



WILLIAMS MULLEN

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June 15, 2007

VIA HAND DELIVERY

Office of the Assistant Attorney General
Antitrust Division
Department of Justice
Main Justice Building
Room 3109
950 Pennsylvania Ave. NW
Washington, DC 20530

Re: Business Review Request

Dear Sir/Madam:

In accordance with the provisions of 28 C.F.R. §50.6 (the Department of Justice Business Review Procedure), this letter is to request that the Department of Justice state its antitrust enforcement intentions, if any, with respect to plans by Ivy Capital Group, LLC ("Ivy"), to form a limited liability corporate entity, Concepta Services, LLC ("Concepta"), that will provide a new and unique form of insurance service to the commercial property insurance market.¹

I. Overview

As explained in further detail below, Concepta is designed to increase the competitive options available to insureds seeking coverage for large, commercial property insurance risks (where in excess of \$250 million in coverage is typically required). Specifically, Concepta will provide a mechanism through which insurers that do not currently offer sufficient "capacity" to place property insurance coverage of \$250 million or more to an individual insured will nevertheless be able to compete in this market in a more meaningful and significant manner.

To accomplish this result, Concepta will consolidate the available capacity of several, similarly-situated insurers, in a seamless and efficient way, to reach the coverage levels required by the insured without the necessity of costly reinsurance. Concepta will therefore provide

¹ As used in this request, the term "commercial property insurance" means fire and allied lines coverage, as distinguished from other types of property insurance, such as homeowner's or automobile insurance.

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insureds with a viable competitive alternative to the small number of large insurers that, because they have sufficient capacity on their own to insure such risks, currently dominate this market. This, in turn, will significantly enhance competition in this market, leading to lower insurance premiums for insureds (the ultimate consumers of these services).

II. Current Market Conditions/How Property Placements are Currently Handled

At the present time, many businesses, individuals and public entities engage large commercial insurance brokers, for example, Marsh & McLennan Companies, Willis Group Limited, or Aon Corporation, to assist them in the procurement of property insurance. This is especially the case where the coverage limits required by the insured are rather high. Typically, the broker, on behalf of the insured, will solicit bids for coverage from multiple insurers, seeking proposals that provide the terms and conditions on which the insurers are willing to provide such coverage. The insurers respond, indicating the terms on which they will offer to provide coverage and the premium for which they are willing to do so. Based upon the responses received from the insurers, the broker then advises the insured regarding which proposal it believes best suits the insured's needs and specifications. The insured then selects an insurer from the options presented by the broker, and a binding insurance contract is subsequently executed between the insurer and the insured.

In circumstances where the property insurance coverage limits sought are not particularly large (up to \$100 million in total coverage, for example), this process works quite well. There are typically a large number of property insurers that a broker can turn to for quotes, all of whom will likely be capable of satisfying the insureds' coverage requirements, thus providing the insured with a wide variety of competitive options. However, as the amount of coverage required increases, the number of property insurers that have the "capacity" required to satisfy the insured's coverage limits begins to become more limited, thus reducing the insured's competitive alternatives.²

When the amount of property insurance coverage required approaches and exceeds \$250 million, the number of insurers that can respond to such proposals with a quote offering to provide the full capacity needed by the customer becomes extremely limited. At this level and above, most insurers can only offer to insure a portion of that coverage, either on a layered or quota share basis.³ If the broker is even willing to consider these options, the broker faces the

² Published reports indicate that the total premiums for fire and allied lines property insurance in 2005 totaled \$15.8 billion and that, notwithstanding the presence of over 450 insurers operating in this market, the top ten underwriting groups wrote over 47% of this business and the top twenty-five groups wrote 69% of this business. Source: A.M. Best summary of 2005 market data for Fire and Allied Lines Property Insurance.

³ In a layered transaction, the insurer may offer to provide, for example, \$25 million dollars of coverage in excess of \$50 million in coverage. Thus, for the first \$50 million in claims the insurer pays no claims, and after claims totaling \$75 million have been paid, the insurer's obligation is fully satisfied. As one would expect, having



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difficult and time consuming task of trying to patch together a network of insurers to satisfy the full capacity requirements of its client. Accordingly, insurers that offer only a layered or quota share proposal are often simply not viewed by many brokers and/or insureds as presenting a viable, competitive option for large placements, and therefore they compete in the current market in only a very limited manner.

For this reason, insurers that cannot fully satisfy the insured's capacity requirements on their own (or through a "pool" of their affiliated companies), sometimes purchase reinsurance to satisfy the insured's full capacity requirements, most typically "facultative reinsurance."⁴ However, while facultative reinsurance permits a smaller insurer to respond to a submission on its own, it significantly increases the insurer's total transactional costs because (1) the insurer takes on the full credit and collection risk of the transaction, paying all claims and then seeking reimbursements from its reinsurers; and (2) the insurer must pay additional premiums to the reinsurers for providing the reinsurance. As such, and particularly depending upon the financial soundness of the reinsurer, insurer proposals that contain a facultative reinsurance component can be perceived to be less sound and more costly, and are disfavored by many insureds. Thus, even when an insurer utilizes facultative reinsurance, and responds with a proposal in which the full capacity sought by the insured is offered, the insurer's submission is frequently still viewed by brokers and insureds as being a far less attractive alternative than those of the insurers that can satisfy an insured's capacity on their own.

In short, for all of these reasons, insureds typically view their competitive options in this market (large, commercial property insurance with coverage in excess of \$250 million) as being limited to the small group of large insurers that can satisfy an insured's full capacity requirements on their own or through a pooling arrangement with affiliated entities.

different insurers on a program, at different layers, can add greater inefficiency, risk and costs for an insured, particularly where all of the insurers in the program do not have identical terms and conditions. In a quota share relationship, the insurers all cover a portion of each risk throughout the entire coverage amount. While this eliminates some of the problems associated with a layered program, inefficiencies exist nonetheless to the extent that all of the insurers do not have identical terms.

⁴ There are two types of reinsurance typically used in property insurance transactions – treaty reinsurance and facultative reinsurance. In treaty reinsurance, an insurer purchases a contract that provides coverage for the total cumulative losses that may occur across the entire "book" of business that the insurer underwrites. The insurer does not have to advise the reinsurer of each policy to which the reinsurance will apply. Instead, the insurer simply makes periodic reports to the reinsurer regarding the total volume of premium written and the total losses incurred. Alternatively, with facultative reinsurance, coverage is purchased by an insurer for a specific risk. This reinsurance is used to build capacity beyond that which the insurer can provide through its own capital or under a reinsurance treaty (*i.e.*, it is a mechanism for adding capacity on a particular risk). This process is not as efficient as treaty reinsurance because each risk must be separately considered and underwritten. Currently, the smaller and mid-sized insurers that Concepta seeks as customers are required to purchase facultative reinsurance to satisfy an insured's capacity requirements on their own.



III. Concepta

In response to the market conditions described above, Ivy has created Concepta.⁵ Concepta will create a means and venue by which insurers that cannot currently compete effectively for large property insurance coverage business will be able to do so.

a. Concepta's Role in Capacity Consolidation

Concepta's role in consolidating coverage capacity is designed to begin after an insurer has negotiated with an insurance broker and successfully secured the "lead" position to provide coverage on a program.⁶ Immediately thereafter, Concepta will consider the underwriting guidelines of its entire participant client base to ascertain as quickly and efficiently as possible which Concepta participants have underwriting guidelines that are consistent with the rates and terms of coverage that the "lead" insurer has agreed to provide to the insured. Concepta will then provide each such potential participant with a summary "term sheet" of the proposed terms, requesting that each such insurer determine whether it would like to participate on the program as a "capacity-adding" insurer. Each Concepta insurer that decides to participate in the program will be permitted to do so, on a pro rata basis, up to the total amount of capacity necessary to complete the program.

In addition, to permit the lead insurer to provide the insured with a product as similar to that offered by those insurers that are capable of providing all of the capacity necessary for the coverage on their own, the terms and conditions upon which the capacity-providing insurer participants will participate will be the same as those offered by the lead insurer. As such, the participating insurers will form, with respect to that program, the equivalent of an insurance "pool," similar to those currently formed by affiliated insurance companies, to increase capacity. This will permit the lead insurer to offer an insurance product that is comparable in virtually all respects to those of larger insurers, thus creating a truly viable alternative coverage option for brokers and insureds.

b. Concepta's Form and Structure

In accordance with Concepta's corporate documents, ownership and control of Concepta will reside exclusively with Ivy, Concepta's management and other independent third parties in no way affiliated with Concepta's insurer participants. Concepta's Limited Liability Company

⁵ Ivy is a privately-owned, Delaware limited liability company. The investors in Ivy are principals in an independent firm that provides management and financial consulting services to Fortune 500 clients.

⁶ Concepta will not play any role in the competitive process to determine which insurer will secure the "lead" insurer role; that decision will be left to the insured, typically with the advice of its insurance broker. Concepta's participants will, however, be able to negotiate more effectively for such contracts because they will negotiate based on the presumption that, through the use of Concepta's services, they will be able to satisfy the insured's full capacity requirements without reinsurance.



Agreement ("LLCA"), and other corporate documents, including a sample of the anticipated summary terms of the contractual relationships between Ivy and its initial potential participants described above, are attached.⁷

For all states in which Concepta will do business, it intends to obtain any and all licenses required to perform its functions. However, Concepta's contracts with each insurer will specify that Concepta will have to obtain binding authority from the insurer on each risk presented, and Concepta will not be authorized to make any decisions on whether or not to bind an insurance risk on the insurer's behalf. That decision will remain exclusively in the hands of each insurer customer, to be exercised independently by each of them based on their own business judgments. Thus, Concepta will perform functions quite different from those of a traditional agent or broker, and does not currently anticipate being required to obtain agent or broker licenses in any state.

IV. Concepta's Anticipated Procompetitive Effects

As described above, by increasing the number of insurers that can truly compete effectively for large, commercial property risk insurance business and increasing the ability of smaller or specialized brokers to assist larger clients on a more comprehensive basis, Concepta will have a procompetitive effect on the market for such business. This increase in competition will result from two distinct circumstances:

- Concepta participants that would not otherwise be able to submit proposals for property insurance coverage programs in which they lack the capacity to satisfy the insured's requirements on a single policy basis will now be in a position to quote such business; and
- By constituting a form of "clearinghouse" for large property insurance placement, Concepta participants will likely have greater opportunities to utilize their capacity in insurance placements, thus inevitably leading to reduced premiums for insureds.

In addition, by virtue of Concepta's unique structure and its development of an accepted policy form and efficient mechanism for capacity consolidation, Concepta can help complete an insurance program more efficiently than a commercial broker. Thus, Concepta should also reduce the broker's internal costs, and ultimately broker fees, since a broker choosing to work with Concepta will not be required to attempt to build a layered program for the insured to act as an alternative competitive option for the insured; instead, Concepta will quickly and efficiently create a fully-completed program on the terms the broker and insured originally found acceptable

⁷ Several potential Concepta participants -- insurers that do not currently offer the full capacity required on large, commercial property insurance risks on their own -- have and/or are expected to enter into consulting agreements with Ivy to study the feasibility of the Concepta project. These insurers will not receive any ownership interest in Concepta nor will they be capable of exerting any control over Concepta's operations.



with the lead. Further, Concepta will allow smaller brokers better access to insurance capacity that they would otherwise not be able to access, providing them with a means to better compete with larger brokers.

REDACTED

Finally, Ivy anticipates that Concepta will help facilitate business submissions directly from retail insurance brokers who need assistance in satisfying their client's insurance capacity needs. Concepta will deal with all brokers, but will be especially useful and relevant to smaller retail insurance brokers (local or regional) who may not have established relationships with larger insurers. This will allow the smaller insurance brokers to be able to compete more effectively with the large national firms.

V. Concepta's Procedural Safeguards Against Anticompetitive Effects

Ivy has also created institutional safeguards to insure that Concepta will not create any unintended, ancillary anticompetitive effects on competition in this market.

Specifically, Concepta's bylaws expressly provide that that the insurer underwriting guidelines that each Concepta participant shares with Concepta will not be provided to any other Concepta participant. Concepta alone will have access to this information. In short, much like an independent insurance agent selling personal lines insurance in a local neighborhood, Concepta will be aware of the underwriting guidelines of several insurer participants (to

⁸ Information concerning broker commission rates is based upon "The Economics of Insurance Intermediaries," J. David Cummins, Neil A. Doherty, *The Journal of Risk and Insurance*, 2006, Vol. 73, No. 3, at 376.



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determine which of them may be in a position to add capacity to an insurance program), but will not exchange or pass on such information between participants.

In addition, Concepta's participants are expressly barred from holding any ownership interest in Concepta, and none of the investors in Ivy will be affiliated in any way with any Concepta participant. Thus, the potential for any anticompetitive effects resulting from an exchange of competitive information among Concepta participants has been greatly minimized, if not altogether eliminated.

REDACTED

For this reason, Ivy anticipates that Concepta will in all likelihood see total annual premium throughput of less than \$500 mm, which represents less than 4% of the overall US commercial property premium volume of \$15.8 billion.

VI. Request for Assessment of Enforcement Intentions

Ivy firmly believes that Concepta will provide significant procompetitive benefits and that Concepta's LLCA and its methods of operation eliminate any potential for ancillary anticompetitive effects. Accordingly, Ivy respectfully requests that the Department of Justice issue a Business Review assessment of Concepta and confirm that the Department has no present intention to challenge Concepta's operations under the federal antitrust laws. In addition, Ivy also expressly requests that the Department provide its views on Concepta both in light of, and without regard to, the McCarran-Ferguson Act exemption, 15 USC §1012 et seq., so that if the legislation currently pending in Congress that would repeal the exemption (S.618/H.R. 1081) were to be enacted into law, the Department's assessment of Concepta would remain viable.

REDACTED

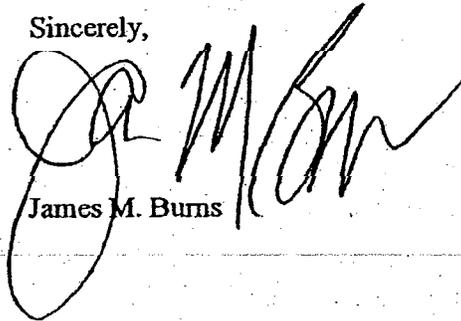


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Finally, so that Concepta may begin operations in time for the next insurance renewal cycle, Ivy requests that the Department of Justice issue its assessment as promptly as possible. Should you have any questions about Ivy or Concepta, or require any additional information to assess this request, please contact the undersigned.

Sincerely,



James M. Burns

Enclosures