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## Increased Insurance Industry Antitrust Enforcement: Foreshocks Before the Earthquake?

On July 10, 2017, the latest in a string of European antitrust probes of the insurance industry touched down in Portugal, as the Portuguese Competition Authority conducted dawn raids at four companies. The raids came close on the heels of the European Commission raiding several Irish automotive insurers, and recent raids of insurance companies and brokers by Swedish, UK, and Italian competition law enforcers.

Could the recent raids be the “foreshocks” that provide warning before an earthquake? While each of these current investigations appears to be geographically localized and to have a relatively narrow focus, is a broad sector-wide investigation the next step?

Those with long memories will recall the EU sector inquiry into the insurance sector<sup>1</sup> and the industry-wide sweeps in the U.S. a decade ago into excess liability insurance and the use of finite insurance and reinsurance – enforcement actions that cost many of the industry’s leading companies billions of dollars in fines, penalties, and private civil damages. At a time when competition investigations are on the rise, those in the insurance industry should pay heed to this recent uptick in enforcement activity.

**December 2016: Italian Probe.** The Italian competition authority launched a probe into a dozen insurers over possible violations of competition rules in their auto insurance policies.<sup>2</sup>

**April 2017: Raids in the UK.** The first of the recent string of incidents involving competition agencies and the insurance sector occurred in the UK in April 2017, when the UK Financial Conduct Authority (“FCA”) visited the offices of several of the largest players in the aviation broking sector. Those firms – Aon P.L.C., Jardine Lloyd Thompson Group P.L.C., Marsh Ltd., United Insurance Brokers Ltd. and Willis Ltd. – are being investigated by the FCA for allegedly “sharing competitively sensitive information within the aviation (re) insurance sector.”<sup>3</sup>

Of note, the aviation probe is the first competition investigation by the FCA – which shares competition duties with the UK’s main antitrust enforcer – where details have become public. The watchdog was given new powers in 2015 to

<sup>1</sup> Final report published on 25 September 2007: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52007DC0556>

<sup>2</sup> <http://www.reuters.com/article/italy-antitrust-insurers-idUSR1N14R01M>

<sup>3</sup> <https://www.ft.com/content/b8e90d12-2684-11e7-8691-d5f7e0cd0a16>

crack down on anticompetitive behavior. Since acquiring those powers the FCA has also conducted a number of market studies relevant to the insurance industry and has recently announced that it intends to look into how competition is working in the wholesale insurance sector.<sup>4</sup>

**June 2017: Raids in Sweden.** Weeks after the UK raids, on June 14, the Swedish Competition Authority raided several insurance companies, including American International Group (“AIG”).<sup>5</sup> According to reports, the raids came as the Authority was investigating whether the companies colluded in anti-competitive behavior with insurance brokers over contracts for both public authorities and private companies.

**July 2017: Raids in Ireland.** Then, on July 4, the European Commission confirmed that its officials carried out unannounced inspections at the premises of companies involved in motor insurance in Ireland. In a statement, the Commission said it had concerns “that the companies involved may have engaged in anti-competitive practices in breach of EU antitrust rules that prohibit cartels and restrictive business practices and/or abuse of a dominant market position.”<sup>6</sup>

In a separate but related development on the same day, the offices of insurers’ representative body Insurance Ireland were visited by compliance officers as part of a European Union investigation into access to two databases used by insurance providers in Ireland. The European Commission stated that while it is working with the EU on the motor insurance probe, that the nature of the two investigations are different. Reacting to the news, Irish politician Michael McGrath told reporters that “given the dramatic hike in motor insurance premiums in recent years, motorists deserve to know whether coordination across the industry has been a factor.”<sup>7</sup>

**July 2017: Raids in Portugal.** Less than one week later, on July 10, the competition enforcement agency in Portugal confirmed that it had opened an investigation into the insurance sector with dawn raids at four companies, making Portugal the latest in a string of countries to experience competition crackdowns on its insurance sector. In a statement, the Portuguese Competition Authority said it had done surprise inspections at five locations of four different Lisbon-based firms, and that the raids were related to suspicion of cartel behavior.<sup>8</sup>

While the recent insurance industry raids/investigations have been spread across different sectors and countries, industry-wide sweeps are not a new concept.

**Look back: the U.S. industry-wide sweep.** In 2004, then New York Attorney General Eliot Spitzer targeted two vast segments of the insurance industry – the mid-sized sector and so-called excess liability insurance – both prime territory for insurance brokers. The charges eventually saw Marsh & McLennan Cos. Inc. (“Marsh”), the largest insurance broker in the world, agreeing to pay \$850 million to settle a lawsuit accusing it of cheating customers by rigging prices and steering business to insurers in exchange for incentive payments.

<sup>4</sup> <https://www.fca.org.uk/publication/documents/rro-april-2017.pdf>

<sup>5</sup> <https://www.reuters.com/article/sweden-insurance-raid-idUSL8N1JB201>

<sup>6</sup> [http://europa.eu/rapid/press-release\\_STATEMENT-17-1910\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-17-1910_en.htm)

<sup>7</sup> <http://www.thejournal.ie/motor-insurance-raids-3478442-Jul2017/>

<sup>8</sup> [http://www.concorrenca.pt/vEN/News\\_Events/Comunicados/Pages/PressRelease\\_201709.aspx](http://www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201709.aspx)

Additionally, the 2005 settlement with the three biggest brokers — Marsh, Aon P.L.C. and Willis Group Holdings P.L.C. — banned them from accepting contingent fees until 2010. Since then, however, brokers have resumed accepting such fees under certain circumstances.

When Mr. Spitzer sued Marsh in 2004, he said that he would continue to investigate the major insurance companies, including AIG, and he kept to his word. In 2006, AIG announced a settlement with federal and New York State regulators, which required the insurance giant to pay out \$1.6 billion to settle charges covering issues ranging from bid-rigging, which Mr. Spitzer had begun investigating in 2004, to misuse of finite insurance, which the Securities and Exchange Commission (“SEC”) had begun looking into in 2001. It was during Mr. Spitzer’s bid-rigging investigation that his office learned about the use of finite insurance, which he began to work closely on with the SEC starting in 2005.

At the time, AIG’s \$1.6 billion settlement was the biggest regulatory settlement by a single company in U.S. history.<sup>9</sup> On the other hand, three former Marsh executives who had been charged criminally for their roles in the bid-rigging and price fixing scheme were acquitted of those charges at trial in 2009.<sup>10</sup>

**Look ahead: is the insurance industry ripe for another sweep?** After all, practices in the insurance industry are not localized in nature; they tend to extend beyond borders. After the launch of the Spitzer investigation, Aon chairman and CEO Patrick Ryan told reporters that practices in the insurance industry were “much bigger than a U.S. and UK issue” and that it was, indeed, “a worldwide issue.”<sup>11</sup> The markets concurred. Following the announcement of the Spitzer-led probe, European insurer stocks dropped alongside their U.S. counterparts.<sup>12</sup>

These developments are significant for actors in the insurance industry facing the possibility of investigations. While the uptick in enforcement activity in the industry may not definitively indicate that a wave of activity has only just begun, it at least compels companies to seriously consider the impact of antitrust investigations, and to take steps assessing the compliance programs that they have in place.

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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<sup>9</sup> [http://money.cnn.com/2006/02/09/news/companies/aig\\_settlement/](http://money.cnn.com/2006/02/09/news/companies/aig_settlement/)

<sup>10</sup> <http://www.nytimes.com/2009/10/27/business/27insure.html>

<sup>11</sup> <http://www.telegraph.co.uk/finance/2899077/Insurance-chief-warns-of-Spitzer-investigation-global-impact.html>

<sup>12</sup> <http://www.sec.marketwatch.com/story/europe-insurers-hit-by-spitzer-probe>

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