher the identity of other insurers within the average), (b) not allowing the comparator set to be selected by reference to the prices of UK Insurers' products (to avoid the possibility of the cheapest price being identified, as might be possible for example if the comparator set were required to consist entirely of insurers within, say, 30 per cent of the cheapest price), and (c) only allowing the comparator set to be altered every twelve months (so that it could not be manipulated so as to identify individual insurers by taking them in and out of the comparator set and assessing the impact on price). Restriction (c) would not preclude the alteration of the comparator set within the twelve month period for the purpose of adding a firm that is a new market entrant or replacing a firm that has exited the market.
- C.3 The Parties also raised the question of how the modified product would operate if there were fewer than five insurers quoting for a particular



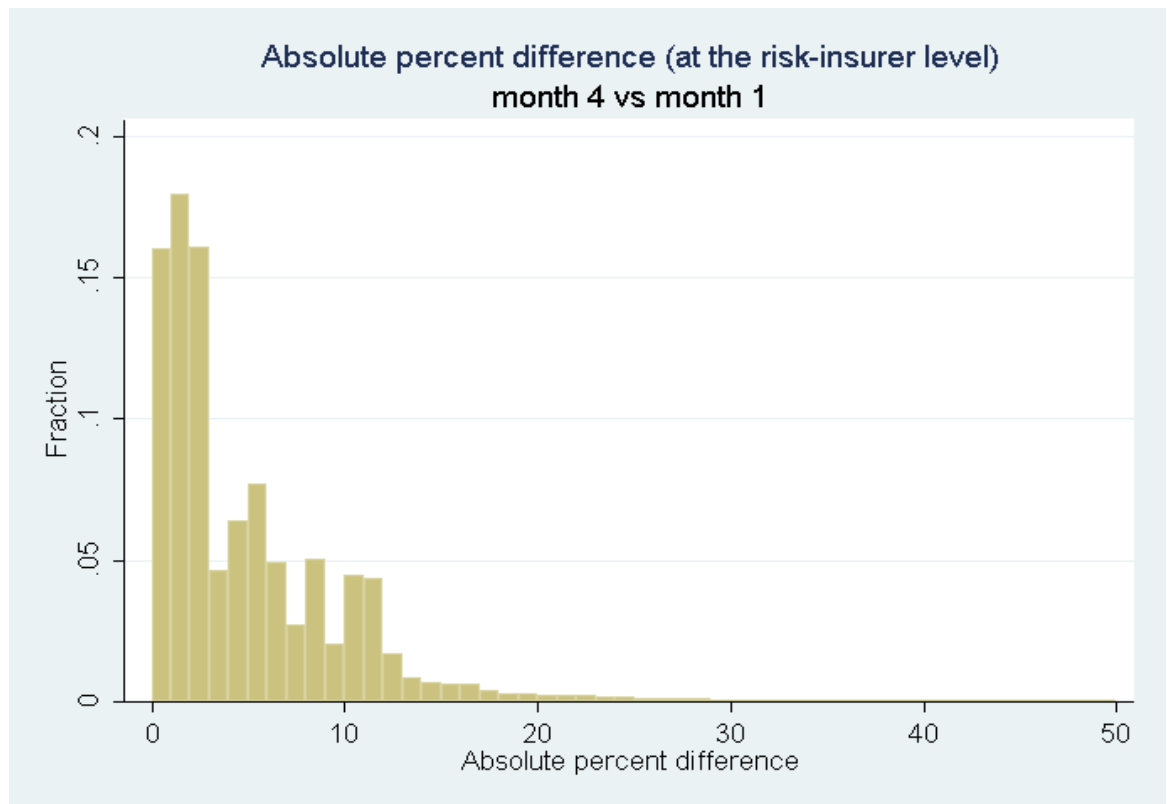
risk. One option would be for the product not to give results in this instance. Another would be for the product to provide for an average of five for the 'next level' – for example, if there were only three insurers quoting for a particular risk profile for someone living in EC4Y 8JX, then if it were technically possible for an average of five insurers to be provided for EC4Y, the OFT would consider that unproblematic and the OFT is expressing no preference with regard to the options discussed. Some of the Insurers, however, explained that this 'next level' aggregation might be difficult from a practical perspective due to the number of risk factors used to 'build' a private motor insurance price, and the degree of interconnectedness between risk factors (in other words, the value of one risk factor may be linked to the value of another). Specifically, the Insurers felt that it would be difficult to determine which risk factor should be moved to the next level of aggregation. Furthermore, depending on which risk factor was chosen and how the aggregation to the next level was performed, this could have a significant impact on the value of any information returned.

- C.4 In addition, the proposed commitments needed to take account of the period which would need to expire before the exchange of individualised, highly disaggregated information through the WhatIf? Private Motor tool ceased to have the potential to facilitate a collusive outcome. In this regard, while some Insurers considered that information would lose its relevance within a matter of a few months, other Insurers expressed the view that prices for many risk factors would remain constant, and would therefore provide an indication of future pricing strategies, until such information was at least 36 months old. While a three month period is unlikely to meet the OFT's concerns, the OFT having taken account of information submitted during the consultation process, including evidence as to potential benefits of this exchange to market entrants in some circumstances, is of the view that sharing of Relevant Data up to 6 months old is unlikely to constitute an infringement under Chapter I of the Act and/or Article 101 TFEU. The Parties have therefore proposed commitments providing that individualised, highly disaggregated information will not be exchanged through the WhatIf? Private Motor tool until at least 6 months have elapsed.

## **D ANNEX 4 - ANALYSIS OF DATA SAMPLE**

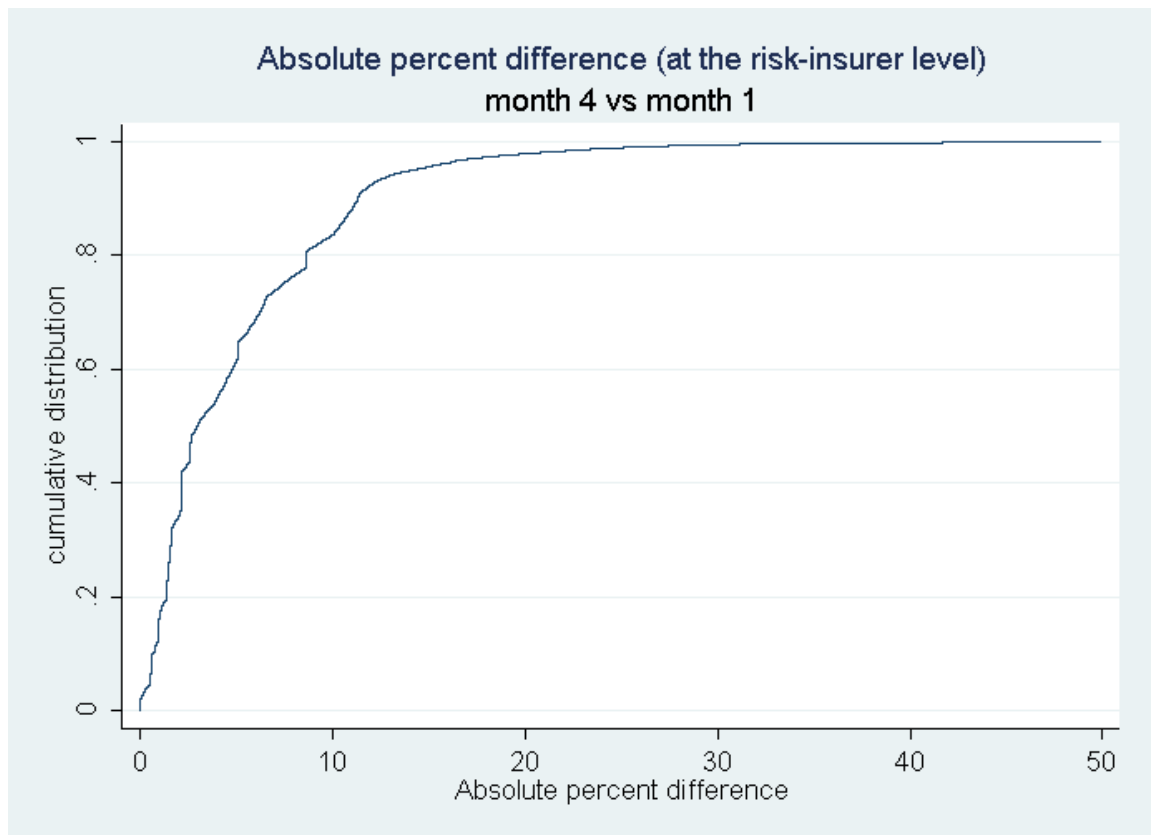
- D.1 The OFT considered whether delaying the provision of the WhatIf? Data by only six months would be sufficient to address its competition concerns if insurers only change their prices every six months to a year.
- D.2 The OFT looked at twelve months of sample data for 21 insurers, 46,399 risk profiles during the year 2009 in order to determine the frequency at which insurers change their prices. The analysis provides evidence that whilst complete rebalancing across an insurer's prices occurs relatively infrequently, insurers can and do make price changes on a month to month basis. These monthly changes differ in magnitude across both specific risks and insurers. The total sum of these changes appears to be significant.
- D.3 Figure 1 below shows the distribution of absolute percentage changes for each quote after three months across all insurers.

**Figure 1: Distribution of percentage change in risk quotations over three months**



D.4 The figure shows that whilst some of the quotes see only relatively small changes after three months, many of the quotes show substantial changes, with 40 per cent of quotes showing an absolute change in the quote of 5 per cent or greater (see Figure 2 as well). This indicates that after only three months there are significant changes in the quotation prices.

**Figure 2: Cumulative distribution of percentage change in risk quotations over three months**



D.5 Furthermore the changes in quotations do not appear to be constant across insurers. Table A below shows the average absolute percentage differences over two different periods across the quotations split by each insurer.

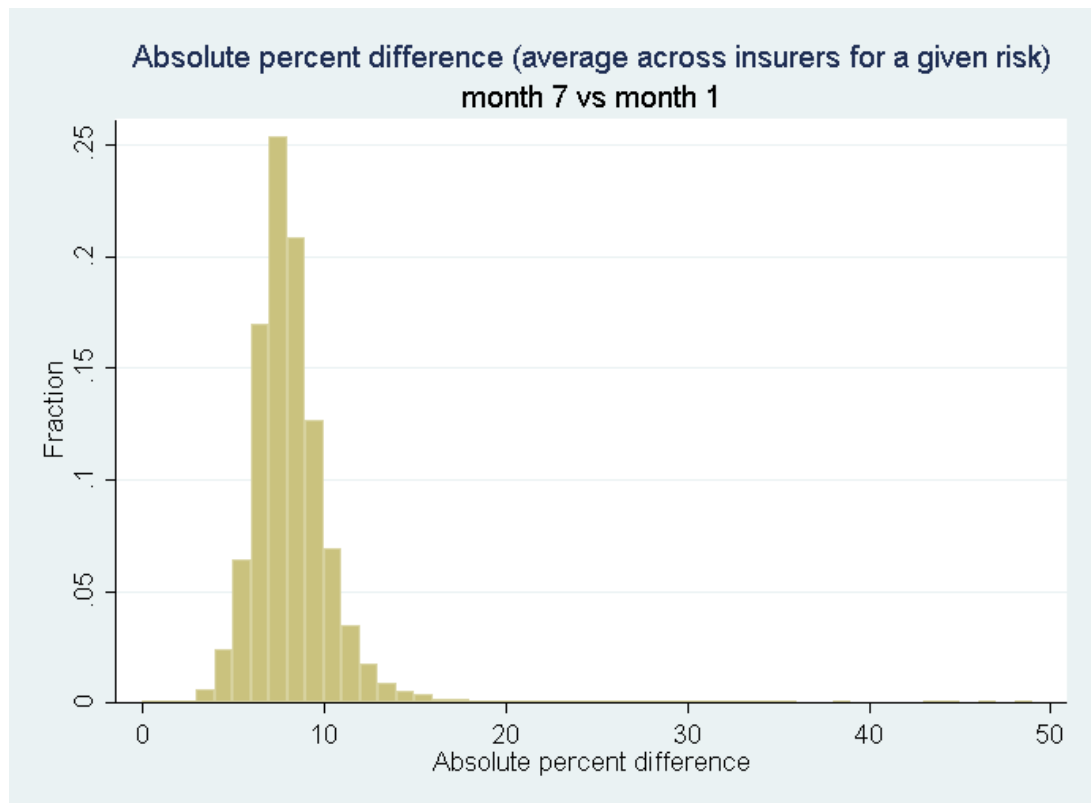
**Table A: Average absolute percentage changes in quotes for all risks split by insurers**

<b>Insurer</b>	<b>Average absolute percentage difference after Six Months</b>	<b>Average absolute percentage difference after Eleven Months</b>
A	4%	11%
B	14%	22%
C	10%	Missing data
D	19%	40%
E	5%	10%

F	5%	9%
G	17%	33%
H	3%	5%
I	17%	Missing data
J	10%	21%
K	3%	9%
L	10%	17%
M	2%	7%
N	8%	Missing data
O	4%	17%
P	2%	10%
Q	4%	13%
R	11%	19%
S	12%	8%
T	8%	15%
U	5%	13%

D.6 The table shows that there is significant variability across insurers after six months, with the average absolute percentage change in quotations ranging from 2 per cent to 19 per cent. Figure 3 confirms this by showing the distribution of average changes in quotation price (average across insurers for a given risk) across the different risks.

**Figure 3: Distribution of average absolute percentage change (average across insurers for a given risk) over six months**



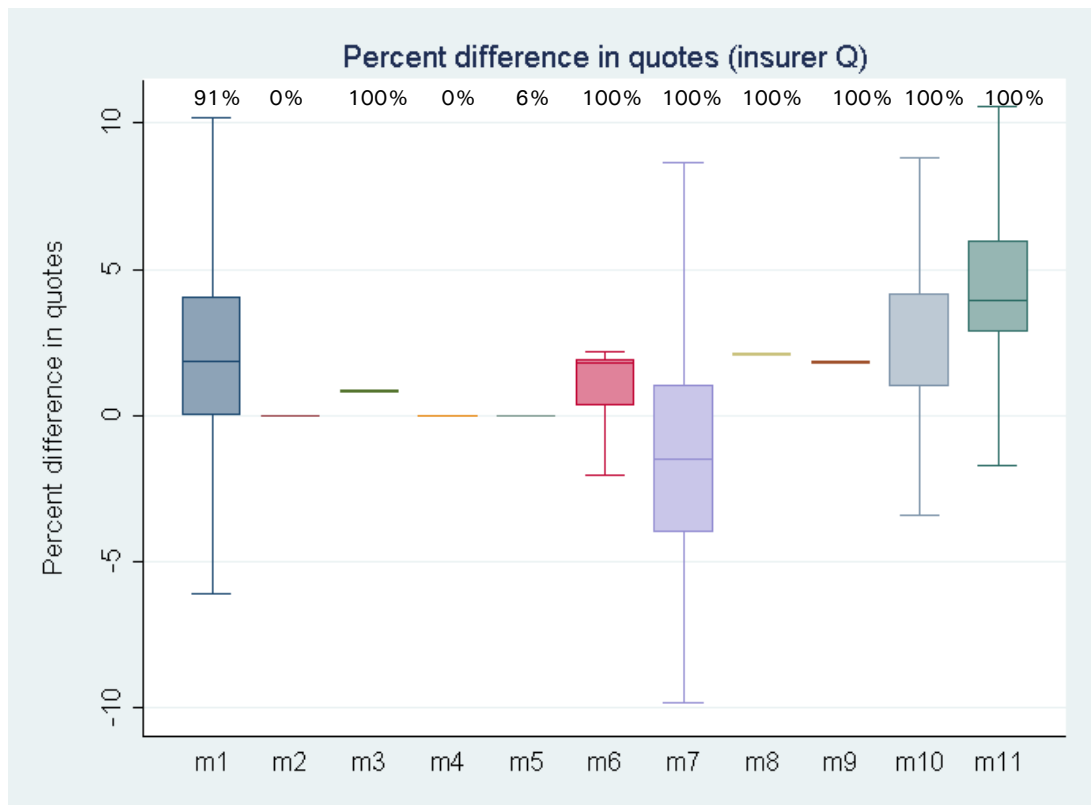
- D.7 The graph above shows that whilst the average quotation price for the average risk changes by approximately 8 per cent after six months, there is significant variation around this, with some risks changing by considerably less and some risks considerably more.
- D.8 Finally, the OFT has also looked at the monthly price changes broken down by risks for the 21 insurers.<sup>54</sup> The aim was to determine whether changes were occurring in only one single month within the year or whether changes were occurring across several months.

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<sup>54</sup> The OFT has selected the five insurers with the highest number of observations within the dataset to display within the document. The OFT has also looked at the other 16 insurers. Whilst there are some differences for specific insurers, their results are consistent with the OFT findings on the five insurers displayed.

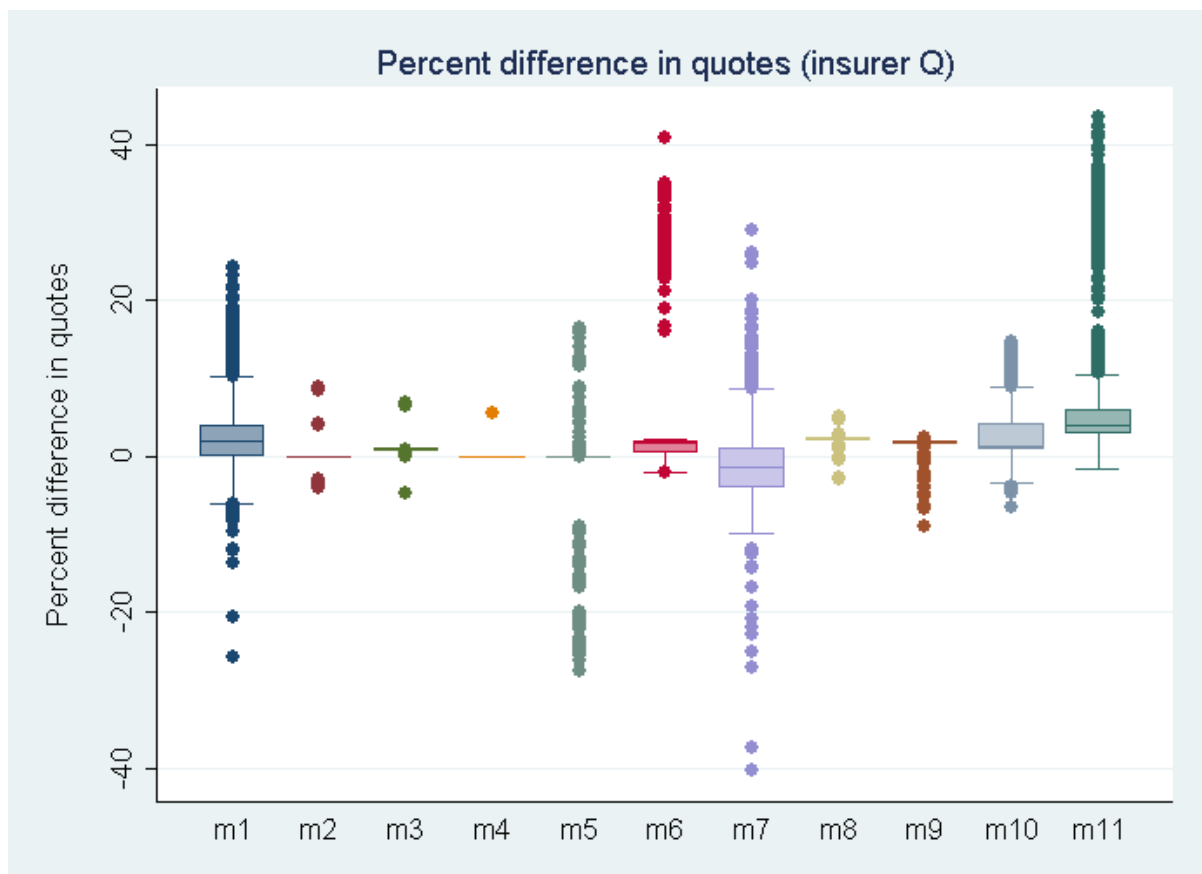
D.9 Figure 4 below shows a 'box and whiskers' plot for insurer Q, based on the percentage changes month on month for each risk. The shaded boxes indicate the range between the 25<sup>th</sup> and 75<sup>th</sup> percentile for the percentage differences in quotes, while the line inside each box shows the median percentage difference. The lower end of the lines (the lower 'whisker') corresponds to the lowest value for the percent difference that is within one and a half interquartile ranges of the 25<sup>th</sup> percentile. Similarly, the upper end of the lines (the upper 'whisker') corresponds to the highest value for the percent difference that is within one and a half interquartile ranges of the 75<sup>th</sup> percentile. These 'whiskers' provide different measurements of the distribution of quotes around the median. The 'whiskers' are typically used in statistical analysis in order to distinguish the main distribution from potential outliers. In addition the percentages show the percentages of quotes in each month with a change greater than 0.

**Figure 4: Distribution of percent change in quotes over 12 months for insurer Q**



D.10 Figure 4 shows that there were five substantial changes with significant variance around the median change across risks (month one, six, seven, ten and eleven). In three months (month two, four and five), there were no changes or changes to less than 50 per cent of the risks. In three months there were relatively homogeneous changes across all risks (month three, eight and nine). Therefore whilst the very substantial changes do not occur every month, there are relatively random price changes of varying degrees every month. Furthermore there is no evidence of a pattern regarding when substantial changes, or indeed when lesser changes will occur.

**Figure 5: Distribution of percent change in quotes over 12 months for insurer Q**



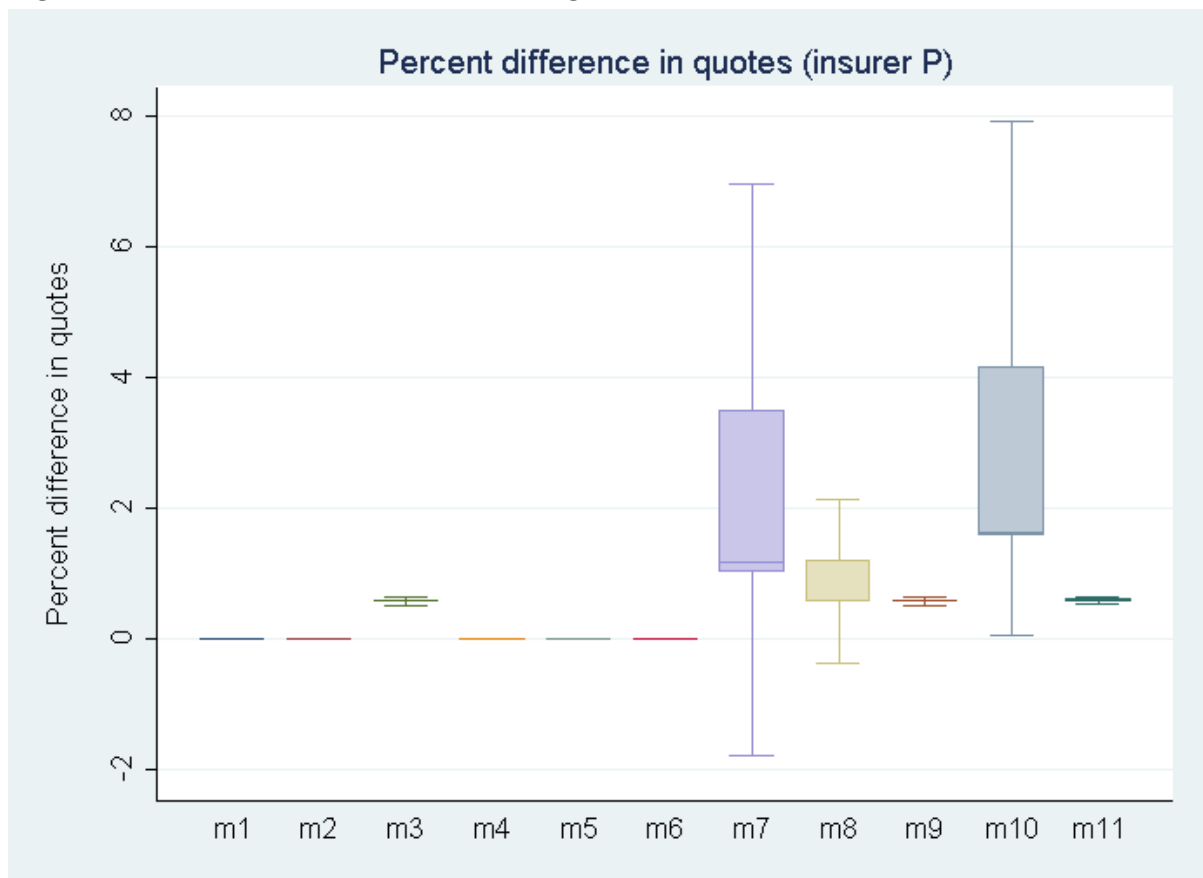
D.11 In addition, Figure 5 shows that even during the months where there were relatively homogeneous changes across quotes (for example month one), there were still some quotes where there were significant changes. These are displayed as dots on the figure. Each dot represents a



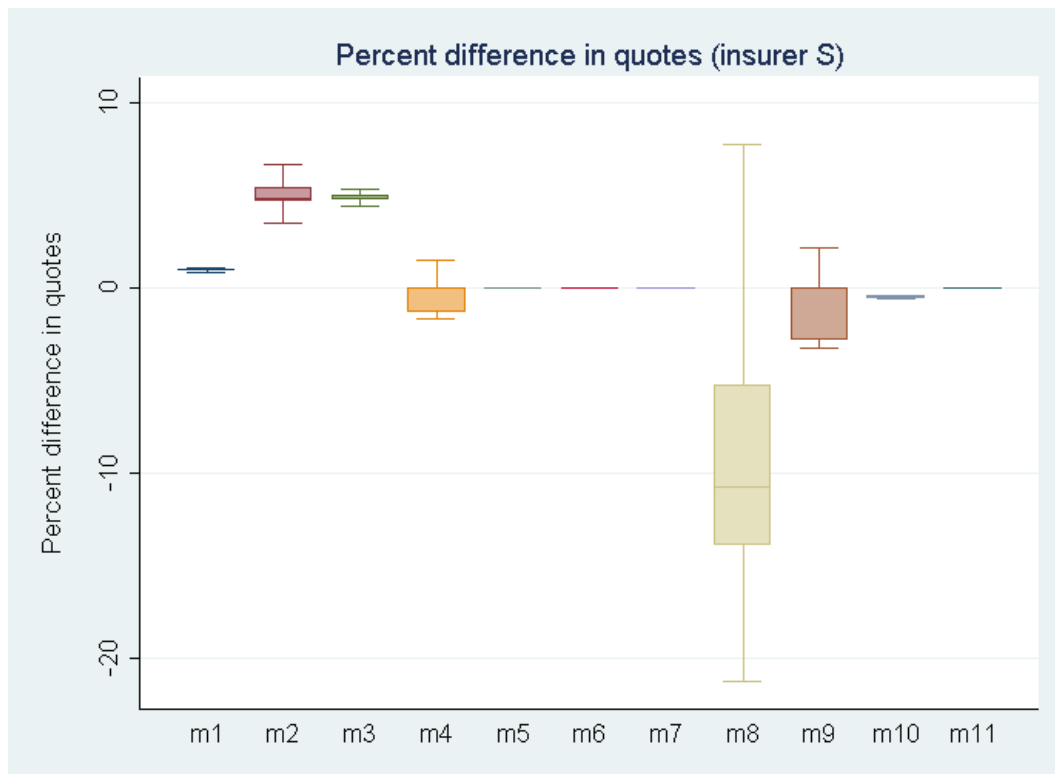
quotation change from the previous month. This shows that even in relatively constant months there were still a significant number of quotation changes. This shows that there is no reason that insurers could not change their prices by significant amounts in any month if they so desired.

D.12 Figures 6 to 9 shows the same graph as Figure 4 for each of the remaining four insurers sampled.

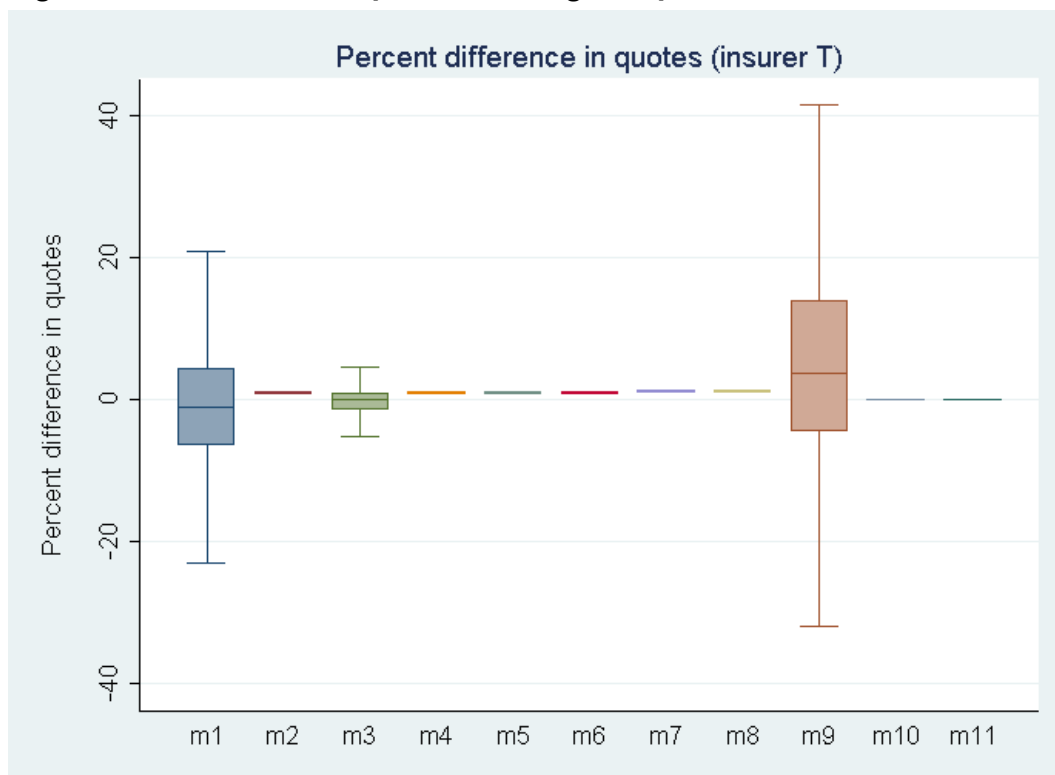
**Figure 6: Distribution of percent change in quotes over 12 months for insurer P**



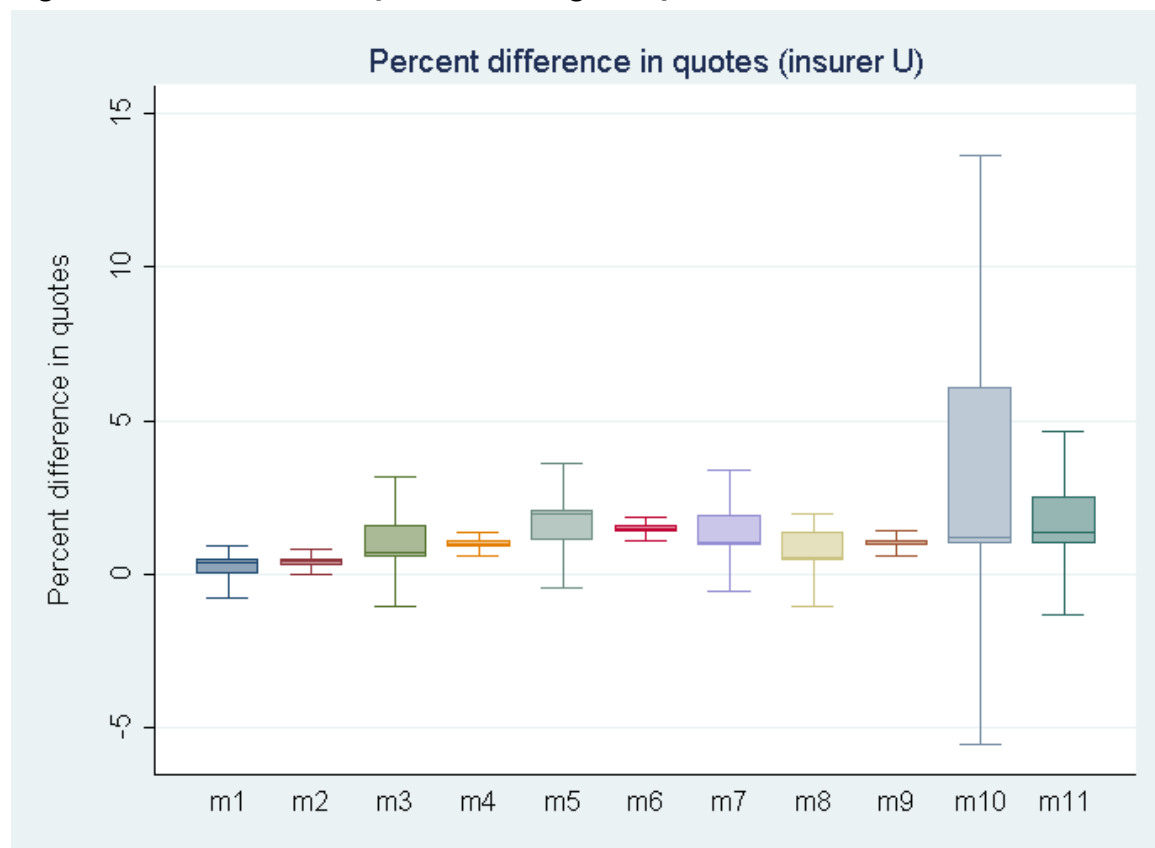
**Figure 7: Distribution of percent change in quotes over 12 months for insurer S**



**Figure 8: Distribution of percent change in quotes over 12 months for insurer T**



**Figure 9: Distribution of percent change in quotes over 12 months for insurer U**



- D.13 The figures show that there are months in which there are relatively few or relatively homogeneous changes to risk prices. However each of the insurers also makes significant changes to their prices across several months. The OFT discerns no pattern as to when the significant changes occur, or when the less significant changes occur. Furthermore the OFT notes that there are significant differences in when the changes occur, and in what direction the changes are, across the firms and time.
- D.14 In summary the data shows that there is considerable volatility regarding where quotes are expected to be after six months for each insurer. Furthermore there is considerable volatility in the price changes each month across insurers.
- D.15 Given this considerable variability of quotes both across time and across insurers, the OFT believes that delaying the information by six months

removes the OFT's concern that the WhatIf? data will allow firms to signal, and sustain coordinated outcomes.

- D.16 First, with regards to signalling a desired coordinated outcome, six months old data makes coordination unlikely due to the magnitude of the pricing signal required to overcome the volatility and the potential risk in losing customers. A firm wanting to signal using six month old WhatIf? data would need to wait six months until its signal could be seen by its rivals. As shown above, prices may have changed significantly during the six month period. Therefore, the firm would need to ensure that its signal could be discerned by changing price by a significantly greater amount than the normal price fluctuations of the individual risks. If the firm signalled a change within the normal degree of price fluctuations, its rivals would not be able to tell whether it was a signal to increase prices or simply part of normal price volatility.
- D.17 Furthermore, absent other data sources, the signalling firm would need to wait another six months until after its rivals have responded in order to view and confirm its rivals' had accepted the signal to coordinate.<sup>55</sup> As before, the rivals' signals would need to be greater than the normal fluctuations in price across the next six months in order that the firm knows they have accepted coordination rather than simply continued to compete.
- D.18 Therefore signalling using six month old WhatIf? data, requires the firm to increase the price on a risk by a significantly greater amount than the normal price fluctuations and leave that price within the market for a period of six months to one year until it knows whether its signal has been accepted by rivals. Charging a price significantly higher than competitive prices for a year, risks losing the signalling firm considerable

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<sup>55</sup> The OFT understands that an insurer may be able to check whether rivals have followed its signal on a specific risk by using an alternative data source – such as phoning the broker and asking for sufficient quotes. If this is the case, and the risk in question can be easily identified and isolated then the insurer may not need to wait six months to determine whether its price signal is being followed by rivals.

market share, particularly if there are a significant number of customers who regularly search for new insurers when their contracts are renewed on a yearly basis. This makes using six month old WhatIf? data to signal prospective price rises a highly costly and risky proposition for firms.

- D.19 Second, with regards to punishing deviations from the coordinated outcome, a six month delay in the publication of the WhatIf? data means that a deviating firm could retain six months' profits before WhatIf? data reveals to its rivals that the firm has deviated and should be punished. This lapse in time increases the profits from cheating and hence significantly increases the incentive to deviate and therefore the difficulty in reaching a coordinate outcome.<sup>56</sup>
- D.20 Furthermore, for a deviation to be detected it would have to be outside of a standard confidence interval for the average movement of a given quote over six months. Deviations that are lower than the normal fluctuations of price over six months would be undistinguishable from the fluctuations, and hence undetectable. This means firms can either make small deviations without being detected or punished, again significantly increasing the difficulty in coordinating.
- D.21 In conclusion, given the pricing volatility within the insurance industry, the OFT believes that six month old data is neither likely to facilitate the signalling of focal points, nor is it likely to facilitate the ability to monitor and punish deviations from an agreement. Therefore, in order to remove its competition concerns, the OFT believes that it is unnecessary to prevent the release of disaggregated WhatIf? data after a period of six months.

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<sup>56</sup> In a simple model where a discount factor of  $\frac{1}{2}$  is sufficient to sustain coordination, a six period delay before detecting deviation raises the discount factor from 0.5 to 0.89 before coordination becomes sustainable.