

## UK Launches Antitrust Review of the Wholesale Insurance Broker Market

### IN SHORT

**The Situation:** The UK Financial Conduct Authority has launched a market study into whether competition works well in the insurance broker market.

**The Impact:** The FCA has begun a fact-finding review into the role of insurance brokers to ensure that competition works well in the market, following suggestions that it might not. It will publish an interim report in Autumn 2018. This is an opportunity for corporates that think they get a bad deal from brokers to have their voices heard.

The UK Financial Conduct Authority ("FCA") has published the terms of reference for a market study into the wholesale insurance broker market. Its aim is to understand whether competition works well in that market. If the FCA identifies concerns, it could refer the sector to the Competition & Markets Authority ("CMA") for an in-depth investigation, open individual antitrust investigations against particular companies, or issue guidelines or recommend new legislation in order to address its concerns. Details of the market study and its terms of reference can be found on the [FCA's website](#).

#### What Is a Market Study?

A market study is a useful tool under UK competition law for the antitrust agencies. It enables the national competition authority—the CMA—and sectoral regulators such as the FCA to conduct wide-ranging reviews of a particular sector in order to assess whether competition works well in that sector. It is a fact-finding exercise typically lasting about a year, in which interested parties are invited and/or compelled to provide information to enable the regulator in question to build up a picture of how competition works in the sector under review. At the end of the market study, the regulator can decide that nothing needs doing. Alternatively, it can open an in-depth market investigation, introduce new sectoral rules, or publish guidance. Market studies also can lead to individual enforcement action against certain companies.



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#### Why Is the FCA Acting?

The UK authorities last reviewed competition across the insurance broker sector a decade ago. Today, at first sight, one might think the market works well. This is because insurance premiums have been declining quarter after quarter for more than four years. However, this decline in rates may have put pressure on brokers who earn commission from premiums. The FCA wishes to understand whether the response of brokers to the decline in commission, by way of new services and forming new referral relationships with insurers, has led to restrictions on competition. In particular, the FCA wishes to understand:

- Whether individual broker firms have market power and, if so, whether this enables them to price at a higher rate than would be the case in a more competitive market and whether they can act to keep out new market entry;
- Whether brokers face conflicts of interest that mean they select insurers for their corporate clients based on the insurer or product likely to provide the broker with the highest remuneration rather than best meeting the needs of the client;
- Whether brokers routinely place risks through facilities rather than in the open market and thereby exclude certain types of—often smaller—insurers and thus harm competition; and
- Whether the conditions of the market are such that brokers can tacitly coordinate their behavior, in particular pricing.

#### Likely Timing

Third parties are invited to submit comments on the FCA's terms of reference by Friday, January 19, 2018. The FCA will begin sending questionnaires to market participants, and others are invited proactively to contact the FCA. The FCA aims to publish an interim report on its findings in autumn 2018.

We would encourage corporates that buy insurance products through brokers and that wish to provide comments to the FCA to contact legal counsel for assistance.

### THREE KEY TAKEAWAYS

1. The UK Financial Conduct Authority has launched a market study into competition in the wholesale insurance broker market.
2. The FCA wishes to check whether insurance brokers always act in the best interests of their clients and in particular whether there is sufficient price competition within the sector.
3. The review is likely to take a long time—an interim report is due in 10 to 12 months.

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