



EUROPEAN COMMISSION
Competition DG

***CASE AT.40511 - Insurance Ireland:
Insurance claims database and conditions of
access***

(Only the English text is authentic)

**ANTITRUST PROCEDURE
Council Regulation (EC) No 1/2003**

Article 9 Regulation (EC) 1/2003

Date: 30/06/2022

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EUROPEAN
COMMISSION

Brussels, 30.6.2022
C(2022) 4448 final

COMMISSION DECISION

of 30.6.2022

**relating to a proceeding under Article 101 of the Treaty on the Functioning of the
European Union (TFEU) and Article 53 of the EEA Agreement**

Case AT.40511 - Insurance Ireland: Insurance claims database and conditions of access

(Text with EEA relevance)

(Only the ENGLISH text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty¹, in particular Article 9(1) thereof,

Having regard to the Commission Decision of 14 May 2019 to initiate proceedings in this case,

Having expressed concerns in the Statement of Objections of 18 June 2021,

Having given interested third parties the opportunity to submit their observations pursuant to Article 27(4) of Regulation (EC) No 1/2003 on the commitments offered to meet those concerns,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer,

Whereas:

1. SUBJECT MATTER

- (1) This Decision is addressed to Insurance Ireland (Member Association) Company Limited by Guarantee ('Insurance Ireland'), a trade association for the insurance sector in Ireland².

¹ OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ('TFEU'). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. Where the meaning remains unchanged, the terminology of the TFEU will be used throughout this Decision.

² Over time, Insurance Ireland has been known by different names. It has, in turn, been previously named 'Irish Insurance Federation', 'Insurance Ireland' and 'Insurance Ireland (Member Association) Limited'. In this Decision, references to 'Insurance Ireland' cover also the association of undertakings under its previous legal forms and names, as appropriate.

- (2) In its Statement of Objections of 18 June 2021 ('SO'), the Commission came to the preliminary conclusion that the conditions of access to the Insurance Link information exchange system, which Insurance Ireland administered and continues to administer, constitute decisions of an association of undertakings within the meaning of Article 101 TFEU³ and of Article 53 of the Agreement on the European Economic Area⁴ ('the EEA Agreement') having the effect of preventing, restricting or distorting competition in the supply of motor vehicle insurance services within the internal market. In the Commission's preliminary view, Insurance Ireland infringed Article 101(1) TFEU and Article 53(1) of the EEA Agreement, by arbitrarily delaying and/or *de facto* denying access to the Insurance Link information exchange system (including its facility to request further information).
- (3) The SO constitutes the Commission's preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003.
- (4) According to the preliminary assessment, access was hindered through a number of interlinked decisions that were applied with various degrees of intensity over different periods. Since at least 2009, access to Insurance Link was linked to and was made conditional upon obtaining membership of Insurance Ireland. Furthermore, the Commission came to the preliminary conclusion that the design and application of the criteria for membership of Insurance Ireland were not clear, transparent, objective, readily available and were discriminatory. According to the preliminary assessment, Insurance Ireland handled the membership application process in an arbitrary and discriminatory manner and delayed the membership application process for a number of applicants during extended periods. Certain categories of market participants, in particular insurers established in other Member States and providing services in Ireland on the basis of the rules relating to the free provision of services between Member States ('FoS insurers') and/or their managing general agents⁵, were excluded from membership for certain periods. Even when access to Insurance Link was granted, access to the facility to request further information on past claims was *de facto* denied and/or delayed for certain applicants.
- (5) In its preliminary assessment, the Commission found that access restrictions were still ongoing at the date of the adoption of the SO.
- (6) While Insurance Ireland disagrees with the conclusions reached by the Commission in its preliminary assessment, it has nevertheless offered commitments under Article 9(1) of Regulation (EC) No 1/2003 to resolve the preliminary concerns expressed by the Commission. This Decision makes those commitments binding on Insurance Ireland.

³ OJ C 115, 9.5.2008, p. 47.

⁴ OJ L 1, 3.1.1994, p. 3.

⁵ A managing general agent is a category of intermediary that typically has a broad remit of power delegated to it by the insurer. From a regulatory perspective, it is licensed as an intermediary and authorised by an insurer to transact business on the insurer's behalf. Depending on the precise terms of the agreement, the managing general agent may have authority to provide a broad range of services, including underwriting, policy issuance, producer appointment, claims handling and administrative support. Managing general agents may have arrangements with a number of insurers, including, for example, FoS insurers. The contracts of insurance issued pursuant to the managing general agent arrangement are between the policyholders and the insurer.

2. THE PARTY

- (7) Insurance Ireland is an insurance trade association, with its main aim being to represent and further the interests of its members, such as through joint representation before legislative bodies. Insurance Ireland's membership mainly comprises undertakings active in the life, non-life insurance, re-insurance and captive insurance sectors in Ireland.
- (8) Insurance Ireland was established in 1986 under the name Irish Insurance Federation, following the merger of three insurance associations in Ireland and its current name was adopted in 2013. Until 1 January 2015, Insurance Ireland operated as an unincorporated association of its members. Then its operations were transferred to a company limited by guarantee, called Insurance Ireland (Member Association) Limited, which in 2016 became Insurance Ireland (Member Association) Company Limited by Guarantee. This corporate structure of Insurance Ireland is still in place.
- (9) Insurance Ireland is managed by a Board composed of members representing various sectors of the insurance industry and an external Independent Director.
- (10) Insurance Ireland developed and administers Insurance Link, which is an information exchange system, comprising a non-life insurance claims data pool and a facility to request certain further information⁶ on claims at the claims handling stage. Insurance Link has been operational since 1987 and in 2006, a major upgrade of the database took place allowing users to access Insurance Link via a web portal. Insurance Link was established with the principle of reciprocity at its basis. This means that every member must contribute and input all claims relevant for Insurance Link. The input is subsequently made available to all participating members. Insurance Link has the dual purpose of: (a) facilitating the detection of potentially fraudulent behaviour by insurance claimants and others acting with such claimants; and (b) ensuring the accuracy of information provided on proposal forms by potential customers of Insurance Link users when they are underwriting risks. The information retrieved through the facility to request further information on past claims thus enable the detection of fraud and aids in the assessment and defence against exaggerated or fraudulent claims⁷. Likewise, that information allows insurers to better assess customers' risk profiles and consequently to price insurance policies appropriately.

3. PROCEDURAL STEPS UNDER REGULATION (EC) No 1/2003

- (11) Between 4 and 7 July 2017, the Commission carried out inspections pursuant to Article 20 of Regulation (EC) No 1/2003 at the premises of Insurance Ireland in Dublin, Ireland.

⁶ This facility was added to Insurance Link in 2015 and insurer members of Insurance Ireland received automatic access to the facility in January 2016, when it was first launched. This was not the case for the associate members of the association. The facility may be utilised at the claims handling stage, whereby participating undertakings may request and obtain information from a particular insurer(s) regarding a particular past claim(s). The function to request and obtain information is available to Insurance Link users only if they have also been given access to that function. Prior to 2015, such requests for further information were made manually.

⁷ The Irish Data Protection Commissioner's Code of Practice for the insurance sector of 2013 detailed the information that may be shared between insurers on request from hard-copy and/or electronic files. The Code is available at the webpage: http://www.insuranceireland.eu/media/documents/20130626_Code_of_Practice_Final.pdf.

- (12) On 14 May 2019, the Commission opened proceedings with a view to adopting a decision under Chapter III of Regulation (EC) No 1/2003. On 18 June 2021, following a number of requests for information to Insurance Ireland and to market participants, the Commission adopted the SO setting out the preliminary competition concerns related to the decisions of Insurance Ireland concerning access to Insurance Link. The SO was notified to Insurance Ireland by letter of 18 June 2021. Insurance Ireland submitted a reply to the SO on 5 October 2021.
- (13) On 16 February 2022, Insurance Ireland offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003, to meet the Commission's competition concerns. On 4 March 2022, the Commission published a notice in the Official Journal of the European Union pursuant to Article 27(4) of Regulation (EC) No 1/2003⁸, summarising the preliminary concerns and the commitments offered by Insurance Ireland and inviting interested third parties to submit their observations on the commitments within 1 month following publication.
- (14) On 13 April 2022, the Commission informed Insurance Ireland of the observations received from interested third parties following the publication of the notice. On 17 May 2022, Insurance Ireland submitted to the Commission an amended proposal for commitments ('the final commitments').
- (15) On 20 June 2022, the Advisory Committee on Restrictive Practices and Dominant Positions was consulted.

4. PRELIMINARY ASSESSMENT

4.1. Relevant markets

4.1.1. Principles

- (16) The definition of the relevant markets requires identifying the relevant competitive constraints in terms of demand-side and supply-side substitutability. From an economic point of view, for the definition of the relevant market, demand substitution constitutes the most immediate and effective disciplinary force on the suppliers of a given product⁹. From a demand-side perspective, a relevant product market comprises all those products and/or services that are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and intended use.
- (17) Supply-side substitutability may be taken into account when defining markets in those situations in which its effects are "*equivalent to those of demand substitution in terms of effectiveness and immediacy*"¹⁰. This means that in order to find supply side substitution, suppliers must be able to switch production to the relevant product and market the product in the short term, without incurring significant additional costs or risks in response to small and permanent changes in relative prices¹¹.

⁸ Communication from the Commission published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case AT.40511 - Insurance Ireland: Insurance claims database and conditions of access 2022/C 104/10, C/2022/1298 (OJ C 104, 4.3.2022, p. 15).

⁹ Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03), paragraph 13.

¹⁰ Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03), paragraph 20.

¹¹ *Ibid.*

- (18) The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas, because the conditions of competition are appreciably different in those areas¹².

4.1.2. *Product market*

- (19) In its previous decisions, the Commission has distinguished between three broad categories of insurance products: life insurance, non-life insurance and reinsurance¹³.
- (20) The Commission has also considered that, from a demand side perspective, the different types of insurance are distinct on the basis of their characteristics, premiums and purposes. The Commission also found that there is typically no substitutability between different types of insurance from a customer perspective. Therefore, as regards non-life insurance the Commission envisaged segmenting the market based on the type of risk covered¹⁴, distinguishing notably the following segments: (a) motor vehicle insurance¹⁵; (b) accident and sickness insurance; (c) property insurance; (d) liability insurance; (e) marine, aviation and transport insurance; (f) credit and suretyship insurance; and (g) travel insurance¹⁶.
- (21) The replies received from respondents to the Commission's requests for information in this case, largely support the segmentation of non-life insurance into the above-

¹² Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03), paragraph 8.

¹³ See Commission Decision of 28.08.2006 in Case COMP/M.4284 - *AXA/Winterthur*, recital 7; Commission Decision of 19.01.2011 in Case COMP/M.6053 - *CVC/Apollo/Brit Insurance*, recital 12; Commission Decision of 03.08.2011 in Case COMP/M.6217 - *Baloise Holding/Nateus/Nateus Life*, recital 10; Commission Decision of 23.09.2013 in Case COMP/M.6957 - *IF P&C/Topdanmark*, recital 15; Commission Decision of 26.09.2019 in Case COMP/M.9432 - *Allianz Holdings/ Legal and General Insurance*, recital 7; and Commission Decision of 29.07.2020 in Case COMP/ M.9796 - *UNIQA/AXA* (Insurance, Asset Management and Pensions - Czechia, Poland and Slovakia), recital 7.

¹⁴ See Commission Decision of 29.07.2020 in case COMP/M.9796 - *UNIQA/AXA* (Insurance, Asset Management and Pensions - Czechia, Poland and Slovakia), recital 9; Commission Decision of 26.09.2019 in case COMP/M.9432 - *Allianz Holdings/Legal and General Insurance*, recital 8; Commission Decision of 10.12.2018 in case COMP/M.9056 - *Generali CEE/AS*, recital 11; Commission Decision of 07.04.2017 in case COMP/M.8257 - *NN Group/Delta Lloyd*, recital 73; Commission Decision of 03.10.2007 in case COMP/M.4844 - *Fortis/ABN Amro Assets*, recital 72; Commission Decision of 04.04.2012 in Case COMP/M.6521 - *Talanx International/Meiji Yasuda Life Insurance/Warta*, recital 19; Commission Decision of 03.12.2007 in Case COMP/M.4701 - *Generali/PPF Insurance Business*, recital 22; Commission Decision of 28.08.2006 in Case COMP/M.4284 - *AXA/Winterthur*, recital 14; and Commission Decision of 23.09.2013 in Case COMP/M.6957 - *IF P&C/Topdanmark*, recital 18.

¹⁵ Previously, the Commission had considered a possible distinction between motor vehicle insurance for the private line and the commercial line (Commission Decision of 04.04.2012 in Case COMP/M.6521 - *Talanx International/Meiji Yasuda Life Insurance/Warta*, recital 30 and following), and ultimately left the precise product market definition open; and a segmentation into motor third-party liability insurance and comprehensive motor insurance (Commission Decision of 17.06.2008 in Case COMP/M.5075 - *Vienna Insurance Group/EBV*, recitals 49-51; Commission Decision of 04.04.2012 in Case COMP/M.6521 - *Talanx International/Meiji Yasuda Life Insurance/Warta*, recital 24; Commission Decision of 03.12.2007 in Case COMP/M.4701 - *Generali/PPF Insurance Business*, recitals 24-25; and Commission Decision of 28.08.2006 in Case COMP/M.4284 - *AXA/Winterthur*, recital 14.

¹⁶ In certain decisions, the Commission also distinguished fire insurance (Case COMP/M.4844 - *Fortis/ABN Amro Assets*), legal assistance (Case COMP/M.8905 - *Axa Group / Roland*), cargo (Case COMP/M.6521 - *Talanx International/Meiji Yasuda Life Insurance/Warta*), speciality insurance, aerospace insurance (COMP/M.5010 - *Berkshire Hathaway/ Munich Re/ GAUM*).

mentioned segments¹⁷. The Commission also notes that the fact that motor vehicle third-party liability insurance is compulsory in Ireland further underscores the lack of demand side substitutability in the case at hand.

- (22) From a supply side perspective, in some previous merger decisions the Commission observed that a certain degree of supply-side substitutability between different types of non-life insurance products might exist, as the conditions for insurance of certain types of risks are quite similar and most large insurers offer insurance covering different types of risk¹⁸.
- (23) However, in the context of this case, several market participants indicated that there are hurdles making entry into the motor vehicle insurance market in Ireland difficult, including regulatory requirements and entry costs. In particular, every motor vehicle insurer operating in Ireland, regardless of its place of establishment, must by law contribute to the funding of a specific body and compensation funds related to the motor insurance sector¹⁹. In addition, the conditions to gain access to Insurance Link²⁰ also constitute a barrier to entry for undertakings not having access.
- (24) Therefore, in its preliminary assessment, the Commission considered that those hurdles, including the decisions adopted by Insurance Ireland, may be considered as impacting negatively on the “*effectiveness and immediacy*” of supply side substitutability, so that its effects may not be regarded as being equivalent to those of demand substitution.
- (25) In light of the above, and without needing to take a final view for the purposes of this Decision, the Commission considers that the relevant product market is the market for motor vehicle insurance services.
- (26) The Commission notes that even under a potential overall market for non-life insurance, the restrictive effects on competition as a result of the conditions of access to Insurance Link identified in its preliminary assessment with respect to the motor vehicle insurance market, concern a significant portion of such a potential overall non-life insurance market in Ireland. Indeed, motor vehicle insurance is the largest category of non-life insurance in Ireland, representing approximately 50 % of non-life insurance gross written premium²¹.

¹⁷ See replies to question 30 of the Commission’s requests for information of 4.07.2018 addressed to insurers and replies to question 31 of the Commissions’ requests for information of 4.07.2018 addressed to intermediaries.

¹⁸ See in this respect Commission Decision of 23.09.2013 in Case COMP/M.6957 - *IF P&C/Topdanmark*, recital 17, Commission Decision of 19.01.2011 in Case COMP/M.6053 - *CVC/Apollo/Brit Insurance*, recital 16 and Commission Decision of 28.08.2006 in Case COMP/M.4284 - *AXA/Winterthur*, recital 9. In these cases, the Commission left the product market definition open.

¹⁹ In Ireland, in addition to contributing to the Insurance Compensation Fund, motor vehicle insurers must become members of the Motor Insurers’ Bureau of Ireland (MIBI) and fund it. A primary purpose of MIBI is to act as compensation body responsible for providing financial compensation to victims of road traffic accidents caused by uninsured or unidentified drivers. That compensation is funded through a levy on firms that underwrite motor insurance in Ireland. Besides this, MIBI also maintains and administers a Motor Insurers’ Insolvency compensation fund, which is funded by contributions from its members.

²⁰ For more details, see section 4.3 of this Decision.

²¹ See also recital (30) of this Decision as regards the position on the market of insurers who are members of Insurance Ireland.

4.1.3. Geographic market

- (27) In previous decisions, the Commission has generally considered non-life insurance as well as motor vehicle insurance as being national in scope²². However, the Commission ultimately left open the exact scope of the geographic market²³.
- (28) In the present case, the replies received from respondents to the Commission's requests for information largely indicate that the geographic scope of the relevant market is national²⁴. Motor vehicle insurance premiums in Ireland exceed, on average, those in the United Kingdom of Great Britain and Northern Ireland by more than 5 % to 10 %. Other pertinent differences also exist regarding, among others, premium levies, regulation, claims frequency and average claims costs. Moreover, there are differences in claims culture, settlement levels for injury and settlement costs for damage, as well as associated legal costs²⁵.
- (29) Therefore, considering the replies from respondents to the Commission's requests for information and without needing to take a final view for the purposes of this Decision, the Commission considers that the geographic scope of the relevant market is national and comprises Ireland.

4.2. Position of the party on the relevant market

- (30) Insurance Ireland includes amongst its members the largest players on the Irish motor vehicle insurance market. Eight of those insurers, Allianz Plc Ireland- ('Allianz'), AIG Europe Limited-Ireland Branch ('AIG'), Aviva Insurance Limited ('Aviva'), AXA Insurance dac ('AXA'), FBD Insurance Plc ('FBD'), Liberty Insurance dac ('Liberty'), RSA Insurance Ireland dac ('RSA'), and Zurich Insurance Plc ('Zurich'), accounted, over the years, for 98 % of the Irish motor vehicle insurance market²⁶. Five of those undertakings are founding members of Insurance Ireland (namely AXA, Aviva, FBD, RSA, Zurich), while Allianz, AIG and Liberty joined the association prior to 2009²⁷. The Commission found that those market

²² Commission Decision of 04.04.2012 in Case COMP/M.6521 - *Talanx International/Meiji Yasuda Life Insurance/Warta*, recitals 56 and 59, Commission Decision of 20.11.2019 in Case COMP/M.9531 - *Assicurazioni Generali/Seguradoras Unidas/AdvanceCare*, recital 13 and cases cited, Commission Decision of 29.07.2020 in case COMP/M.9796 - *UNIQA/AXA* (Insurance, Asset management and pensions - Czechia, Poland and Slovakia), recital 10.

²³ Commission Decision of 04.04.2012 in Case COMP/M.6521 - *Talanx International/Meiji Yasuda Life Insurance/Warta*, recitals 56 and 60, Commission Decision of 20.11.2019 in Case COMP/M.9531 - *Assicurazioni Generali/Seguradoras Unidas/AdvanceCare*, recital 16, Commission Decision of 29.07.2020 in case COMP/M.9796 - *UNIQA/AXA* (Insurance, Asset management and pensions - Czechia, Poland and Slovakia), recital 16.

²⁴ See replies to question 32 of the Commission's requests for information of 4.07.2018 addressed to insurers and replies to question 33 of the Commissions' requests for information of 4.07.2018 addressed to intermediaries.

²⁵ See replies to questions 34 and 35 of the Commission's requests for information of 4.07.2018 addressed to insurers and replies to questions 35 and 36 of the Commission's requests for information of 4.07.2018 addressed to intermediaries.

²⁶ See the Report on the costs of motor insurance prepared by the Cost of Insurance Working Group of the Irish Department of Finance in January 2017, pages 35 and 36, available at: <https://www.gov.ie/en/publication/466182-report-on-the-cost-of-motor-insurance/>. See also the Irish Central Bank Insurance Statistics 2015, page 17, available at: <https://www.centralbank.ie/docs/default-source/statistics/statistical-publications/insurance-statistics/insurance-statistics-2015.pdf> and Insurance Ireland Fact File 2017 available at: <https://www.insuranceireland.eu/media/Factfile%202017.pdf>

²⁷ Insurance Ireland's response to the Commission Request for information of 19.06.2020, Annex 3.1. See also Insurance Ireland's submission of 30.11.2017, page 10.

players²⁸ had access to Insurance Link for the entire duration since 2009 and had access to the facility to request further information on past claims since it became operational in 2016²⁹.

- (31) Insurance Link users must agree to upload all claims data in order to ensure that the data pool is updated on a regular basis. The evidence indicates that larger motor insurers contribute to the data pool with a higher number of claims compared to smaller players or new entrants. As the Commission found in its preliminary assessment, since the largest market players are Insurance Link users and are under the obligation to update all their claims data, the information included in Insurance Link necessarily covers a significant part of the relevant market.

4.3. Practices raising concerns

- (32) This Decision concerns the conditions for access to the Insurance Link information exchange system, as designed and imposed by Insurance Ireland.

4.3.1. Article 101(1) TFEU and Article 53(1) of the EEA Agreement

4.3.1.1. Principles

- (33) Article 101(1) TFEU and Article 53(1) of the EEA Agreement prohibit agreements between undertakings, decisions by associations of undertakings and concerted practices, which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.
- (34) Article 101(1) TFEU and Article 53(1) of the EEA Agreement apply to associations insofar as their own activities or those of the undertakings affiliated to them tend to produce the results which those provisions aims to suppress³⁰. The Court of Justice has held that the legal framework within which decisions of associations of undertakings are taken and the classification given to such associations of undertakings by the various national legal systems are irrelevant insofar as it concerns the application of Article 101(1) TFEU³¹. The Court of Justice has also interpreted the concept of association of undertakings broadly and has qualified acts of professional bodies as decisions by associations of undertakings³². According to the Commission, it follows that neither the legal personality nor the incorporation of an entity are relevant for qualifying it as an association of undertakings³³. It is also recognized that an association consists of undertakings of the same general type,

²⁸ Furthermore, all these insurers were involved in the governance of Insurance Ireland and/or sat on the Board of Insurance Ireland during different periods between 2009 to date.

²⁹ For more details about this facility, see footnote 6.

³⁰ Case 71/74 *Frubo v Commission*, EU:C:1975:61, paragraph 30; Joined Cases 209/78 to 215/78 and 218/78 *Van Landewyck and Others v Commission*, EU:C:1980:248, paragraph 88; Joined Cases 96/82 to 102/82, 104/82, 105/82, 108/82 and 110/82 *IAZ and Others v Commission*, EU:C:1983:310, paragraph 20.

³¹ Case C-123/83 *BNIC v Clair*, EU:C:1985:33, paragraph 17 and Case C-35/96 *Commission v Italy* ECLI:EU:C:1998:303, paragraph 40.

³² Case C-309/99 *Wouters*, EU:C:2002:98, paragraphs 56 and 64. Case law further established that in the context of competition law, the concept of an undertaking includes any entity engaged in economic activity regardless of its legal status or method of financing. Any activity consisting in offering goods or services in a particular market is considered as economic activity. (Case C-309/99 *Wouters*, EU:C:2002:98, paragraphs 46 and 47; Case C-1/12 *Ordem dos Técnicos Oficiais de Contas v Autoridade da Concorrência*, EU:C:2013:127 paragraphs 35 and 36).

³³ Case COMP/34.579 — *MasterCard*, recitals 338-343.

responsible for representing and defending their common interests *vis-à-vis* other economic operators, government bodies and the public in general³⁴.

- (35) The term '*decision*' has also been given a wide interpretation under Article 101(1) TFEU and it can include formal decisions adopted by an association, its constitution, any rules governing the association's operations and strategy, binding regulations made by the association and any non-binding recommendations made by it³⁵. In addition, it is well-established case law that for a decision to be found to exist, it is sufficient that the decision is taken by the competent body within the association³⁶.
- (36) Information exchange systems constitute a common feature of many competitive markets and may generate various types of efficiencies³⁷. Nevertheless, information exchange systems have to comply with competition law rules as they may also give rise to anticompetitive concerns.
- (37) Indeed, information exchange systems must be assessed on a case-by-case basis taking into account the particularities of each system, such as the nature of information exchanged, the characteristics of the exchange, including the frequency of the exchange, the particular industry and the market to which the system relates (including the characteristics of the market) and the conditions of access³⁸. With the rise of sophisticated technologies, the use of data shared within each system is a matter that should be assessed on a case-by-case basis, taking into account digital and market evolution, and specific sector related particularities. Against this background, since the particular characteristics of anti-fraud insurance information exchange systems, such as the nature and scope of the information exchanged, the design of the system and the conditions of access may vary from one system to another, a case-by-case assessment is warranted.
- (38) In its preliminary assessment, the Commission therefore assessed whether certain of the conditions of access to and participation in Insurance Link had the effect of preventing, restricting or distorting competition within the meaning of Article 101(1) TFEU.
- (39) In its preliminary assessment, the Commission also took into account the fact that when analysing the relevant elements for the appraisal of the effects of another type of information exchange system often used in the financial services sector, that is, a credit register, the Court of Justice considered that the compatibility of such a system

³⁴ Opinion of Advocate General Leger in Case C-309/99, *Wouters*, EU:C:2002:98, paragraph 61.

³⁵ See, for example, Joined Cases 209-215 and 218/78, *van Landewyck a.o. v Commission*, EU:C:1980:248, paragraph 86; Joined Cases 96-102, 104, 105, 108 and 110/82, *IAZ v Commission*, EU:C:1983:310, paragraph 20; Case 45/85 *Verband der Sachversicherer v Commission*, EU:C:1987:34, paragraph 32; Case C-309/99 *Wouters*, EU:C:2002:98, paragraph 64; Case T-193/02 *Piau v Commission*, EU:T:2005:22, paragraph 75; Case T-325/01 *DaimlerChrysler v Commission*, EU:T:2005:322, paragraph 210; *BPICA*, OJ 1977 L299/18; *FEDETAB*, OJ 1978 L224/29; *National Sulphuric Acid Association*, OJ 1980 L260/24; *Milchförderungsfonds*, OJ 1985 L35/35; *COAPI*, OJ 1995 L122/37; *EPI Code of Conduct*, OJ 1999 L 106/14.

³⁶ See, for example, Case 45/85 *Verband der Sachversicherer*, EU:C:1987:34, paragraphs 30-32.

³⁷ Paragraph (57) of the Commission's Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements, OJ C 11/1, 14.01.2011, p. 1-72 (the 'Horizontal Guidelines').

³⁸ The compatibility of an information exchange system with the Union's competition rules depends on the economic conditions on the relevant markets and on the specific characteristics of the system concerned, such as the conditions of access to it and participation in it. See, by analogy, Case C-238/05 *Asnef-Equifax, Administración del Estado v Asociación de Usuarios de Servicios Bancarios (Ausbanc)*, EU:C:2006:734, paragraph 54.

with Article 101 TFEU rests, *inter alia*, on whether the system is: “...accessible in a non-discriminatory manner, in law and in fact, to all operators active in the relevant sphere”³⁹. The Court of Justice held that: “[i]f such accessibility were not guaranteed, some ... operators would be placed at a disadvantage, since they would have less information for the purpose of risk assessment, which would also not facilitate the entry of new operators on to the market”⁴⁰.

- (40) The Commission also took into account the fact that there are circumstances in which information exchange systems may be restrictive of competition⁴¹, for example, in certain situations where systems are engineered in the form of an exclusive exchange of information⁴².
- (41) In order to assess the effects of agreements or decisions or practices within the meaning of Article 101(1) TFEU, it is necessary to consider the actual context to which they belong, in particular, the economic and legal context in which the undertakings concerned operate, the nature of the goods or services affected, as well as the real conditions of the functioning and the structure of the market or markets in question⁴³.
- (42) In order to establish whether an agreement constitutes a restriction of competition by effect within the meaning of Article 101(1) TFEU, the Court of Justice consistently held that “*the competition in question should be assessed within the actual context in which it would occur in the absence of the agreement in dispute*”⁴⁴. In other words, the competition in question should be compared with the degree of competition that would have existed if the decision had not been taken by the association of undertakings. This involves assessing how competition would have operated in the market⁴⁵ absent such a decision⁴⁶. Accordingly, in terms of counterfactual, in its

³⁹ Case C-238/05 *Asnef-Equifax, Administración del Estado v Asociación de Usuarios de Servicios Bancarios (Ausbanc)*, EU:C:2006:734, paragraphs 60 and 72.

⁴⁰ Case C-238/05 *Asnef-Equifax, Administración del Estado v Asociación de Usuarios de Servicios Bancarios (Ausbanc)*, EU:C:2006:734, paragraph 60. Commission Regulation 267/2010/EU of 24.03.2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector OJ L 83/1, 30.3.2010 which expired on 31.03.2017, reflected a similar principle in setting out the conditions for exemption from the applicability of Article 101(1) TFEU of certain joint compilations, tables and studies in the insurance sector (Article 3(2)(d)). Indeed, the exemption applied, *inter alia*, on condition that the compilations, tables and studies “...are made available on reasonable, affordable and non-discriminatory terms, to any insurance undertaking which requests a copy of them, including insurance undertakings which are not active on the geographic or product market to which those compilations, tables or study results refer...”

⁴¹ Paragraph 58 of the Horizontal Guidelines.

⁴² As indicated in paragraph 70 of the Horizontal Guidelines, an exclusive exchange of information can lead to anticompetitive foreclosure. This may occur when the exchange of information places unaffiliated competitors at significant disadvantage compared to the companies affiliated to the exchange system. Such foreclosure is possible where the information exchanged is of strategic importance and covers a significant part of the market.

⁴³ Case C-382/12 P, *MasterCard and Others v Commission*, EU:C:2014:2201, paragraph 165 and the case law cited; Case C-307/18, *Generics (UK) and Others*, EU:C:2020:28, paragraph 116; Case C-345/14 *Maxima Latvija*, EU:C:2015:784, paragraphs 27 and 28.

⁴⁴ Case C-56/65, *Société Technique Minière v Maschinenbau Ulm*, EU:C:1966:38, p. 250; Case C-31/80, *L'Oréal v De Nieuwe AMCK*, EU:C:1980:289, paragraph 19; Case C-551/03 P, *General Motors*, EU:C:2006:229, paragraph 72; Case C-382/12 P, *MasterCard and Others v Commission*, EU:C:2014:2201, paragraph 161.

⁴⁵ Opinion of Advocate General Tesauro in Case C-250/92, *Gøttrup-Klim e.a. Grovvareforeninger v Dansk Landbrugs Grovvareselskab*, EU:C:1994:413, paragraph 16.

preliminary assessment, the Commission analysed the effects of the conditions of access to Insurance Link, taking into account the competitive situation that would have prevailed in the absence of those conditions.

- (43) The restrictive effects on competition may be both potential and actual⁴⁷. For a decision to fall within the scope of Article 101(1) TFEU, the potential or actual effects on competition have to be appreciable⁴⁸.

4.3.1.2. Application to this case

- (44) The Commission considered that Insurance Ireland is an association of undertakings within the meaning of Article 101(1) TFEU. The Commission found, in its preliminary assessment, that Insurance Ireland infringed Article 101(1) TFEU and Article 53(1) of the EEA Agreement by arbitrarily delaying and/or *de facto* denying access to the Insurance Link data pool and its facility to request further information. Insurance Ireland set up the conditions of access to Insurance Link that were not transparent, and applied them in an arbitrary, non-uniform, and discriminatory manner. In its preliminary assessment, the Commission found that the conditions of access to Insurance Link and the way in which they were applied had the effect of preventing, restricting or distorting competition in the supply of motor vehicle insurance services within the internal market.
- (45) In its preliminary assessment, the Commission found that the decisions, through which the infringement was achieved, were interlinked and were applied with various degrees of intensity over different periods of time:
- (a) Since at least 2009 and still at the time that the Commission carried out its preliminary assessment, access to Insurance Link has been linked to, and/or depended upon, membership of Insurance Ireland⁴⁹. Moreover, since at least 2013 and for several years thereafter, Insurance Ireland was, as a general rule, applying a policy in relation to certain undertakings that reserved Insurance Link access to Insurance Ireland members and for the benefit of Insurance Ireland members only (a ‘by members, for members only’ policy). As a result, Insurance Link and its facilities have been exclusively available to Insurance Ireland members and/or for the exclusive benefit of Insurance Ireland members.

⁴⁶ Case C-382/12 P, *MasterCard and Others v Commission*, EU:C:2014:2201, paragraph 166; Opinion of Advocate General Kokott in Case C-307/18, *Generics (UK) and Others*, EU:C:2020:28, paragraph 191; Case T-684/14, *Krka v Commission*, EU:T:2018:918, paragraph 315.

⁴⁷ Cases 142/84 and 156/84, *BAT and Reynolds v Commission*, EU:C:1987:490, paragraph 54; Case C-7/95 P, *Deere v Commission*, EU:C:1998:256, paragraph 77; Case C-238/05, *Asnef-Equifax*, EU:C:2006:734, paragraph 50; Case C-307/18, *Generics (UK) and Others*, EU:C:2020:52, paragraph 117; and paragraph (26) of the Horizontal Guidelines. In his Opinion in Case C-307/18, *Generics (UK) and Others*, EU:C:2020:28, paragraph 198, Advocate General Kokott explained: “[...] the assessment of the effects of an agreement is not limited to actual effects alone, but must also take account of potential effects. Moreover, that is only logical since [...] Article 101 TFEU protects not only actual competition, but also potential competition without which the entry of new entrants to the market could never take place”. In paragraphs 26-28, the Commission Horizontal Guidelines explain that for an agreement / decision to be restrictive by effect, it must affect either actual or potential competition to such an extent that on the relevant market negative effects on competition parameters, such as prices, quantity or the variety or quality of goods may be expected with a reasonable degree of probability.

⁴⁸ Case 5/69, *Voelk v Vervaecke*, EU:C:1969:35, paragraph 7; Case C-7/95 P, *Deere v Commission*, paragraph 77; Case C-238/05, *Asnef-Equifax*, EU:C:2006:734, paragraph 50; Case C-307/18, *Generics (UK) and Others*, EU:C:2020:28, paragraph 117.

⁴⁹ With a few exceptions, such as members of the Self-Insured Task Force, Motor Insurers’ Bureau of Ireland.

- (b) As regards eligibility, for several years, certain types of undertakings were not eligible for membership. FoS insurers were not eligible for Insurance Ireland membership between 2009 to 2011. Furthermore, Insurance Ireland membership was not possible for managing general agents until mid-2013. During 2010 and 2013, Insurance Ireland was also not accepting any new Insurance Link users. Thus, during those periods, FoS insurers and their managing general agents were denied the prospect of Insurance Ireland membership and thus *de facto* denied access to Insurance Link.
 - (c) As regards the criteria to become member of Insurance Ireland, at the time of the preliminary assessment their design and application by Insurance Ireland has not been clear, transparent, objective and non-discriminatory. Furthermore, the membership criteria have not been readily available. The membership criteria and their scope have been within Insurance Ireland's discretion and thus liable of being applied in an arbitrary, non-uniform and discriminatory manner.
 - (d) As regards the application process to become member of the association, Insurance Ireland has been handling that process in an arbitrary and discriminatory manner and delayed it for certain applicants. For example, in its preliminary assessment, the Commission found that in 2014 and 2015, Insurance Ireland indicated to a FoS insurer that it had put on hold applications for overseas membership⁵⁰. It was also not considering applications from certain managing general agents. Furthermore, Insurance Ireland indicated different membership criteria at different points in time to certain applicants, added new membership criteria for certain applicants as the process protracted, replied to queries from applicants with delay and delayed bringing applications for consideration at the level of the Board or the relevant decision-making structure of Insurance Ireland.
 - (e) Even when access to the data pool of Insurance Link was granted to certain applicants, their access to the facility to request further information was *de facto* denied and/or delayed.
- (46) In its preliminary assessment, the Commission found that the restrictions of accessing Insurance Link had significant negative consequences for the affected undertakings, impacting on their costs, the quality of their services and, hence their competitiveness.
- (47) Access to Insurance Link generally enables insurers to better assess an insurance risk, to correct a potentially erroneous claims history, which in turn allows for a smoother underwriting process. The information in Insurance Link covers a significant part of the market. As the Commission found in its preliminary assessment, there appear to be no comparable substitutes to Insurance Link⁵¹. Lack

⁵⁰ E-mail correspondence between Insurance Ireland and [an FoS insurer] of 31.10.2014.

⁵¹ Based on replies received by the Commission during the investigation, Insurance Link appears to be the most complete, comprehensive, trustworthy, cost- and resource-effective source of information available regarding the Irish motor insurance market. It is also constantly updated with new claims data. Other sources of information appear fragmented, dispersed, offer data of more limited scope and depth and/or are unreliable. These data are often of lower quality, as they are often not verified and the process of retrieving data from such other sources is often more costly and resource-intensive. See the replies to the Commission's Request for Information of 04.07.2018, to the Commission's Request for Information of 19.12.2019 and to the Commission's Request for Information of June 2020. Furthermore, the market study of the Irish Competition and Consumer Protection Commission

of information on past claims from Insurance Link poses a higher burden on affected undertakings as it can lead to a lengthier screening process, increase the risk of fraud⁵², and decrease customer satisfaction.

- (48) In particular, in its preliminary assessment, the Commission found that undertakings facing restrictions in accessing Insurance Link had a greater burden to validate customers' files at the underwriting stage due to the lack of reliable information. Those undertakings would generally be in a significant competitive disadvantage compared to the members of Insurance Ireland concerning the detection of potential fraud and file validation, because they would have to rely on less reliable or less complete sources of information during their decision making process. This would in turn make them less competitive, as it could lead to miscalculation of premiums or to higher premiums in order to compensate for the risk uncertainty.
- (49) If, owing to a deficiency of information on a prospective customer and/or claimant, insurers (and/or their agents) are unable to distinguish those prospective customers and/or claimants who are more likely to pose a risk of fraud, the risk thereby borne by such insurers will necessarily be increased. The insurers will tend to factor that risk in when calculating the cost of insurance for all customers, including those less likely to pose a greater risk, who will then have to bear a higher cost than they would have, if the insurers (and/or their agents) were in a position to evaluate the risk more precisely⁵³.
- (50) In its preliminary assessment, the Commission determined that access to Insurance Link is of significant importance for the detection of fraud not only at the underwriting stage, but also at the claims handling stage, because otherwise insurers would end up paying fraudulent claims, and those costs incurred by the insurer would ultimately be passed on collectively to its customers⁵⁴.
- (51) Overall, Insurance Link appears to enable a better allocation of resources, more efficient processes and a better quality of service for customers which can lead to more competitive prices and choice of suppliers for consumers.

(‘CCPC’), concerning public liability insurance (a type of non-life insurance) refers to Insurance Link, describing it as “[t]he most reliable source of information on the claims history of an insured party in the State” and concludes that “access to claims history data to price risk is not readily accessible for all competitors and new entrants may not have the ability to price in a sustainable manner, which could deter new entry”, available at [2020.12.22-CCPC-Public-Liability-Insurance-Market-Study.pdf](https://www.ccpcc.ie/publications/2020.12.22-CCPC-Public-Liability-Insurance-Market-Study.pdf).

⁵² The Irish motor vehicle insurance sector is characterised by high levels of fraud. Fraud is a cost factor for insurance companies and the impact of the accumulation of false or exaggerated claims affects all policy holders. See the Report on the costs of motor Insurance; prepared by the Cost of Insurance Working Group of the Irish Department of Finance in January 2017, page 120, available at: <https://www.gov.ie/en/publication/466182-report-on-the-cost-of-motor-insurance/>.

⁵³ See also, by analogy, Case C-238/05 *Asnef-Equifax, Administración del Estado v Asociación de Usuarios de Servicios Bancarios (Ausbanc)*, EU:C:2006:734, paragraph 55 and Opinion of Advocate General Geelhoed of 29 June 2006, paragraph 54.

⁵⁴ As part of claims management, the insurer would usually check the claims history of the client to identify potential fraud or exaggerated claims. For example, a customer may have had a previous accident with the same vehicle but failed to disclose this to the current insurer and thus the costs for repairs would be higher due to older faults to the car. In this context, access to Insurance Link offers the insurer the possibility to check the claims history of the customer and identify, for example, whether there have been undisclosed previous claims for the same vehicle. The request for further information facility could be used, if the relevant triggers are met, to enhance and complete the data retrieved from the data pool. This additional information may assist in establishing if there is more than one claim for a particular incident of injury or damage; establishing a clearer picture of the claimant's claims history including the number of previous claims made, any potential issues in the settlement of claims, whether legal proceedings have been initiated and providing an insight into the claimant's propensity to claim.

- (52) Therefore, in its preliminary assessment, the Commission found that, in the context of a market characterised by increasing prices⁵⁵ and where motor vehicle third-party liability insurance is compulsory⁵⁶, the restrictions to access Insurance Link resulted in significantly reducing the competitive constraints on insurers who were members of Insurance Ireland and in dissuading potential competitors from entering the market, to the ultimate detriment of consumers.

4.3.2. *Applicability of Article 101(3) TFEU and Article 53(3) of the EEA Agreement*

4.3.2.1. Principles

- (53) Pursuant to Article 101(3) TFEU and Article 53(3) of the EEA Agreement, an agreement is exempted from the prohibition of Article 101(1) TFEU and Article 53(1) of the EEA Agreement where it satisfies the following four cumulative criteria: (a) it contributes to improving the production or distribution of goods or services or to promoting technical or economic progress; (b) it allows consumers a fair share of the resulting benefit; (c) it does not impose restrictions that are not indispensable to the attainment of those objectives; and (d) it does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

4.3.2.2. Application to this case

- (54) In its preliminary assessment, the Commission took the view that Insurance Ireland had not made any arguments specifically referring to the applicability of the cumulative criteria of Article 101(3) TFEU. The Commission also considered that the reasons brought forward by Insurance Ireland for its conduct did not constitute convincing objective justifications and that they did not satisfy the criteria of Article 101(3) TFEU.
- (55) Insurance Ireland's decisions impacted on several undertakings which sought access to Insurance Link, placing them at a significant competitive disadvantage in comparison to undertakings that had access to Insurance Link. Insurance Ireland's decisions afforded it the possibility of restricting competition in respect of a substantial part of the services in question to the detriment of consumers.

4.4. **Effect on trade between Member States**

4.4.1. *Principles*

- (56) The Courts of the European Union have consistently held that, in order to find that an agreement or a practice may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability, on the basis of a set of objective factors of law or fact, that it may have an influence, direct or indirect, actual or

⁵⁵ During the period 2008 to 2016, the Irish motor insurance market has been reportedly characterised by increasing prices, with a slight price stabilisation between 2010 and 2014. According to a statement by the Irish Minister of State of the Department of Finance in 2017, the market is characterised by high premium prices. See the Report on the costs of motor Insurance prepared by the Cost of Insurance Working Group of the Irish Department of Finance in January 2017, page 41. Also on page 7, the Report notes: “[t]hroughout the country people are paying dramatically higher premiums for insuring their motor vehicles.” The Report also notes that between January 2003 and January 2008, private car insurance prices fell by 40%. This, the Report indicates, has been associated with the introduction of significant industry cost-cutting measures including those tackling fraud.

⁵⁶ Motor third-party liability insurance, which is compulsory in the entire Union (see the EU Motor Insurance Directive (2009/103/EC)), provides financial protection against claims for physical damage and bodily injury from traffic collisions.

potential, on the pattern of trade between Member States⁵⁷. The effect on trade between Member States is normally the result of a combination of several factors which, taken separately, are not necessarily decisive. Moreover, the Courts of the Union have consistently held that the effect on trade should be appreciable, although they have specified that a potential effect suffices⁵⁸.

4.4.2. *Application to this case*

- (57) According to the Commission's preliminary assessment, the access conditions regarding Insurance Link affect cross-border trade within the Union and the EEA, and contribute to the partitioning of the internal market as they appear to have particularly impacted on the ability of insurers based in other Member States (or their managing general agents) to effectively enter and/or provide competitive motor vehicle insurance services on a freedom of services basis in Ireland.
- (58) In light of that, in its preliminary assessment, the Commission found that Insurance Ireland's conduct was capable of limiting trade between Member States in a manner that might harm the attainment of the objectives of an internal market between the Member States, in particular by hindering entry or by affecting the structure of competition within the internal market.

5. INITIAL COMMITMENTS

- (59) The key elements of the commitments initially offered by Insurance Ireland on 16 February 2022 are set out in recitals (60) to (67).

5.1. **Commitments concerning access to Insurance Link**

- (60) Within 20 business days following the date on which Insurance Ireland receives formal notification of the Decision in accordance with Article 9 of Regulation (EC) No 1/2003, Insurance Ireland would:
- (a) de-couple access to Insurance Link from membership to Insurance Ireland, such that there would be no requirement for an Insurance Link user to be, or become, a member of Insurance Ireland in order to access Insurance Link or use any of its functions⁵⁹;
 - (b) adopt and make publicly available criteria for access to Insurance Link that will be fair, objective, transparent and non-discriminatory and applied uniformly to all applicants (including from other Member States)⁶⁰. As regards the applications process, from the moment when the application is submitted and until a decision has been reached, this process should last 20 business days⁶¹. Additional 10 days are foreseen to review the procedure and its outcome, if at

⁵⁷ Case 319/82 Kerpen & Kerpen EU:C:1983:374, [1983] ECR 4178; Case 31/80 L'Oréal v De Nieuwe, EU:C:1980:289, paragraph 18 and Case 42/84 Remia BV and others v Commission, ECLI:EU:C:1985:327, paragraph 22. See also Commission guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty ('Guidelines on the effect on trade concept') OJ C 101 of 27.4.2004, paragraph 23.

⁵⁸ Case 5/69 Franz Völk v Établissements J. Vervaecke, EU:C:1969:35, paragraph 5/7; Case C-219/95 Ferriere Nord SpA v Commission, ECLI:EU:C:1997:375, paragraph 19.

⁵⁹ See point 2.1 of the initial commitments and point 2.1. of the final commitments.

⁶⁰ See points 2.12 and 2.2 of the initial commitments and points 2.12 and 2.2 of the final commitments.

⁶¹ See Annex 4 (points 2.6 - 2.8) of the initial commitments and Annex 4 (points 2.6 - 2.8) of the final commitments.

first instance, access is refused or no decision is made during the 20 days⁶². Access to Insurance Link would be granted to:

- (1) any insurer that carries out insurance business in Ireland, or demonstrates an intention to carry out insurance business in Ireland on a freedom of services basis or on the basis of rules on the freedom of establishment; and
- (2) any entity appointed by an insurer to perform, under delegated authority, underwriting functions and/or claims management functions in Ireland on the insurer's behalf⁶³.

Applicants would need to submit an application form⁶⁴, to agree to input data claims into Insurance Link to enter and comply with a terms of access agreement⁶⁵ and to adhere to the 2013 Code of Practice on Data Protection for the Insurance Sector⁶⁶.

In the case of entities operating by way of delegated authority, there would be no requirement for the insurer for whom they are acting, to be, or become, a member of Insurance Ireland in order for the entity to access Insurance Link. Entities operating by way of delegated authority would also provide Insurance Link with a confirmation letter to confirm their delegated authority to act on behalf of an insurer. By submitting such a letter, entities with delegated authority limited to underwriting services would confirm that an insurer on which behalf they act would ensure that relevant claims data would be inputted in Insurance Link⁶⁷.

- (61) Within 10 business days following the date on which Insurance Ireland receives formal notification of the Decision, Insurance Ireland would:
- (a) designate an Insurance Link Application Officer⁶⁸ who would have the responsibility to independently review and determine applications for access to Insurance Link in accordance with the Insurance Link application procedure. The Application Officer would report to Insurance Ireland as regards the outcome of the process, but neither Insurance Ireland nor any external party

⁶² See Annex 4 (points 2.11 and 2.12) of the initial commitments and Annex 4 (points 2.11 and 2.12) of the final commitments.

⁶³ See Annex 1 (point 1) of the initial commitments and Annex 1 (point 1) of the final commitments.

⁶⁴ By submitting an application form, the applicants will also confirm that they would seek access to Insurance Link for the purposes of: (a) fraud detection, and/or (b) verifying the accuracy of information provided by customers.

⁶⁵ For clarity, all users will have to sign a Terms of Access Agreement (see Annex 3 of the initial commitments and Annex 3 of the final commitments), the purpose of which is to ensure compliance with data protection obligations and requirements. Indeed, in Annex 3 it is mentioned that "*these Terms of Access shall be governed and construed in all respects in accordance with the laws of Ireland*", which include, for example, the legislation implementing the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ('GDPR'). Each user of Insurance Link is subject to statutory or other external regulations, conditions and restrictions, including the GDPR obligations, which it must comply with.

⁶⁶ See Annex 1 (points 2-4 and points 7-8) of the initial commitments and Annex 1 (points 2-4 and points 7-8) of the final commitments.

⁶⁷ See Annex 1 of the initial commitments (points 5-6) and Annex 1 (points 5-6) of the final commitments.

⁶⁸ See point 2.5 of the initial commitments and point 2.5 of the final commitments. There shall be, at all times, a minimum of two designated Insurance Link Application Officers – See Annex 4 (point 3.1) of the initial commitments and Annex 4 (point 3.1) of the final commitments.

would be allowed to influence this process. Only in the case that the Application Officer decides that the applicant does not meet the criteria for access, will the Board⁶⁹ of Insurance Ireland have to validate the decision of the Application Officer or overturn it and then grant access instead⁷⁰;

- (b) introduce revised fees for the use of Insurance Link set in accordance with principles of a fee structure that must be fair, objective, transparent and non-discriminatory for all Insurance Link users. The aggregate fees charged to Insurance Link users would reflect the actual costs incurred in the operation of Insurance Link. The fees charged to individual Insurance Link users would be determined on the basis of the user's actual usage of the system over a given reference period. A one-time on-boarding fee would be charged to all new Insurance Link users to cover the costs of setting them up⁷¹.
- (62) Within 30 business days following the date on which Insurance Ireland receives formal notification of the Decision, Insurance Ireland would set up an Oversight Committee, which would be an independent appeal body composed of a Chairperson nominated by a body of the government, such as the Department of Finance, and at least five other ordinary members: (i) a person representing consumers' interests proposed by the Department of Finance; (ii) a qualified lawyer with expertise in dispute resolution, proposed by the Chair of the Chartered Institute of Arbitrators (Ireland Branch); (iii) a person representing the interests of business customers proposed by the Irish SME Association (ISME); (iv) a person proposed by the Motor Insurance Bureau of Ireland (MIBI); and (v) a person proposed by the Personal Injuries Assessment Board (PIAB)⁷². An applicant could appeal to the Oversight Committee following the refusal of its application by Insurance Ireland or its failure to act within the foreseen timeframe and the Oversight Committee would decide as last instance on refusals to grant access to Insurance Link. The Oversight Committee would review the operations of Insurance Link and it would be responsible for reporting every 3 months to the Board of Insurance Ireland in this regard, including in particular on the applications process and the activities of the Insurance Link Application Officer. It would also advise on any changes to Insurance Link operations and processes and it would advise on and act as an appeal body as regards the fee structure for access to Insurance Link⁷³.

5.2. Commitments concerning membership of Insurance Ireland

- (63) Within 20 business days following the date on which Insurance Ireland receives formal notification of the Decision, Insurance Ireland would:
- (a) adopt and make publicly available criteria for the admission to membership of Insurance Ireland for full and associate members that will be fair, objective, transparent and non-discriminatory⁷⁴. Insurance Ireland full membership would be open to insurers carrying out or intending to carry out their business in Ireland. Other entities offering services in the insurance sector in Ireland or intending to do so would be eligible for Insurance Ireland associate

⁶⁹ More precisely, a newly created Insurance Link Sub-Committee of the Board.

⁷⁰ See Annex 4 (points 2.11 and 2.12) of the initial commitments and Annex 4 (points 2.11 and 2.12) of the final commitments.

⁷¹ See Annex 7 of the initial commitments and Annex 7 of the final commitments.

⁷² See Annex 6 (point 3) of the initial commitments and Annex 6 (point 3) of the final commitments.

⁷³ See Annex 6 (point 2) of the initial commitments and Annex 6 (point 2) of the final commitments.

⁷⁴ See points 4.1, 4.2 and 4.9. of the initial commitments and points 4.1, 4.2 and 4.9 of the final commitments.

membership⁷⁵. Insurance Ireland would remove the criteria currently in force pursuant to which: (i) a membership applicant must have been in operation for at least 1 year; and (ii) an applicant must be sponsored by an existing full member of Insurance Ireland to be admitted as associate member⁷⁶;

- (b) establish a new membership application procedure with a defined timetable and a right of appeal for membership applicants. The duration of the application process would be the same as for access to Insurance Link⁷⁷;
- (c) designate a Membership Application Officer⁷⁸ that would have the responsibility and operational independence for processing applications for admission to Insurance Ireland in accordance with the membership application procedure. In the case that the Membership Application Officer decides that an applicant does not meet membership criteria, the Board⁷⁹ of Insurance Ireland will have to validate the decision of the Membership Application Officer or overturn it and then admit to membership instead⁸⁰.

- (64) Within 30 business days following the date on which Insurance Ireland receives formal notification of the Decision, Insurance Ireland would designate a Membership Appeal Board that would be composed of independent adjudicators having proven knowledge of and expertise in the insurance sector and/or dispute resolution. The Membership Appeal Board would review appeals in respect of a decision taken by the Membership Application Officers and/or the Board of Insurance Ireland that an applicant does not meet membership criteria⁸¹.

5.3. Duration and monitoring

- (65) The duration of all offered commitments would be 10 years from the date on which Insurance Ireland receives formal notification of the Decision⁸².
- (66) Insurance Ireland would appoint a Monitoring Trustee that will monitor and report to the Commission on the implementation of the initial commitments. During the first 2 years, the Monitoring Trustee would submit its report to the Commission every 6 months and, for the remainder of the duration of the initial commitments, on an annual basis⁸³.
- (67) Insurance Ireland would not circumvent or attempt to circumvent the initial commitments either by action or omission.

⁷⁵ See Annex 9 (point 2) and Annex 10 (point 2) of the initial commitments and Annex 9 (point 2) and Annex 10 (point 2) of the final commitments.

⁷⁶ See points 4.3 and 4.4 of the initial commitments and points 4.3 and 4.4 of the final commitments.

⁷⁷ See Annex 13 of the initial commitments and Annex 13 of the final commitments.

⁷⁸ See point 4.5 of the initial commitments and 4.5 of the final commitments. There shall be, at all times, a minimum of two designated Membership Application Officers – See Annex 13 (point 3.1) of the initial commitments and Annex 13 (point 3.1) of the final commitments.

⁷⁹ Or a Sub-committee of the Board.

⁸⁰ See Annex 13 (point 2.9) of the initial commitments and Annex 13 (point 2.9) of the final commitments.

⁸¹ See Annex 14 of the initial commitments and Annex 14 of the final commitments.

⁸² See point 6 of the initial commitments and point 6 of the final commitments.

⁸³ See points 7 - 13 of the initial commitments and point 7 and Annex 15 of the final commitments.

6. COMMISSION NOTICE PURSUANT TO ARTICLE 27(4) REGULATION (EC) NO 1/2003

- (68) In response to the publication on 4 March 2022 of a notice pursuant to Article 27(4) of Regulation (EC) No 1/2003 ('Market Test'), the Commission received three responses from interested third parties.
- (69) One respondent welcomed the initial commitments in their entirety and particularly the decoupling of access to Insurance Link from membership of Insurance Ireland, but expressed reservations about whether unhindered access to Insurance Link would continue after the commitments lapse. Another respondent expressed a preference for a divestment of Insurance Link from Insurance Ireland. Nevertheless, that respondent also welcomed the commitments overall and suggested amendments or sought clarification only on a few provisions. In a third response, the view was expressed that Insurance Ireland should divest Insurance Link. However, other than that concern, that response did not identify any specific shortcomings of the initial commitments.
- (70) The more detailed comments submitted during the Market Test are summarized in Section 6.1 below. Sections 6.2 and 8 set out the Commission's position in this regard.

6.1. Respondents' views on the commitments

6.1.1. Decoupling of Insurance Link from Insurance Ireland

- (71) As mentioned in recital (69), one respondent commented that the commitments are very comprehensive and identified the decoupling of access to Insurance Link from membership of Insurance Ireland as the key commitment made by Insurance Ireland. The two other respondents either expressed a preference for the divestment of Insurance Link from Insurance Ireland or called for such divestment. Therefore, it appears that also these respondents consider that decoupling access to Insurance Link from membership of Insurance Ireland is fundamental, even if they would have preferred a more far-reaching measure to achieve it. Only in one of the responses was the preference for a divestment justified by the fear that conflicts of interest would otherwise remain. However, the response did not include further justifications for this view, nor identify any specific shortcomings of the initial commitments in addressing possible conflicts of interest.
- (72) For the reasons set out in Section 8, the Commission does not consider an amendment of the initial commitments on those points necessary.

6.1.2. Duration of the commitments

- (73) As mentioned in recital (69), one respondent expressed a reservation that following the lapse of the 10 years duration of the commitments, Insurance Ireland could revert to its practice of hindering access to Insurance Link.
- (74) For the reasons set out in Section 8, the Commission does not consider an amendment of the initial commitments on this point necessary.

6.1.3. The role and/or function of the Application Officer

- (75) One respondent commented that the commitments should stipulate that the Application Officer is a senior role with the experience and authority to make genuinely independent decisions.
- (76) As it will be explained in Section 6.2, the Commission considers the seniority and experience of the Application Officer is important for strengthening the effectiveness

of the commitments. Insurance Ireland offered additional commitments in this respect.

6.1.4. The Oversight Committee in the Insurance Link application procedure

- (77) One respondent welcomed that representatives of the external bodies, such as ISME, PIAB and MIBI, will be included in the Oversight Committee that will handle appeals, among others, regarding hurdles to access Insurance Link.
- (78) The same respondent suggested that: (i) the representatives of other bodies, such as: the Irish Competition and Consumer Protection Commission, the Data Protection Commission and the Central Bank of Ireland should also become part of the Oversight Committee; and (ii) the Oversight Committee must have more than an advisory role regarding Insurance Link policies, operations, processes and fees.
- (79) For the reasons set out in Section 6.2, the Commission does not consider an amendment of the initial commitments on those points necessary.

6.1.5. Other comments

- (80) One respondent commented that it should be clarified that the commitments apply to all aspects of Insurance Link.
- (81) The same respondent pointed out that it should be ensured that self-insured organisations and other organisations with a legitimate interest in insurance claims data can get access to Insurance Link.
- (82) For the reasons set out in Section 6.2, the Commission does not consider an amendment of the initial commitments on these points necessary.

6.2. The Commission's assessment of the initial commitments in light of the comments from third parties during the Market Test

- (83) The Commission considers that the comment regarding seniority and experience of the Application Officer in charge of the Insurance Link application procedure will strengthen the ability of the initial commitments to effectively address the competition concerns outlined in its preliminary assessment. Relevant experience and seniority will provide an additional safeguard that the decisions of the Application Officer with regard to granting access to Insurance Link are taken autonomously, on the basis of the criteria set out in the commitments⁸⁴.
- (84) With respect to the request for clarification that the commitments apply to all aspects of Insurance Link (as described in recital (80)), the Commission observes that the text of the commitments is unambiguous in this regard, and does not include any limitations as regards the information included in Insurance Link.
- (85) As regards the comment that self-insured organisations and other organisations with a legitimate interest in the claims data can get access to Insurance Link (described in recital (81)), the Commission observes that currently, Insurance Link contains a self-insured database which is available to self-insured entities belonging to the Self-Insured Task Force and who access Insurance Link via their own system, which is linked with Insurance Link. Their access to Insurance Link was not identified as a competition concern in the preliminary assessment. Furthermore, the commitments provide detailed and exhaustive criteria for obtaining access to Insurance Link⁸⁵,

⁸⁴ See Annex 1 of the initial commitments and Annex 1 of the final commitments.

⁸⁵ These criteria are also detailed in Section 8 of this Decision.

which should guarantee that access to the data pool is open for entities with a legitimate interest in accessing the claims data.

- (86) The Commission observes that the role of the Oversight Committee, as described in the commitments and contrary to the suggestion of one respondent (described in recital (78)), goes beyond an advisory one. Indeed, the commitments set out clearly that the Oversight Committee⁸⁶: (i) will oversee the Insurance Link Application Officer's activity; (ii) will act as appeal body for the Insurance Link application process⁸⁷; (iii) will review and report on the operations of Insurance Link⁸⁸; (iv) will advise on changes to Insurance Link operations and processes⁸⁹ and (v) will advise on the fee structure for access to Insurance Link and hear appeals from Insurance Link users in relation to a failure to calculate the fees in accordance with the fee structure in place for Insurance Link⁹⁰.
- (87) The Commission also considers that the envisaged set-up of the Oversight Committee is such that it does not call into question the ability of this commitment to address the competition concerns identified. The composition of the Oversight Committee provides a sufficient guarantee of its independence and professionalism, with persons nominated by an established arbitration body (Chartered Institute of Arbitrators), by business customers (ISME), by bodies separate from Insurance Ireland dealing with insurance issues (PIAB and MIBI) and by the Government of Ireland (the Department of Finance). The respondent to the Market Test has welcomed the participation of these bodies in the Oversight Committee, but has not provided any justification for adding other bodies in its composition; nor has the respondent contended that the current set up may not be sufficient to address the competition concerns identified⁹¹.
- (88) The remaining comments of respondents will be assessed in Section 8 of this Decision, in the context of the proportionality assessment of the commitments.

⁸⁶ See Annex 6 of the initial commitments and Annex 6 of the final commitments.

⁸⁷ The Oversight Committee will have ultimate responsibility for determining appeals regarding decisions not to grant access to Insurance Link; decisions to withdraw, restrict or de facto deny a user's rights of access; failure to comply with any aspect of the Insurance Link application procedure resulting in a delay to the processing of applications; failure to calculate the fees charged to an Insurance Link user for access to Insurance Link in accordance with the fee structure in place for Insurance Link.

⁸⁸ The Oversight Committee will be responsible for reporting to the Board of Insurance Ireland on the operations of Insurance Link, including in particular the applications process and the activities of the Insurance Link Application Officers every 3 months. The Oversight Committee will also make available to the Board of Insurance Ireland and the Monitoring Trustee details on the outcomes of appeals brought under the appeal process for the purpose of including such details in the written reports provided to the Commission by the Monitoring Trustee regarding the implementation of the commitments.

⁸⁹ The Oversight Committee may propose changes to improve or enhance Insurance Link operations (including in particular the application procedure). Any such proposals shall be shared with the Monitoring Trustee for inclusion in its reports to the Commission. Any changes to the operations, processes and functionalities of Insurance Link, once implemented, will be notified to Insurance Link Users within 5 days of their implementation with access granted to Insurance Link users when new functionalities arise.

⁹⁰ See Annexes 6 and 7 of the initial commitments and Annexes 6 and 7 of the final commitments.

⁹¹ It is noted that the appeals lodged with the Oversight Committee will be heard by a case panel comprised of the Chairperson nominated by a body of the government, such as the Department of Finance, and two members of the Oversight Committee selected by the Chairperson. To the extent possible, the composition of the case panel shall vary from case to case, but shall include at least one member of the Oversight Committee nominated by the Chair of the Chartered Institute of Arbitrators (Ireland Branch) and one member of the Oversight Committee nominated by the Department of Finance. See Annex 5 of the initial commitments and Annex 5 of the final commitments.

7. THE REVISION OF THE INITIAL COMMITMENTS

7.1. The revision of the commitments in light of the Market Test

- (89) In response to the comments received in the Market Test, Insurance Ireland modified its initial commitments and submitted the final commitments on 17 May 2022. The final commitments modified the initial commitments by adding detailed provisions about the role, responsibilities and key competencies of the Insurance Link Application Officer, including the requirement that any candidate proposed for the role of the Insurance Link Application Officer is of a sufficient level of seniority (that is, manager level or above) and has experience in the insurance sector acquired in a professional capacity⁹².

7.2. Other changes compared to the initial commitments

- (90) Furthermore, Insurance Ireland made the following changes in the final commitments:
- (a) it set out in more detail the steps regarding the appointment, replacement, discharge and reappointment, as well as the functions and obligations of the Monitoring Trustee⁹³;
 - (b) it made further clarifications to the period for implementation of the final commitments, in order to ensure that all commitments will be implemented timely⁹⁴;
 - (c) it introduced a so-called *force majeure* clause commonly foreseen in commitments⁹⁵.

8. PROPORTIONALITY OF THE FINAL COMMITMENTS

8.1. Principles

- (91) The principle of proportionality requires that the measures adopted by institutions of the Union must be suitable and not exceed what is appropriate and necessary for

⁹² See Annex 16 of the final commitments.

⁹³ See points 1, 7 and 11 of the final commitments and Annex 15 of the final commitments.

⁹⁴ In particular, Insurance Ireland commits to: (i) instruct the System Sub-Contractor to make available on the website of Insurance Link information regarding the Insurance Link application process (e.g., the criteria for access, the application form, etc.) within 20 business days of the formal notification of the Decision (point 3.3 of the final commitments); (ii) establish the Insurance Link Sub-Committee of the Board within 20 business days of the formal notification of the Decision (point 3.4 of the final commitments); (iii) designate the Insurance Link Application Officer within 20 business days of the formal notification of the Decision (point 3.5 of the final commitments); (iv) establish the Insurance Link Oversight Committee within 30 business days of the formal notification of the Decision or by no later than 29 August 2022 (point 3.6 of the final commitments); (v) following approval by the Insurance Link Oversight Committee, introduce revised fees for the use of Insurance Link within 30 business days of the formal notification of the Decision or by no later than 29 August 2022 upon agreement with the System Sub-Contractor (point 3.7 of the final commitments); (vi) designate the Membership Application Officer within 20 business days of the formal notification of the Decision (point 5.3 of the final commitments), and (vii) establish the Membership Appeal Board within 30 business days of the formal notification of the Decision or by no later than 29 August 2022 (point 5.4 of the final commitments).

⁹⁵ This clause refers to any occurrence limiting Insurance Ireland's ability to comply with the commitments that are outside the control of Insurance Ireland and the consequences of which could not be avoided, despite the exercise by Insurance Ireland of all due care.

attaining the objective pursued⁹⁶. Where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued⁹⁷.

- (92) In the context of Article 9 of Regulation (EC) No 1/2003, the Commission must ensure, first, that the commitments in question effectively address the concerns expressed by the Commission in its preliminary assessment (effectiveness assessment) and, second, that the undertaking or association concerned has not offered less onerous commitments that would also address those concerns adequately (proportionality assessment). When carrying out that assessment, the Commission must take into consideration the interests of third parties⁹⁸. The Commission enjoys discretion when assessing the appropriateness of commitments⁹⁹.

8.2. Application to this case

- (93) The commitments offered by Insurance Ireland in their final form are sufficient to address the concerns identified by the Commission in its preliminary assessment for the reasons set out in Sections 6 and 8 of this Decision.

8.2.1. Commitments concerning access to Insurance Link

- (94) In its preliminary assessment, the Commission indicated that access to Insurance Link is linked to and/or dependent upon membership of Insurance Ireland and reserved for Insurance Ireland members only. In order to address this competition concern, Insurance Ireland commits to de-couple access to Insurance Link from membership of Insurance Ireland. That means there will be no requirement for an applicant to be, or become, a member of Insurance Ireland in order to access Insurance Link or use any of its functions. That commitment will also address the Commission's preliminary concern that certain types of market players, such as FoS insurers and/or their managing general agents, were not eligible for membership of the association for certain periods and thus, were *de facto* denied access to Insurance Link.
- (95) Insurance Ireland also commits to put in place criteria for access to Insurance Link that will be fair, objective, transparent and non-discriminatory and they will be applied uniformly to all applicants, including to applicants from other Member States. Access to Insurance Link will be granted to: (i) any insurer that carries out or demonstrates an intention to carry out insurance business in Ireland; and (ii) any entity appointed by an insurer to perform, under delegated authority, underwriting functions and/or claims management functions in Ireland on the insurer's behalf. In the case of entities operating by way of delegated authority, there is no requirement for the insurer for whom they are acting, to be, or become, a member of Insurance Ireland in order for the entity to access Insurance Link. Applicants will need to submit an application form, to agree to input data claims into Insurance Link, to enter

⁹⁶ See, for instance, Case T-260/94 *Air Inter v. Commission*, EU:T:1994:265, paragraph 144 and Case T-65/98 *Van den Bergh Foods v. Commission*, EU:T:2003:281, paragraph 201.

⁹⁷ Case 265/87 *Schröder*, EU:C:1989:303, paragraph 21; Case C-174/05 *Zuid-Hollandse Milieufederatie and Natuur en Milieu*, EU:C:2006:170, paragraph 28.

⁹⁸ Case C-441/07 P *Commission v Alrosa*, EU:C:2010:377, paragraph 41 and Case C-132/19 P *Groupe Canal + SA v. Commission*, EU:C:2020:1007, paragraphs 105-106.

⁹⁹ Case T-76/14 *Morningstar v Commission*, EU:T:2016:481, paragraph 40; Case C-441/07 P *Commission v Alrosa*, EU:C:2010:377, paragraph 94.

and comply with a terms of access agreement and to adhere to Insurance Ireland's practice code for data protection¹⁰⁰.

- (96) The access criteria and all information relating to the access and use of Insurance Link will be clearly made available on the Insurance Ireland and Insurance Link websites.
- (97) The Commission considers that those commitments will address the competition concerns identified in the preliminary assessment, according to which the criteria for becoming member of the association and thus, for accessing Insurance Link, were not clear, transparent, objective, readily available and were discriminatory. The new access criteria to access Insurance Link, as described in recital (60), will on the one hand, guarantee a transparent and predictable Insurance Link application process, and on the other hand, safeguard non-discriminatory treatment of insurers from other Member States and their agents. In the same vein, Insurance Ireland will be able to refuse access only if the defined access criteria are not met.
- (98) Insurance Ireland offers to put in place a new Insurance Link application process that will be uniform, transparent and expeditious, and will include a right to appeal. The assessment of all applications for access to Insurance Link will be performed independently by the Application Officer, a new function created to that effect. The operational independence of the Application Officer, as well as his/her experience in the insurance sector and seniority¹⁰¹ will guarantee that his/her decisions are taken autonomously without influence from any other person or body. To further warrant independence of the Application Officer's actions, the newly created Sub-Committee of the Board of Insurance Ireland will have the authority to review the decisions of the Application Officer, only if the latter refuses access. In such a scenario, the Board of Insurance Ireland will be empowered to validate the decision of the Application Officer or overturn it and then grant access instead.
- (99) Insurance Ireland also commits to set up the Oversight Committee, an independent appeal body responsible for reviewing and deciding as final instance on all matters pertaining to actions, inactions or decisions taken by the Application Officer and/or the Board of Insurance Ireland concerning access and use of Insurance Link. The appeal procedure will be uniform, transparent and expeditious and generally should take a maximum of 35 working days to conclude¹⁰². The Oversight Committee will also have the duty to review the operations of Insurance Link, including in particular the applications process and the activities of the Application Officer and provide regular reports to the Board in this regard¹⁰³. The Oversight Committee will also make available to the Board and the Monitoring Trustee the details on the outcomes of appeals brought under the appeal process. The Monitoring Trustee will include such details in the written reports submitted to the Commission. The set-up of the Oversight Committee will ensure that the Insurance Link application process and/or its use will not be at the discretion of Insurance Ireland.
- (100) The Commission considers that the commitments concerning the Insurance Link application process, in particular the new function of the Application Officer, the

¹⁰⁰ For more details, see Section 6.

¹⁰¹ As stated in the final commitments 'manager level or above'.

¹⁰² Subject to limited exceptions specified in Annex 5 of the final commitments, the Oversight Committee has maximum 35 working days to determine an appeal from the date on which an appeal is lodged with it.

¹⁰³ For more details, see Section 6 of the Decision.

Sub-Committee of the Board of Insurance Ireland reviewing only access refusals and the Oversight Committee, will adequately address the concern identified in its preliminary assessment that Insurance Ireland handled the application process in an arbitrary and discriminatory manner and delayed the process for certain applicants. The Commission considers that these commitments will ensure effective access to Insurance Link, by safeguarding that the access criteria that Insurance Ireland commits to put in place will be respected in practice. This should guarantee that Insurance Ireland will not retain the ultimate control over decisions regarding access to Insurance Link. Therefore, despite the views submitted by two respondents to the Market Test, the effectiveness of the commitment to decouple access to Insurance Link from having membership to Insurance Ireland is sufficient to meet the competition concerns expressed by the Commission in its preliminary assessment, without it being necessary to divest Insurance Link. The multi-layered set-up of the final commitments will ensure that Insurance Ireland will not influence the Insurance Link application process, its outcome or the applicants' ability to access or use Insurance Link. In view of the above, decoupling access to Insurance Link from membership to Insurance Ireland can be achieved through less onerous means than a divestment. Therefore, the commitments are both sufficient and proportionate to address the competition concerns.

- (101) In this context, it is noted that Insurance Ireland also commits to introduce a cost- and usage-based fee model for access to Insurance Link. The fees charged will depend on the intensity of Insurance Ireland usage. Therefore, the aggregate fees charged to Insurance Link users will reflect the actual costs incurred in the operation of Insurance Link. The Commission considers that the commitments on the fee structure will safeguard effective access to Insurance Link despite the lack of a divestiture. Charged fees for the use of Insurance Link will be applied on a fair, objective, transparent and non-discriminatory basis to all Insurance Link users. In this manner, they will not be prohibitive to current or prospective Insurance Link users and they will not be used as a means to directly or indirectly hinder access. Therefore, this commitment is necessary and proportionate for effectively addressing the competition concerns.
- (102) Insurance Ireland also commits to introduce fair, objective, transparent and non-discriminatory criteria for membership to the association and to put in place a streamlined, transparent and expeditious process with a right to appeal, which, generally, should take a maximum of 35 business days to conclude¹⁰⁴.
- (103) The Commission considers that these commitments will effectively address the competition concerns identified in the preliminary assessment with regard to the membership criteria and the membership application process relating to Insurance Ireland for applicants wishing to access Insurance Link. It is noted that Insurance Ireland will continue to own and administer Insurance Link, will have a role in validating refusals of access and will employ the dedicated Application Officer who will assess access requests. An open membership model of Insurance Ireland with a transparent and streamlined membership application process is necessary and proportionate to eliminate any incentives for hindering access to Insurance Link and avoid any possible conflicts of interest or circumvention risks.

¹⁰⁴ Subject to limited exceptions specified in Annex 14 of the final commitments, the Membership Appeal Board has 35 business days to determine an appeal from the date on which an appeal is lodged with it.

8.2.2. *Non-circumvention*

- (104) The Commission considers that in addition to the safeguards provided by the commitments on Insurance Ireland membership and on the fee model for Insurance Link, the specific non-circumvention clause included in the commitments will prohibit Insurance Ireland from circumventing the commitments either by action or by omission.
- (105) A breach of the commitments could lead to the application of a number of measures provided for in Regulation (EC) No 1/2003, namely reopening of the proceedings pursuant to Article 9(2), imposition of a fine pursuant to Article 23(2), point (c), or the imposition of periodic penalty payments pursuant to Article 24(1), point (c).

8.2.3. *Duration of the commitments, Monitoring Trustee and review clause*

- (106) As mentioned in recital (69), one stakeholder expressed a reservation about access to Insurance Link after the lapse of the commitments. Nevertheless, the Commission considers the 10-year duration of the commitments to be proportionate, as it is sufficiently long to address the Commission's preliminary concerns, while also providing certainty to market participants for a sufficiently long period. Furthermore, the Commission considers that the enforcement action taken in this case as well as the deterrent effect of any future enforcement action by the Commission will have a more long-term effect on Insurance Ireland's incentives with regard to ensuring fair, transparent, objective and non-discriminatory access to Insurance Link. In addition, Insurance Ireland's open membership model will also contribute to removing in the longer term incentives for hindering access to Insurance Link and to reducing conflicts of interest risks, even after this 10-year period.
- (107) The implementation of the commitments will be subject to independent expert review by a Monitoring Trustee, acting under the Commission's supervision, for the entire duration of the commitments. The use of a Monitoring Trustee is a proportionate and necessary commitment for ensuring effective implementation of this Decision.
- (108) The review clause in the final commitments provides the possibility for Insurance Ireland to amend the commitments in light of relevant regulatory or legal developments or experience gained in the implementation of the commitments. However, any such amendment must first be notified to the Commission, and can be implemented only if the Commission agrees to it. In the event of a proposal to transfer Insurance Link to an independent third party during the term of the commitments, the third party must agree to be bound by the terms of the commitments relating to Insurance Link for the remaining duration of the commitments. That agreement of the third party must be provided to the Commission for approval in advance of the transfer.
- (109) The Commission considers that the design of the review clause complemented by an obligation for any potential acquirer to abide by the commitments in case of sale of Insurance Link, is proportionate and at the same time necessary to ensure effectiveness of the commitments for their entire duration.

8.3. **Conclusion on the effectiveness and proportionality of the final commitments**

- (110) The Commission considers that the final commitments effectively meet the competition concerns identified in its preliminary assessment.

- (111) Insurance Ireland has not offered less onerous commitments in response to the preliminary assessment that would address the Commission's concerns adequately.
- (112) The Commission has taken into consideration the interests of third parties, including those of the interested third parties that have responded to the Market Test and considers that the final commitments will not hinder the legitimate commercial interests of any third party. The Commission has carefully analysed all comments received. To the extent that they contributed to meet the competition concerns identified in the preliminary assessment and were proportionate, those comments were discussed with Insurance Ireland and are reflected in the final commitments.
- (113) The need to ensure increased deterrence through the imposition of fines has been removed by the submission of the final commitments, which will be made legally binding and enforceable by this Decision. This effectively removes the risk of recidivism and has positive effects on the market structure to the ultimate benefit of consumers.
- (114) This Decision accordingly complies with the principle of proportionality.
- (115) In addition, the final commitments address only the competition concerns identified by the Commission in its preliminary assessment and are without prejudice to Insurance Ireland's legal obligations in any other area, including obligations relating to the protection of natural persons with regard to the processing of personal data¹⁰⁵.

9. CONCLUSION

- (116) By adopting a decision pursuant to Article 9(1) of Regulation (EC) No 1/2003, the Commission makes the commitments offered by the undertakings or associations concerned to meet the Commission's concerns expressed in its preliminary assessment binding upon them. Recital (13) of the Preamble of Regulation (EC) No 1/2003 states that such a decision should not conclude whether or not there has been or still is an infringement.
- (117) The Commission's assessment of whether the commitments offered are sufficient to meet its concerns is based on its preliminary assessment, representing the preliminary view of the Commission based on the underlying investigation and analysis, and the observations received from third parties following the publication of a notice pursuant to Article 27(4) of Regulation (EC) No 1/2003.
- (118) In light of the offered commitments, the Commission considers that there are no longer grounds for action on its part and, without prejudice to Article 9(2) of Regulation (EC) No 1/2003, the proceedings in this case should therefore be brought to an end.
- (119) The Commission retains full discretion to investigate and open proceedings under Article 101 TFEU and Article 53 of the EEA Agreement as regards practices that are not the subject matter of this Decision,

¹⁰⁵ As stated in Annex 3 (point 13.9) of the final commitments, the "*Terms of Access shall be governed and construed in all respects in accordance with the laws of Ireland*", which include obligations relating to the protection of natural persons with regard to the processing of personal data stemming from both national and EU law. Furthermore, according to point 9.2 of the final commitments, Insurance Ireland may need to revise the final commitments in light of relevant regulatory or legal developments, including in particular updates required in order to ensure compliance with the law relating to the protection of personal data. Any such changes have to be notified to the Commission, which will assess whether they impact the suitability of the commitments.

HAS ADOPTED THIS DECISION:

Article 1

The commitments and the accompanying Annexes listed 1 to 16 shall be binding on Insurance Ireland (Member Association) Company Limited by Guarantee.

Article 2

It is hereby concluded that there are no longer grounds for action in this case as regards the concerns set out in the preliminary assessment.

Article 3

This Decision shall apply for 10 years from the date on which Insurance Ireland (Member Association) Company Limited by Guarantee is notified thereof.

Article 4

This Decision is addressed to:

Insurance Ireland (Member Association) Company Limited by Guarantee, 5 Harbourmaster Place, IFSC, Dublin 1, D01 E7E8, Ireland.

Done at Brussels, 30.6.2022

For the Commission
(Signed)
Margrethe VESTAGER
Executive Vice-President