U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 25 1994

Joel M. Cohen, Esq.
Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017

Re: Request for Business Review by
Insurance Services Office, Inc.

Dear Mr. Cohen:

This letter responds to a letter of November 25, 1992, requesting a statement from the Department of Justice (the "Department") of its current enforcement intentions regarding the proposed development and marketing of an insurance premium-comparison product by your client, Insurance Services Office, Inc. ("ISO"). 1/ You believe that ISO's proposed conduct, to the extent that it might be considered to violate the antitrust laws, qualifies for the limited antitrust exemption provided by the McCarran-Ferguson Act.

The Department's understanding of ISO and its proposed insurance premium-comparison product is as follows. ISO is a nonprofit membership corporation consisting of approximately 1400 participating property and casualty insurers, 2/ and is licensed in all 50 states as a rating, rate service, or advisory organization. Many of those states authorize ISO to collect insurers' statistical data, to calculate advisory prospective loss costs and/or base rates and relativities or to

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1/ The submission of requested supplemental information was completed by you on August 9, 1993.

2/ Insurers may participate in ISO in one of three ways: (i) as members, who are entitled to sit on the Board of Directors; (ii) as subscribers, who may sit on committees but not on the Board; or (iii) as service purchasers, who purchase products or services but who do not participate in the governance of ISO.

develop and file with the state insurance departments advisory standardized policy forms that comply with state regulation.

ISO proposes to develop and market a product consisting of a computer database with proprietary software that would enable users to compare the premiums being charged by various insurance companies for particular types of insurance coverage. The product would cover two lines of insurance: Homeowners and Personal Automobile. The product would include premium data for these lines only for states in which insurance rates are subject to regulation. 3/ A user would be able to purchase data for either line of insurance and for any number of supported states or companies. The product would allow the user to compare the current premiums charged by any of the supported companies in a given state for any risk.

The user would load the product onto a personal computer (via diskette) and then run the comparison program. After selecting a state, the user would input a detailed description of the risk that is to be the subject of the premium comparison. For example, for the Personal Automobile comparisons, the user would input, among other factors: the amount of coverage, the model year of the car, the type of car, the driver's driving record, and the use to which the car is put.

The product would then produce a report that compares the premium charged by various companies that the user has selected for the relevant states. The report will include final premiums and the premiums for the individual coverages that make up the final premiums. For example, for Personal Automobile, the individual coverage premiums will include bodily injury liability, property damage liability, medical payments, uninsured motorists, underinsured motorists, comprehensive, and collision.

The statewide market shares of insurance companies by line also will be available.

3/ ISO will not provide either product in California, Hawaii, North Carolina, Puerto Rico and Texas, and will not provide the Personal Automobile product in Massachusetts and New Jersey. These states have either uniform rates with deviations easily available or state laws prohibiting premium comparisons.

The product will derive premiums from rates. While the rate is the price per unit of exposure, a premium is the total cost of coverage for a group of exposure units. The premium for a policy is usually calculated by multiplying the applicable rate by the number of units of exposure. Risk-dependent surcharges, such as performance car, accidents, and inexperienced operator, and discounts, such as renewal, good student, and driver training, are then applied to the premium. The process of deriving premiums from manual rates is very labor intensive. Thousands of combinations of rating variables are considered in determining a single company's premium for a given risk. The task is more complicated when multiple companies are used for comparison purposes. The proposed product will automate premium calculation, making the process much easier and faster.

All of the rate data to be used in the product to derive premiums is filed with state insurance regulators and is publicly available. The market share data to be included in the product is currently available from another publisher of insurance industry information.

ISO currently plans to market the product to property and casualty insurers and state regulators and will make it available for purchase to any other interested party.

You represent that ISO's proposed conduct is either not anticompetitive or, to the extent that it might be considered to be anticompetitive, should be considered to be covered by the limited antitrust exemption provided by the McCarran-Ferguson Act. The McCarran-Ferguson Act immunizes from antitrust enforcement "the business of insurance to the extent that such business is . . . regulated by State Law," and is not "any agreement to boycott, coerce, or intimidate, or act of boycott, coercion or intimidation." 15 U.S.C. 1012(b), 1013(b) (1976).

As you state in your October 25, 1993, letter to the Antitrust Division concerning ISO's business review request, in the absence of an exemption, the substantive antitrust issue presented by ISO's conduct is whether it facilitates or evidences an unlawful agreement among insurers to fix or stabilize prices. The Department would be concerned about the anticompetitive impact on insurance rates of the creation by competitiors of a database that permits the detailed comparison of premiums currently being charged by identified companies for homeowners and personal automobile insurance.

Accordingly, we turn to an evaluation of ISO's proposed conduct under the McCarran-Ferguson Act. The inquiry under the "business of insurance" prong of the McCarran-Ferguson exemption is whether ISO's creation of a product that could be alleged to be part of a price-fixing agreement among insurers would be part of the business of insurance. The Department believes that the proposed conduct, as you have described it, meets the definition of "business of insurance" presented in applicable precedent. 4/

To be exempt from antitrust challenge by virtue of the McCarran-Ferguson Act, conduct must not only be the business of insurance but that business must also be regulated by state law. Based upon the information you have submitted and assuming as correct your representations concerning the adequacy of existing state regulations in those states for which ISO intends to develop its product, ISO's proposed conduct would appear to meet this requirement. If state regulation is not as you represent it or if it should change, the Department could take a different position on the application of the McCarran-Ferguson Act exemption to ISO's development and marketing of its proposed premium-comparison product.

Therefore, based upon the information submitted to us and the judicial precedents to date concerning the McCarran-Ferguson Act, the Department has no current intention to challenge this conduct. The Department reserves the right, however, to bring an enforcement action in the future with regard to any aspect of ISO's proposed product or the conduct of its membership that is found to be anticompetitive in purpose or effect and that is determined to be not subject to the limited antitrust exemption provided by the McCarran-Ferguson Act.

4/ See, e.g., Union Labor Life Ins. Co. v. Pireno, 458 U.S. 119, 129 (1982), a case in which the Supreme Court found three criteria relevant to determining whether particular conduct is part of the "business of insurance": "first, whether the practice has the effect of transfering or spreading a policyholder's risk; second, whether the practice is an integral part of the policy relationship between the insurer and the insured; and third, whether the practice is limited to entities within the insurance industry."

This statement is made in accordance with the Department's business review procedure, 28 C.F.R. § 50.6 (1986). Pursuant to that regulation, your business review request and this letter will be made publicly available immediately. Your supporting data will be made publicly available within 30 days, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the business review procedure.

Sincerely,

Anne K. Bingaman
Assistant Attorney General