

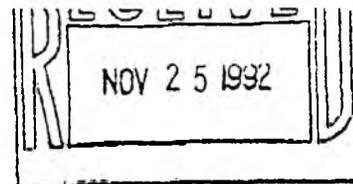
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November 25, 1992

Honorable Charles A. James
Acting Assistant Attorney General
Antitrust Division
United States Department of Justice
Tenth and Constitution, N.W.
Room 3107
Washington, D.C. 20530

Re: Request for Business Review

Dear Mr. James:

This letter is submitted on behalf of Insurance Services Office, Inc. ("ISO") to request a review by the Department of Justice, pursuant to 28 C.F.R. § 50.6 (1992), of a proposed insurance premium comparison product ISO wishes to develop and market.

ISO, a Delaware nonprofit membership corporation, is licensed or registered in all fifty states as a rating, rate service, or advisory organization and consists of approximately 1400 participating property and casualty insurers. Pursuant to state law, ISO is authorized to collect insurers' statistical data, to calculate advisory prospective loss costs and/or rates, and to develop and file with state insurance departments advisory standardized policy forms that comply with state regulation.

The proposed premium comparison product is designed to collect and electronically organize publicly available manual rate data that is filed with state insurance regulators and in use by insurers to permit easy comparisons of premiums for user-defined risks.¹ The

¹A rate is the price per unit of exposure, while a premium is the total cost of coverage for a group of exposure units. The premium for a policy is usually

proposed product will cover two lines of insurance: Homeowners and Personal Automobile. The product will include premium data for these lines only for states in which insurance rates are subject to regulation. A user will be able to purchase data for either line of insurance or both lines and for any number of supported states or companies. The product will be designed to allow the user to compare the current premiums charged by any of the supported companies in a given state for any risk. The product will not include information relating to the underwriting guidelines of the supported companies.

The product, as currently envisioned, will be in the form of a computer database with proprietary software. The user would be able to load the product onto a personal computer (via diskette) and run the comparison program. After selecting a supported state, the user would input a detailed description of the risk that is to be the subject of the premium comparison. For Personal Automobile insurance premium comparisons, the user will need to input various factors, including: 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. For Homeowners insurance premium comparisons, the user will need to input various factors, including: the amount of coverage; the age of the home; the construction type of the home; and the presence of protective devices.

Once the appropriate data has been entered, the product will produce a report that compares the premiums charged by the supported companies that the user has selected for the relevant state. The report will include final premiums and the premiums for the individual coverages that make up the final premiums. For Personal Automobile insurance, the individual coverage premiums will include: bodily injury liability; property damage liability; medical payments; uninsured motorists; underinsured motorists;

calculated by multiplying the applicable rate by the number of units of exposure. The exposure base unit varies by line of insurance: for Personal Automobile it is the number of vehicles; for Homeowners it is the number of houses. Risk-dependent surcharges and discounts are applied to the premium. The process of deriving premiums from manual rates is extremely labor intensive. There are thousands of combinations of rating variables that must be considered to determine a single company's premium for a given risk. The task is even more complicated when multiple companies are used for comparison purposes. The proposed product will offer an automated solution to this process.

comprehensive; and collision. For Homeowners insurance, the individual coverage premiums for various standard policy forms will be included. The statewide market shares of the companies by line also will be available. The software also will provide the user with options for customizing the reports in a variety of ways.

ISO does not currently compile all of the data necessary for the proposed product. Therefore, ISO plans to enter into an agreement with an outside vendor to supply the data that ISO does not already collect. ISO will include only data that is on file with state regulators and actually in use by insurers. ISO will update the data on a monthly basis.

ISO currently plans to offer the product to all property/casualty insurers, whether or not they participate in ISO. Fees will be based on the amount of data requested. ISO also will provide state regulators with the product. ISO believes that the product will be useful to insurance consumers. While ISO currently does not plan to market the product to consumers, ISO will make the product available to anyone who requests it, including consumers, agents and brokers.

We believe the proposed product is exempt from the federal antitrust laws under the McCarran-Ferguson Act, 15 U.S.C. §§ 1012-1013. The Act exempts conduct that is: (1) within the "business of insurance;" (2) subject to state regulatory jurisdiction; and (3) not "an act of boycott, coercion or intimidation." Id.

The product will aid insurers in independently determining the competitive price for a given risk. Likewise, the product will help state regulators to monitor these lines of insurance and will provide a database to help answer premium related questions. The product, therefore, falls squarely within the business of insurance and, in fact, is the type of core conduct at the heart of the McCarran-Ferguson exemption. See, e.g., SEC v. National Securities, Inc., 393 U.S. 453, 460 (1969) ("Certainly the fixing of rates is part of this business [of insurance]"); H.R. Rep. No. 873, 78th Cong., 1st Sess. 9 (1943) ("The most accurate determination of risk, premium rate, and forms of policy is desirable also in preserving the solvency of insuring companies, for there can be no true insurance unless rates are adequate"). Because ISO will furnish data only for states where insurance rates for the affected lines are subject to regulation and where ISO is licensed or registered as a rating, rate service or advisory organization, the product will be subject to state

regulation.² Finally, there is no way in which to characterize ISO's offering of the product, or the product itself, as an act of boycott, coercion or intimidation. Cf. St. Paul Fire & Marine Insurance Co. v. Barry, 438 U.S. 531, 545 n.18 (1978) (even price fixing is not a boycott, in the absence of additional "enforcement activity").

Moreover, even if the product were subject to the federal antitrust laws, we believe it should be upheld as efficiency enhancing and procompetitive. ISO believes that currently only the largest insurers have the resources to compile the publicly available manual rate data into usable premium comparison information.³ Therefore, the smaller insurers are at a disadvantage because they are unable to assess the competitiveness of their premiums on a risk-by-risk basis. The proposed product will alleviate this disparity by providing small insurers with this information. Not only will this permit all insurers to accurately assess their competitive positions, but the product may allow small insurers to identify market niches that they can effectively service. Likewise, even many larger insurers do not expend the resources necessary to compile premium comparison data in lines of insurance that they do not target. Therefore, the availability of the proposed product will facilitate entry into the supported lines by insurers that otherwise would not have the data necessary to make informed entry decisions.

ISO believes that all insurers will benefit from having this information compiled by ISO because ISO can realize economies of scale in obtaining and organizing the data that no single insurer could achieve. Even insurers that currently compile this type of data in-house will be able to realize significant cost savings that can be passed on to policyholders. State regulators also will benefit from having access to accurate, cost-effective information on premiums charged in the marketplace. Finally, because of the unconcentrated nature of the property/casualty insurance

²We note, in fact, that many states expressly authorize rating, rate service or advisory organizations to "collect, compile and distribute" premium information. E.g., Ark. Code Ann. § 23-67-116; Haw. Rev. Stat. § 431.14-107.1; Iowa Code § 515F.11; Ky. Rev. Stat. Ann. § 304.13-121; Me. Rev. Stat. Ann. tit. 24-A, § 2321-d; N.D. Cent. Code § 26.1-25-10.3; R.I. Gen. Laws § 27-44-11; Vt. Stat. Ann. tit. 8, § 4690; Wyo. Stat. § 26-14-109.

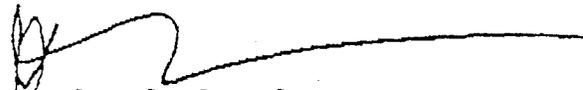
³Although ISO currently makes available some premium comparison information to insurers, it is a sampling that is not based on user-defined risks and is limited in scope.

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industry," the increased availability of premium data in a format that permits true price transparency is procompetitive.

We request that the Department state its enforcement intentions concerning ISO's proposed premium comparison product. Please call the undersigned if you require any additional information.

Very truly yours,



Douglas I. Brandon

"See To Repeal or Revise the McCarran-Ferguson Act: Hearings before the Senate Committee on the Judiciary, 100th Cong., 1st Sess. 52 (1987) (statement of Charles F. Rule) ("The structure of the property/casualty insurance industry is conducive to competition, not collusion"); Antitrust Division, The Crisis in Property-Casualty Insurance, Appendix to Tort Policy Working Group, An Update on the Liability Crisis (1987) (economic analysis shows property/casualty insurance markets are unconcentrated).