

## SUMMARY OF THE CMA's DECISION

1. The CMA has found that BGL<sup>1</sup> infringed section 2(1) of the Competition Act 1998 ('the Chapter I prohibition') and Article 101 of the Treaty on the Functioning of the European Union ('Article 101 TFEU') between 1 December 2015 and 1 December 2017 (the 'Relevant Period'). The CMA has imposed a penalty on BGL of £17,910,062.
2. The CMA's decision concerns contractual obligations, known as wide most favoured nation clauses ('wide MFNs'), imposed by the price comparison website ('PCW') comparethemarket.com ('CTM') in its agreements with a number of home insurers.<sup>2</sup> CTM's wide MFNs contractually prevented these home insurers from quoting lower prices on CTM's rival PCWs than on CTM.
3. The CMA has found that CTM's network of wide MFNs had the appreciable effect of preventing, restricting or distorting competition between PCWs and between home insurers competing on PCWs in breach of the Chapter I prohibition and Article 101 TFEU during the Relevant Period by:
  - (a) Reducing price competition between PCWs.
  - (b) Restricting the ability of CTM's rival PCWs to expand, enabling CTM to maintain or strengthen its market power.
  - (c) Reducing price competition between home insurers competing on PCWs.<sup>3</sup>
4. CTM's network of wide MFNs meant that it was protected, as a matter of contract, from being undercut by the prices quoted by the relevant insurers on rival PCWs. This was in circumstances where the price quoted by

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<sup>1</sup> BGL (Holdings) Limited, BGL Group Limited, BISL Limited and Compare the Market Limited.

<sup>2</sup> In this summary, the terms insurers and providers are used interchangeably and refer to providers of home insurance products on PCWs, including insurance underwriters, brokers, and retail partners (such as banks and utility companies). Providers of home insurance products, as well as CTM and other PCWs that enable consumers to compare financial service products (such as home insurance), are authorised and regulated by the Financial Conduct Authority.

<sup>3</sup> The CMA has applied Rule 10(2) of the [CMA Rules](#) in this case and has addressed its decision only to BGL, and not to any of the home insurers that were party to the agreements with BGL containing wide MFNs.

insurers on PCWs was important both to competition between PCWs and to competition between insurers competing on PCWs.

5. The relevant insurers covered by CTM's network of wide MFNs accounted for approximately 40% of sales of home insurance made through PCWs in the Relevant Period and included some of the largest insurers. CTM had market power during the Relevant Period; its market share was over 50%, well above its nearest rivals such as MoneySupermarket, Confused and GoCompare, and a significant proportion of consumers could only be accessed by insurers by listing on CTM.
6. CTM's wide MFNs were integral to CTM's competitive strategy, were effective in achieving its objectives, and CTM behaved accordingly. CTM used wide MFNs to strengthen its competitive position by securing the lowest prices, whilst also maintaining growth in the commission fees that it received from insurers. Internal documents record that CTM believed that, without wide MFNs, there would have been greater competition between PCWs, putting greater pressure on commission fees and reducing CTM's profits.
7. CTM made clear to the insurers the importance it placed on compliance with its wide MFNs and systematically monitored and enforced those obligations in order to secure such compliance throughout the Relevant Period. This included questioning insurers on their pricing and requiring compliance action to be taken by insurers. For example, on four of the five occasions on which relevant insurers agreed promotional deals with CTM's rivals (whereby they temporarily offered lower prices on another PCW), CTM enforced its wide MFNs. CTM also refused to remove its wide MFNs from its contracts despite numerous requests from insurers.
8. Given in particular CTM's monitoring and enforcement, and its importance as a trading partner, insurers had strong incentives to comply with CTM's wide MFNs and most insurers adopted pricing strategies that were consistent with their contractual obligations. Insurers considered they were at risk of being delisted by CTM, or at least at risk of a deterioration in their commercial relationship with CTM, if they offered lower prices on other PCWs in breach of CTM's wide MFN. Insurers variously described CTM's wide MFNs as '*ingrained*' in their pricing, '*part of the landscape*', a '*showstopper*' or '*blocker*' to promotional deals with rival PCWs, and '*tantamount to removing competition between PCWs in respect of price*'.
9. The CMA has found that CTM's network of wide MFNs had the following effects:

- (a) The relevant insurers were contractually unable to quote lower prices on rival PCWs. If the relevant insurers reduced their prices on a rival PCW below the prices offered on CTM, they had to fund an equivalent price reduction on CTM. This reduced the insurers' incentives to lower their prices. Accordingly, several insurers refused to enter into promotional deals with CTM's rivals or adjusted their prices following enforcement action by CTM. By contrast, absent CTM's network of wide MFNs, the relevant insurers would have had a greater ability and increased incentives to compete on price by quoting different prices across PCWs. For example, they would have been able to reflect another PCW's lower commission fees in their prices on that PCW and to freely target price reductions on CTM's rival PCWs.
- (b) CTM's rival PCWs were prevented from gaining a competitive price advantage over CTM for quotes from the relevant insurers (unless an insurer was willing to take the risk of breaching its wide MFN). CTM's rivals therefore had reduced incentives to lower their commission fees or otherwise seek to incentivise these insurers to offer them lower prices.
- (c) CTM relied primarily on its network of wide MFNs to ensure it had the lowest prices from the relevant insurers, rather than competing on the merits with other PCWs for such prices. CTM typically benefitted from any reduction in retail prices achieved by its rivals, without the need to lower its own commission fees or provide some other benefit to the insurers. In addition, CTM was able to increase its commission fees without the insurers covered by its wide MFNs being able to fully reflect that increase in the prices they quoted on CTM compared to the prices quoted on other PCWs. By contrast, for example, absent CTM's network of wide MFNs, CTM would have had increased incentives to compete more strongly against rival PCWs to secure lower quotes from these insurers, including by lowering its commission fees.
- (d) CTM's rival PCWs were restricted in their ability to expand because they were unable to secure a price advantage over CTM from the relevant insurers. CTM was therefore able to use its network of wide MFNs to maintain or strengthen its market power.
- (e) Because the relevant insurers competed less strongly on price, other providers were subject to less competitive pressure and therefore competition on retail prices between all insurers competing on PCWs was reduced.

10. This is likely to have resulted in less differential pricing across PCWs by insurers, together with higher commission fees and consequently higher retail prices, than would have been the case absent CTM's network of wide MFNs, to the detriment of consumers using PCWs to purchase their home insurance.
11. BGL has not adduced evidence that there were any pro-competitive efficiencies of its network of wide MFNs which would meet the conditions for exemption under section 9 of the Competition Act 1998 or Article 101(3) TFEU. Nor has BGL submitted that its wide MFNs were objectively necessary such that they should not be considered to have restricted competition.
12. Accordingly, the CMA has found that CTM's wide MFNs in the agreements with each of the relevant insurers infringed the Chapter I prohibition and Article 101 TFEU.
13. The CMA has also found that BGL committed the infringements intentionally or, at least, negligently. The CMA has imposed a penalty of £17,910,062 to reflect the seriousness of the infringements and the need for deterrence.

**Competition and Markets Authority**

**19 November 2020**