

15 Views of insurers

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Allianz Cornhill Insurance plc

Issues

Complex monopoly

15.1 Allianz Cornhill considered that it should not have been listed in the CC's issues statement as participating in a possible complex monopoly.

15.2 A single complex monopoly should not be based on a group of companies performing different functions in the supply process. That was particularly so in respect of an insurer such as Allianz Cornhill: insurers had no direct relation with the consumer in the selling process and the allegedly anti-competitive practices described in the Issues Statement related to the conduct of retailers.

15.3 In so far as the CC, nevertheless, judged it necessary to list apparent participants in a possible complex monopoly, it should include all companies operating at the same level in the market and not just those with a larger part of the market as it had done in Table 2 of Annex 1 of the Issues Statement.

Market definition

15.4 Allianz Cornhill thought that there were clear differences between the EW market as commonly understood for brown and white goods, based primarily on breakdown and repair but with additional cover such as accidental damage, and newer segments such as mobile phones and PCs. In PC warranties, there were substantial additional elements such as technical helplines and routine checks: these required very different skill sets from traditional EWs. For mobile phones, the primary covers were for theft, loss and accidental damage. In some cases the mobile phone policy included a breakdown cover, in others it did not and as such was much closer in nature to ordinary property insurance.

15.5 Allianz Cornhill saw renewals as part of the mainstream EW market. So also were free EWs, which were in any event normally paid for by the retailer buying insurance cover and which could affect decisions on paid-for EWs. Free EWs offered to some credit card holders by the credit card issuers were slightly different in that the DEG purchase normally had to be registered with the issuer and were further from the POS than a traditional or even a free warranty.

POS advantage

15.6 Even if there were a competitive advantage accruing to retailers from being at the POS of the DEGs, the real issue in Allianz Cornhill's view was the lack of consumer knowledge of the choices of EWs available and the difficulty of alerting consumers to these other than at POS. The problem was compounded by consumer inertia, both in unwillingness to investigate alternatives or cancel existing policies during the cooling-off period. It should also be borne in mind that entry to the EW market was relatively easy, whether for insurers or non-insurer providers—particularly for the non-insurer provider on account of the fiscal benefit through VAT (but not IPT) reimbursement on repairs and the costs of insurance regulation falling on all insurers.

Possible uncompetitive practices

Restricting choice

15.7 It might be considered that the consumer could only benefit if retailers had to offer a choice of EWs (in the same way as a choice of goods) but Allianz Cornhill thought that there would be drawbacks also. Any individual EW supplier would find it harder to assess the risks if it had no idea how the EW sales at POS would be distributed between the policies available—for example, if a retailer steered EWs on low-risk goods to one provider and on high-risk goods to another. There would be a danger that any third party provider had to increase its premiums or charges, to compensate for the loss of economies of scale and the more limited pooling of risks. If the retailer did not reduce its margins, the effect would be higher costs to the EW buyers.

15.8 It was also the case that the consumer had some choice of EW provider even if they did not research the market before the POS. There might well, for example, be an EW offered by the manufacturer of the DEG, with the necessary information included with the product. And the consumer always had the option of not buying an EW at all.

15.9 As for the ‘bundling’ in EWs of additional cover such as accidental damage, theft or frozen food loss, Allianz Cornhill thought that this was less an attempt by the retailers to restrict choice than an attempt by them to add value to their EWs and differentiate them from those of their competitors. However, the cost to the consumer of such covers was small as would be the consequent saving from unbundling them. However, administration costs would increase if separate policies were written for each element previously bundled. As for choice of EW periods, that was mainly a matter for the retailers but Allianz Cornhill was ready to offer cover for a wide range of periods.

Contracting in advance

15.10 Allianz Cornhill did not think this was likely to distort competition. EW providers could allow payment to be spread out, as it did, rather than paid up front and in such cases consumers could in practice cancel whenever they wanted. Even if payment had been made up front, it was always within the discretion of EW providers to allow cancellation after the initial cancellation period if they thought there were good grounds in individual cases. Payment up front also had cash flow benefits to providers, which could be reflected in cheaper EW rates.

Setting prices above competitive levels

15.11 The retail prices for EW policies underwritten by Allianz Cornhill were set by the retailer. There was considerable competition between insurers to obtain contracts to supply EWs through major retailers (and through manufacturers and membership organizations) and it was doubtful if any insurer winning such business found it highly profitable. So any issue of EW pricing above competitive levels was an issue for those controlling the retail prices, not Allianz Cornhill.

Restricting information

15.12 There was information available to consumers ready to search for it, though comparative data was harder to obtain. More information could in principle be made available at POS on areas such as statutory rights; the manufacturer’s EW; reliability of the DEG; and typical and indicative repair costs. This would have to be compiled and presented objectively. The costs of doing so might be considerable and it was uncertain whether the consumer benefits would justify the effort. It would not remove the main problem, the lack of consumer interest in spending time on gathering information about EWs before the POS.

Selling practices

15.13 In so far as there was a problem of unacceptable selling practices, it was a matter to be addressed by the retailers concerned. Allianz Cornhill received very few complaints about selling practices by its retail agents. Allianz Cornhill was, however, concerned to ensure that its reputation did not suffer from the activities of its agents and their staff: it provided training and reference materials to avoid that. It did not operate any EW schemes which would give retailers’ employees an incentive to sell its EWs.

Unfair terms

15.14 Allianz Cornhill did not consider that the terms on which it wrote EW policies were unfair to consumers. Its policies reflected normal underwriting practice and their terms were clearly indicated to consumers both in POS material provided to retailers for distribution or to manufacturers for inclusion in box or in mailings. Termination of cover following replacement of a DEG under it was standard under-

writing practice and reflected the fact that the contract had been fulfilled in respect of the good originally covered. It would be possible to make the cover run on in such cases but the consumer would have to pay more for the warranty when taking it out. In any event, the replacement good would benefit from the manufacturer's guarantee. Current legislation on unfair contract terms was sufficient to deal with any problems in EWs that might arise (although Allianz Cornhill did not consider it likely that any would).

Insured and service-backed EWs

15.15 Allianz Cornhill was strongly of the view that insured warranties provided much better protection for consumers than the service-backed variants. Insured EWs benefited from the solvency regulation by the FSA and the ultimate safety net of the FSCS. Service-backed schemes were often claimed by those offering them to be no less secure because they were underpinned by ring-fenced trust funds. However, the value of those to the consumer depended on the terms of the trusts, including their investment policies for the funds held, and whether or not the reserving standards followed by both the service scheme providers and the captive insurers that underwrote them were as robust as those of regulated UK insurers. [⌘]

15.16 In any event, there was no regulatory mechanism for ensuring that service-backed schemes were backed up either by trust funds offering equivalent protection to insured EWs—or by trust funds at all, [⌘]. Consumers should be made aware of the different levels of protection offered. Better still would be to make the activity of providing service-backed EWs subject to equivalent regulatory standards as insured EWs: in their nature these policies were seldom different from insured policies as was clear from the FSA Consultation Paper 150 on the identification of insurance contracts.

Remedies

15.17 In responding to the possible remedies included in the CC's remedies statements, Allianz Cornhill supported the first package as described in paragraphs 18–24, and commented generally that:

- both insured and service-backed EWs should be subject to the same or equivalent regulation;
- many of the remedies would increase costs to consumers; and
- the cost of some of the remedies would be disproportionate to the benefits.

15.18 *Written information to consumers:* Allianz Cornhill supported the proposal to provide written information to consumers on matters such as statutory rights, general availability of other EWs, and cancellation rights. The material should not be excessive and should be prepared centrally in standard form, with ABI and BRC involvement.

15.19 *Written quotes:* Allianz Cornhill thought that these would be useful. The maximum period of validity should be 30 days from issue and the customer should have 30 days after purchase of the DEG in which to elect to buy an EW.

15.20 *Longer cancellation periods:* Allianz Cornhill argued that the cancellation period allowed should be 30 days, which compared with 14 days often used at present.

15.21 *Written confirmation of the right to cancel:* Allianz Cornhill thought that this could be done through a prepaid cancellation card and that the retailer should not have to write to customers about it in addition. Replacement cover policies should be excluded or subject to a value threshold greater than the £50 mentioned by the CC.

15.22 *Pro-rata refund of premium on cancellation:* Allianz Cornhill thought that the CC should allow for the pro-rata part of an insurer's administration costs to be recovered, whereas the proposal envisaged none of it would be. In addition, Allianz Cornhill thought strongly that no refund should be paid following fulfilment of the policy.

15.23 *Selling practices:* Allianz Cornhill supported the idea of some form of industry code to deal with any problems of selling practices.

15.24 *Financial Protection*: Allianz Cornhill agreed that retailers should be required to provide information, prepared by an independent third party, which would make clear the differences between insured EWs and service-backed schemes, with the effect these had on the protection ultimately available to the consumer, as part of the package of information to be provided pre-POS. The information should be factual but thorough.

15.25 *Second package*: Allianz Cornhill strongly recommended that the CC should not opt for the second package, preventing the consumer from buying a full EW at POS until a later date. This would greatly restrict the choice available to consumers and increase the administrative burden on them. It would greatly increase adverse selection against insurers and, in consequence, costs to those buying EWs.

Domestic and General Group plc

Issues

Complex monopoly

15.26 D&G argued that insurers such as themselves should not be shown as a party to a complex monopoly. The state of affairs described in the CC's Issues Statement was one which was set by the major retailers, with their POS advantage, even if, technically, they were agents for insurers in respect of the insured EWs. Even though D&G sold EWs through retail agents as well as direct marketing, those agents were essentially smaller retailers that did not have the same influence over the market as the multiple retailers. In principle, insurers might be considered to benefit from a complex monopoly if, say, it enabled their retail agents to sell more EWs and/or EW prices generally tended to follow those by the multiple retailers, but whether in practice they did benefit to any material extent was another matter.

Market definition

15.27 D&G had no strong views on the issues posed concerning market definition. D&G did not see why central heating contracts should be excluded merely because the maintenance element might be predominant in these. In fact, D&G noted that many of its central heating policies did not include a maintenance element, allowing customers to choose whether to include this in their cover or select local repairers to carry out this service. In addition, the administrative networks were essentially part of the same facilities as operated in the wider market for EWs on ordinary domestic appliances. D&G had no major presence in the mobile phone or PC segments, which had their particular characteristics. On the whole, D&G thought that the EW market was largely about white and brown goods and the repair or replacement of these.

POS advantage

15.28 D&G thought that there was a substantial advantage for the large retailers from their POS presence as the POS was the best place to explain EWs face-to-face with the consumer. Admittedly, the smaller retailers that made up a large part of D&G's retail agent base were also operating at the POS but they accounted only for a limited share of the market and had nowhere near the same influence as the larger retailers. The market was not one in which, for example, it was justified to spend large sums in untargeted advertising campaigns to attract customers away from the large retailers towards direct EW purchase. A direct supplier had to be very competitive at the margin in price and service quality to have any chance of competing with the main providers of EWs at POS and even then the information gap made it difficult for the direct suppliers such as D&G, who also had their own shareholders to bear in mind.

15.29 The indirect taxation structure also helped the POS providers of service-backed warranties, through their ability to reclaim input VAT on repair costs. Insurers selling EWs for manufacturers with the help of returned guarantee cards were subject to higher-rate IPT but without the same ability to save on input costs. That had led D&G to have to develop different ways of cooperating with manufacturers

such as buying their sales data and trying to market EWs on the back of that. In such cases there was no direct link between the sale of the DEG and the sale of the EW, which then incurred the general IPT rate of 5 per cent rather than the 17.5 per cent applying to higher rate IPT and VAT. But it was a highly competitive business for D&G, given the presence of competing insurers.

Possible uncompetitive practices

Restricting choice

15.30 D&G did not consider that consumers would necessarily benefit much if they were not tied into EWs in the first year after buying the DEG. The first year might add little or nothing in respect of breakdown cover to the manufacturer's guarantee and there were few first-year claims under other risks like accidental damage: but the corollary was that not having the EW in the first year would not save much for the consumer. 'No frills' warranties might in theory appear attractive to customers but a sufficiently wide coverage of risk and a 'no quibble' attitude to claims such as operated by D&G was more beneficial to them.

Cancellation periods

15.31 D&G were in favour of longer periods for allowing cancellation of EWs than the typical 14 days offered by many POS providers. D&G allowed 12 months with full refund of premium if there had been no claim and saw no reason why that period should not become the norm.

Setting prices above competitive levels

15.32 D&G thought that the higher profile of EWs following the 1994 report by the OFT had coincided with the gap between the much higher-priced POS and the manufacturer warranties reducing. As for D&G's own price-setting processes, the manufacturers influenced how EWs on their products were to be priced by D&G. The larger of the independent retailers at POS also had an influence on what rates should be set on their EWs.

15.33 As to whether EW prices were in general not sufficiently reflective of actual claims and repair costs, so that the publication of much more information about reliability and repair costs could help to increase competition in the market, D&G were very sceptical about the practicability of such publication. Information could only be of much use at the individual model level, yet there were many models and changes to them were taking place all the time: historical information would not help consumers much where there were model changes. Repair costs to individual buyers of independent repair services were also very different from those obtained by large-scale customers such as EW providers: D&G, like others, could not see where critics like the CA derived their low repair cost data from.

Restricting information

15.34 D&G considered that there was much more information about EWs available now than, say, before the OFT 1994 report. This was true in relation to the large retailers as well as other providers. But there was scope for more to be done, with the aim of increasing the awareness of customers that there were alternatives to buying EWs from POS retailers including direct providers.

Selling practices

15.35 D&G did not think that concerns about possible 'pressure selling' applied to the kind of retailer base that it had, evidenced by the low market penetration of these retailers. D&G's consumer-friendly approach to claims handling, allied to the wide coverage of risks in its policies, also made such concerns unlikely in its case.

Unfair terms

15.36 Most of the possibly unfair terms listed by the CC's Issues Statement did not apply to D&G except termination of cover when a good was replaced under the EW. But that reflected general insurance practice, as well as the fact that replacement products would in any event also carry a manufacturer's guarantee. It was also not administratively simple to provide continuous cover. D&G doubted if consumers saw this as a problem since many of them took out a new EW with D&G on the replacement products.

Uninsured cover

15.37 D&G treated the insured and service-backed EWs in the same way in its internal operations in respect of solvency cover, etc, though not obliged to do so for the latter. The playing field was not level as service-backed warranties were not subject to regulation, unlike the insured EWs which were subject to FSA prudential controls in respect of the underwriting and ABI or GISC rules on selling. Even though it would be going too far to say that insured EWs were always superior, in consumer protection terms, to service-backed EWs, it remained the case that there should be a consistent regulatory playing field for both types.

Remedies

15.38 In commenting on the 19 remedies published by the CC in its first Remedies Statement, D&G argued in favour of a package of measures which it thought would most effectively meet the concerns underlying the statements. This package comprised the following elements.

- A1: display price and terms of retailer's EW with the goods. That could be achieved by a separate leaflet, in-store notice, or window or door display.
- A3: provide written information to consumers. There should be a leaflet containing standard and prescribed information on terms and conditions of cover, cancellation period, ability to cancel without penalty, and identifying other providers (with, perhaps, a list of the main categories of those providers). The leaflet would not need to contain information on DEG reliability, which would be very difficult to do for such a complex matter.
- B7: provide written quotes.
- B8: longer period in which to cancel an EW, and without penalty. Consumers should be entitled to cancel their EW policy at any time up to the end of the manufacturer's guarantee period (usually one year).
- B9: written confirmation of the right to cancel. It should be made easy for consumers to cancel EW policies, including the option of doing so by telephone rather than through use of a written form. The confirmation should be contained in mailings sent subsequent to any contract at POS, although, in D&G's view, it was not necessary to ensure that the confirmation of the right to cancel was contained in a separate document.
- B11: requirement on any retailer to offer EWs on the same goods sold by another retailer.

15.39 The remaining measures in the 19 would either interfere too much with the operation of the EW market and consumer choice, notably remedy B10, or would be too bureaucratic and/or ineffective in making competition work more effectively in the EW market.

15.40 D&G, in commenting on the two packages published by the CC in its revised remedies statement, noted that Package 1 was on similar lines to the list of remedies supported by the company.

15.41 In some respects, however, in D&G's view, the precise scope of Package 1 as envisaged by the CC was disproportionate or was unlikely to be unworkable. This was the case in respect of the inclusion of reliability and repair cost data in the information leaflets, which attempt would result in poten-

tially misleading data being provided to the consumer: the collection of such data was impractical, unnecessary and disproportionate. However, if the CC decided to pursue such a remedy, contrary to the concerns expressed, D&G would be prepared to supply such data provided that all other EW providers were also obliged to do so and that the data was aggregated (by a neutral body such as the OFT) before being made public. D&G also thought that allowing anyone to cancel an EW with pro-rata refund of insurance premium or service-backed EW charge even if there had been payment on a claim was going too far and not linked to the competition concerns enunciated by the CC.

15.42 Care would also have to be taken in requiring information to be provided to consumers about the differing implications for them of insured and service-backed EWs: it would not be appropriate for any compulsory wording to suggest that insured EWs were necessarily superior, as a service-backed scheme with accompanying ring-fenced trust arrangements could provide financial cover which was at least as strong as some insured EWs.

15.43 Subject to these points, in particular, D&G considered that Package 1 should go a long way in helping to reduce the built-in advantages of POS providers and increase competition to the benefit of EW customers.

Landmark Insurance Co (UK) Ltd

Issues

Complex monopoly

15.44 Landmark considered it more helpful for the progress of the inquiry to focus on practical issues concerning the operation of the EW market than to spend excessive time on the criteria for the existence of a complex monopoly situation. That could become a somewhat theoretical exercise. Landmark noted that the degree of benefit accruing to a party from a particular complex monopoly situation might not necessarily have to be that great before the possibility of its participation in that monopoly. However, although in Landmark's case the retailer, Comet, was technically the agent of the EW supplier, Landmark, in practice the agent determined how their nominally joint activity in providing EWs worked in the market. And the retailer could find another insurer whenever it wished to, given the strong competition between insurers to secure retailers' EW business.

Market definition

15.45 Landmark considered that such differences as there between the mainstream EW market and some particular market segments probably did not justify their being considered to constitute separate markets. For example, although for PCs the provision of helpline type services where no hardware repair turned out to be necessary was not carried out by Landmark for Comet, Landmark could in principle provide such a service: its inclusion in the coverage along with breakdown provision still made the contract one of EW. In mobile phones too, the range of cover provided would often not be identical to that for a brown or white good, as accidental damage or loss would be more important, but that did not necessarily put mobile phone EWs in a different market. Free warranties, on the other hand, tended to be very different in their commercial motivation.

POS advantage

15.46 Landmark believed that the consumer propensity to buy an EW was strongest at POS, as the CC's NOP survey had confirmed. Direct sales to consumers were not impossible but were more costly due to the advertising and promotional effort needed, which was difficult to justify commercially. However, the advantages of selling at POS could be exaggerated and experience had shown that more direct EW providers had come into the market. That might continue to be the case, in view of the unfavourable publicity and image that POS warranties had been having in recent years. Consumers too were now much more aware of the alternatives to buying EWs at POS.

Possible uncompetitive practices

Restricting choice

15.47 Landmark did not think it unnatural that a POS provider offered EWs of one supplier only. It would put suppliers in a difficult position if a retailer offered, say, competing EWs from different insurers. A particular insurer might suffer from not receiving a portfolio of business that was sufficiently balanced for reasonable pooling of its risks to be possible. As for the argument that the consumer suffered from being offered EWs which reduced his or her choice by bundling different risks which he or she might possibly be able to cover separately, and more advantageously, the splitting up of cover would be more burdensome administratively for the consumer as well as the supplier and would not lead to savings.

Contracting in advance

15.48 This also was an aspect of EWs sold at POS which had its upside as well as any apparent drawbacks. Selling to consumers after POS incurred extra costs, for example in marketing. There was also a problem of adverse selection which would occur if EWs were being sold at, say, the eleventh or twelfth month after purchase of the DEG: for the EW supplier to protect itself against adverse selection would add about 10 to 20 per cent to its costs, to be passed on to consumers.

Setting prices above uncompetitive levels

15.49 The setting of EW prices was a matter for Comet in which Landmark had no involvement. Comet was in the retail market, not Landmark, and Comet were responsible for all price factors which went into the price over and above the actuarially-determined net rates which Landmark gave to Comet. These were at product category level. To determine them at make or model level would entail a considerable amount of administrative burden for Landmark, given the numbers of models involved, but without necessarily being more accurate from a pricing viewpoint. Models and the ways they were produced were constantly changing, which made more detailed information less reliable because less pooled. Analysing claims data for a particular model might have to be undertaken if its claims record were poor but that was another matter. EW prices tended to settle at a level around 10 to 20 per cent of that of the DEG, with exceptions for completely new products with no claims history, and that was not very different from the run of general insurance. Landmark thought that retailers like Comet did not compete on EW as well as DEG prices.

Restricting information

15.50 Landmark did not think that in so far as this happened it reflected any strong attempt to disadvantage the consumer. EWs had to be kept fairly simple for retail staff to be able to sell them and there were limits to the degree to which the consumer found it helpful to be presented with lots of detailed information at POS.

Selling practices

15.51 In addition, Landmark as an insurer, unlike suppliers of service-backed EWs, was subject to GISC rules on selling. For example, Landmark had an agreement with Comet for approval of the latter's sales manuals and carried out spot checks of Comet's training and the standards actually applied in-store.

Unfair terms

15.52 This did not seem to be a problem for Landmark EWs. All replacements were new products so there was no depreciation rule applied. Cashback had been stopped on new EWs. Landmark policy was to make a full repayment on all cancellations, without a claim, within 14 days of the EW purchase.

Financial protection

15.53 As the supplier of wholly-insured EWs, Landmark had firm views about service-backed schemes. The market was distorted unfairly in favour of these by the indirect tax rules which had the effect that service-backed EWs were not subject to the same regulatory burden and costs as the insured variants. Even worse, the service-backed schemes had been shown in a number of cases, such as the collapse of Tempo and Colourvision, to give much less protection to the consumer. Even where the service-backed EWs claimed to have protection for their liabilities to EW holders in the shape of ring-fenced trust funds, there was no guarantee that these would be sufficient in the event of the retailer getting into financial difficulties.

Remedies

Package 1

15.54 In general, Landmark had no complaints about remedies designed to provide consumers with more information and make the market work as effectively as possible providing that the information was kept as clear and simple as possible to avoid information overload and minimize compliance costs. Landmark's more detailed views on the two packages set out in the CC's second Remedies Statement were as follows.

A1: Display price of retailer's EW with the DEG

15.55 Landmark supported this requirement, which its retail programmes already conformed with.

A3: Provide written information to consumers

15.56 In principle Landmark supported this remedy although care would be needed to make it work effectively. All factors relevant to consumer decisions, not just price, should be reflected. Inclusion of data on product reliability and repair costs could be misleading unless great care were taken to compile it in a way which took account of model differences and allowed for proper comparability.

B7: Provide written quotes

15.57 The principle of this was reasonable enough but Landmark thought that these were in practice already available in the form of price leaflets which the potential customer could take away for study, given that retailers generally allowed a period after the DEG purchase in which the EW decision could be taken. A requirement for an additional written quote seemed unnecessary.

B8: Longer cancellation periods

15.58 Landmark accepted that a cancellation period up to 60 days would be reasonable though provision should be allowed for any refund to be pro-rata, rather than 100 per cent, in respect of risks covered from the first day of the EW's validity.

B9: Written confirmation of the right to cancel

15.59 This remedy could be very expensive administratively for EW suppliers and prone to errors and omissions. Moreover, its objective could be met adequately through full disclosure of cancellation information in the documentation provided to the EW purchaser at POS.

B12: Cancellation refund rights

15.60 Landmark thought it unreasonable to allow pro-rata refund of premium or charge when a claim had also been made. Such a remedy would have to be reflected in higher EW premiums.

C15: Discounting policies

15.61 Landmark supported this remedy.

C17: Controls on sales processes

15.62 Landmark supported some kind of code to control any problems of pressure selling which might exist.

D18: Financial protection

15.63 Landmark supported the proposal that retailers would have to inform consumers whether an EW was insured (and covered by the FSCS) or if a service-backed warranty to describe what arrangements were in place to ensure sufficient funding to meet costs of claims. In view of the complexity of the financial issues, there would need to be an agreed benchmark statement for retail staff to use.

Package 2

15.64 Landmark thought this approach, entailing the prevention of consumers entering into full EWs at POS, was unworkable and unreasonable, in the light of consumers preference for taking such decisions then. The limitation of policies allowed to be entered into at POS to additional and subsidiary elements such a accidental damage would not be cost-effective for EW suppliers.

London General Insurance Co Ltd

Issues

Complex monopoly

15.65 LGI considered that no member of AON engaged in any of the conduct that the CC had identified as behaviour that might give rise to a complex monopoly situation. LGI considered that as it neither engaged in nor benefited from the conduct identified as potentially contrary to the public interest, and was not acting contrary to the public interest, then it could not be a person in favour of whom a possible complex monopoly existed. LGI's activities, as an underwriter or provider of administration services (within the wider AON group of which LGI formed a part) in connection with EWs for DEGs, were all one step removed from the POS. The possible anti-competitive practices identified by the CC all related to agreements made and/or conduct that took place at the POS of the DEGs on which EWs were being offered. The retailer owned the POS. It was impossible for LGI to carry out the practices identified or indeed have any contact with consumers at the POS other than under the control of the retailer.

15.66 In addition, LGI did not benefit either from any monopoly situation that might exist.

Market definition

15.67 LGI thought that insured and service-backed EWs were in the same market, despite the differences in them. Multi-appliance policies were also in the same market as single-appliance EWs. But replacement-only EWs were targeted at different appliances, usually of relatively low value, than standard breakdown/repair appliances as repair costs were usually prohibitive on lower value DEGs.

POS advantage

15.68 In general, the control of the POS was undoubtedly a competitive advantage to retailers in providing their own EWs: most EWs were bought at POS. The EWs were effectively the products of a retailer and branded as such in the case of LGI's insured warranty business even though LGI was technically the supplier that contracted with the consumer. However, the fact that a retailer might own and control the POS, and perhaps form part of a complex monopoly, did not thereby make an insurer providing it with underwriting or other services a party to any such monopoly.

Possible uncompetitive practices

Restricting choice

15.69 Choice of EW and terms was determined by the retailer only albeit within a statutory/regulatory framework. There was no way that LGI could offer its product at the POS without the consent and active support of the retailer at POS. The scope of LGI's product offering was also to a significant degree determined by the retailer although it was, of course, always open to LGI to assess its underwriting risk and supply terms accordingly.

15.70 The fact that an insurer such as LGI, for its part, made its supply of underwriting services conditional on the retailer not offering competing EWs should not be regarded as a restrictive measure but as a corollary of prudent underwriting: if the retailer were free to offer EWs from multiple sources and outside the influence of an insurer then it would be very difficult for the insurer to properly assess and price the risks—for example, due to the danger of adverse selection against it. Moreover, LGI, like any insurer offering EWs to a retailer, had to face competition at any time from other insurers willing to supply the same service to the retailer.

Contracting in advance

15.71 Whether or not contracting in advance was a matter for concern, it was also one in which LGI had no contact with consumers at POS and thus no control over the choices or the information offered to consumers about the availability of alternative warranty products.

Setting prices above competitive levels

15.72 Prices at POS were entirely a matter for the retailer in LGI's contracts. All that LGI did was submit its risk premium, based objectively on claims experience. The bargaining power of the larger retailers was such that insurers wishing to supply them with EW products were obliged to make a very competitive offering.

Restricting information about alternatives

15.73 While LGI did not allow the agents selling its EWs to sell its competitors EWs on the same product, for the obvious commercial reasons explained above, it had no control or influence over the conduct of the retailer in respect of providing information about alternative warranty products.

Selling practices

15.74 In practice, LGI had little or limited influence over the conduct of retailers at the POS. It had regard to its obligations under the GISC and ABI selling codes for general insurance—for example, in providing training materials to its retail agents which reflected the provisions of those codes—but that was as far as it was able to go.

Unfair terms

15.75 LGI did not believe it offered any EWs that included unfair terms or conditions. LGI might in the past have offered some policies that included terms (often to the retailer's specification) that might now be considered to constitute unfair terms. But such provisions had been phased out and had not for some time been enforced by LGI.

Uninsured cover

15.76 The decision to offer EWs in the form of an insured or a service-backed scheme was one made by the retailer. LGI offered insured EWs and Aon Warranty Services offered uninsured EWS. However, all AON companies operated within a highly regulated environment where strict prudential requirements, including minimum solvency margins and funding rules, were imposed. Both offered real protection to the consumer so no issue of conflict between the two contexts, insured and uninsured, arose in relation to the AON's overall EW business.

15.77 LGI did not, therefore, engage in any of the conduct that the CC had identified as behaviour which might give rise to a complex monopoly situation, as listed in the issues statement, and was not a potential complex monopolist for the purposes of the investigation.

Remedies

15.78 LGI believed that of the two packages of remedies set out in the CC's second Remedies Statement, the first could be workable if applied in a way which took account of practical considerations arising. Its views on the specific measures in Package 1 were as follows.

Package 1

A1: Display price of retailer's EW with the DEG

15.79 This was a matter for the retailer though LGI believed that in most cases the the price was already likely to be displayed.

A3: Provide written information to consumers

15.80 In accordance with best industry practice, LGI already provided written information for consumers. Providing pre-contract written information in respect of a policy might include a general statement on, for example, other warranties available, cancellation rights and the degree of financial protection provided, thus adequately dealing with concerns expressed by the CC.

B7: Written quotes

15.81 LGI had no problems about providing written quotes but thought that having to keep these open for between 30 and 45 days would have significant adverse underwriting and cost implications apart from the uncertainty and confusion it could cause to the consumer. Keeping a quote open would mean extra administrative costs. And if the EW had to be backdated to the date of DEG purchase then moral hazard would result, with EWs bought after, say, damage had occurred to the DEG. So the remedy would need careful consideration.

B8: Longer cancellation periods

15.82 LGI currently allowed 30 days, which was more than the period that impending statutory regulations would require. The period of 60 days being considered by the CC would provide excessively long free cover to the consumer.

B12: Rights to refunds

15.83 The CC's idea of a full refund in the absence of a claim or a pro-rata refund in the event of a claim having been met would both be to give EW holders more favourable treatment than any other insurance classes and entail significant rises in the cost of EW cover for consumers. At worst, providing EW cover could become commercially unviable.

C15: Discounting policy

15.84 LGI had no comment on what was a matter for the retailer.

D18: Financial protection

15.85 LGI thought that it should be possible to include a statement in respect of the form of financial protection backing a particular EW in the pre-contract documentation and/or in the contract documents themselves.

Package 2

15.86 This would be to the clear detriment to the consumer, by reducing the accessibility of the undoubtedly useful products that EWs were to the consumer and increasing the administrative burden on EW providers. Considerable confusion would be caused for consumers. The end result could well be to reduce artificially the demand for EWs, causing irreparable harm to the industry and increasing prices to consumers.

USP Strategies plc/Pinnacle Insurance plc

Issues

Complex monopoly

15.87 USP/Pinnacle noted that as a matter of law they were the party with whom the customer contracted and that the retailers at POS were formally their agents. However, to infer from those facts that USP/Pinnacle might be involved in a complex monopoly seemed a legal technicality which bore no relationship to the market and commercial reality. This was that the driving force in setting up and running a service-backed EW (or even an insured EW) was the retailer, particularly where it was one of the larger retailers. It should also be noted that the few complaints there were in relation to the USP/Pinnacle service-backed EWs tended to be on matters where they did not have the operational responsibility, such as whether the repair service was working efficiently on the ground in the interface with the EW consumer.

Market definition

15.88 USP/Pinnacle thought that the EW market for PCs was probably sufficiently different from the brown and white goods to constitute a separate market. There was nothing in principle to stop an EW provider from offering a conventional type of EW on PCs. But the market was tending to move very much in the direction of orienting PC warranties towards the provision of 'soft' services, connected with the operation of the PC by the consumer, even though a breakdown cover might also be included.

15.89 Mobile phones, however, seemed to be closer to the mainstream EW market. Theft, loss and accidental damage might be the main coverage in the EW but breakdown would normally also be offered. The difference from PCs was the absence of the equivalent of the service help for what might be quite straightforward problems of not understanding how the PC worked.

15.90 Utilities contracts, for central heating or alarm systems, where provision of a routine, planned maintenance service was the main feature of the contract did, however, seem rather different from the mainstream EWs.

15.91 Renewals might be seen as being in a different market from the mainstream. When a consumer came to consider a renewal he or she would often by then be more aware of alternative providers: the POS factor was less significant by then.

POS advantage

15.92 USP/Pinnacle accepted that having a POS advantage, linked to the primary sale of the goods, was a very effective way of selling EWs. Competing directly in providing EWs without the advantage of POS was certainly possible, as D&G showed, but it was a costly way of securing business at relatively low margins. The market share of direct EW providers such as D&G, Centrica and Norwich Union would probably continue to grow, particularly if they invested significant resources in marketing and obtaining consumer data, though how rapidly was hard to forecast. But the strong preference of EW buyers for acting at the POS when the matter of protection against repair bills was fresh in their minds would remain important.

15.93 However, in another sense there was strong competition in the POS market in the sense that suppliers of the EWs such as USP, or Pinnacle in the insured market, had to tender periodically to retailer agents for their business. Competition in such cases tended to be strong and retailers did on occasion change their suppliers.

Possible uncompetitive practices

Restricting choice

15.94 Again, this was very largely a matter for the retailer to decide upon. If the retailer wished, for example, to unbundle warranties so that different elements of cover could be offered separately, or to offer a wider range of warranty durations than at present, USP or Pinnacle could as the facilitator provide the necessary variations, if it was content with their financial/actuarial robustness. But it was the retailer that judged whether such variations should be offered and specify them, as it was the retailer that understood the final market.

Setting prices above competitive levels

15.95 The job of the supplier, like USP or Pinnacle, was to ensure that the risk premium paid to it was clearly adequate, having regard to its data on claims experience and repair costs, and the need for an additional safety margin, to allow for the necessary reserves to be established to meet claims. That and the complex arrangements necessary for its achievement was a matter that USP/Pinnacle took seriously, in the light of its ultimate responsibility to the consumer and the stringent legal and regulatory requirements it was subject to. But the final price to the consumer, including the retailer's commission, was entirely determined by the retailer.

Restricting information

15.96 The control of what information was made available at POS also rested with the retailer. Some of the information which it might in principle be possible to make available could be difficult in practice to provide. An example was information on the reliability of different makes or models, where there was in principle a great deal of information from claims data. Detailed information would be unusable by consumers and aggregation would have to be carried out systematically and objectively if it were to provide helpful indicators of relative reliability: but the task was not impossible.

Unfair terms

15.97 The examples given in the issues statement were not frequent in the EWs offered by retailers using USP or Pinnacle as the supplier. In one case reconditioned products were offered when replacement was necessary and in another a depreciation adjustment was applied. But there was some justification for such practices—for example, the falling prices of many DEGs meant that a replacement with the same cash price as that originally paid would be a higher-quality product.

Remedies

15.98 USP/Pinnacle limited its comments on the remedies statements to the question of whether financial protection to the consumer was less in respect of service-backed EWs. The service-backed schemes provided by USP were extremely robust due to the well-understood patterns of EW claims (subject to any difficulties which could arise with new products); the use of a portion of the service charge to buy insurance against the service company's future liability to pay claims; the prudent nature of the reserving standards followed by the retailers' captive insurers from whom that insurance was bought, given that the offshore jurisdictions in which the captives were located had a strong reputational interest in being seen to apply rigorous regulatory standards; the strict rules applied by the independent trustees for releasing funds from the trust funds to pay claims; and the fact that even if the retailer or the service scheme provider went out of business the trust would still be in place and able to operate.

15.99 In those cases such as the Tempo insolvency where the EW customers had been left without the cover they had already paid for there had not been trust arrangements. The liabilities to EW holders had been carried on the retailer's balance sheet, with the EW left in the unfavourable position of unsecured creditors.

15.100 The value of the protection provided by the FSCS could also be exaggerated. It did not offer 100 per cent protection. If it were activated, the consumer had to go to not inconsiderable effort to prove eligibility to a claim; assign their rights against the failed insurer; and then suffer some delay while their claim was processed.

15.101 If there were a requirement to give the consumer information about insured and service-backed EWs, that information should be comprehensive enough for it to be understood that there were many similarities between the two as well as the differences. The information would be quite complex and it was questionable how far consumers would understand it or even bother to read it in the first place.