CONSUMER PROTECTION AND COMPARISON TOOLS: THE ITALIAN ENFORCEMENT EXPERIENCE IN THE MOTOR VEHICLE INSURANCE SECTOR

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Keywords: Italian Competition Authority, consumer protection, unfair commercial practices, comparison tools, insurance sector, intermediaries, e-commerce

1. COMPARISON TOOLS AND CONSUMER PROTECTION

In April 2015, the Italian Competition Authority (ICA) concluded two formal investigations which had been initiated in October 2014, making the commitments presented by traders managing two comparison websites, Facile.it and 6Sicuro.it, which allow consumers to compare motor vehicle insurance policies and to purchase them through their web sites, legally binding.

Insurance product comparison tools typically include the policies of “direct companies”, that is, of those insurance firms that allow consumers to purchase insurance covers online.

The development of online insurance companies can empower consumers and enhance their welfare, disseminating more information readily accessible on market supply. This increases consumer awareness with respect to product characteristics and their prices, and allows for easier comparison, reducing search costs, increasing consumer mobility, and stimulating competition to the benefit of consumers. In addition, direct insurance companies might have cost advantages that should result in lower prices for consumers.

Comparison tools, aggregating direct companies’ information, can boost these effects; moreover, in the comparison they might also include those “traditional companies” that offer their products through agencies, in this way expanding the beneficial effects of increased transparency to a bigger share of the market.

However, in the insurance sector, where informational asymmetries are significant, this form of disintermediation might increase consumer weakness. Therefore, a suitable protection of the “average” consumer is particularly relevant in this sector, since the described beneficial effects of comparison tools will arise only if companies behave fairly, in accordance with the requirements of professional

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1 Italian Competition Authority.
diligence pursuant to Art. 5 of the EU Unfair Commercial Practices Directive (UCPD), as transposed into Article 20 of the Italian Consumer Code. Otherwise, comparison tools might even be detrimental to consumers by distorting market dynamics.

Comparison tools have recently drawn the attention of regulators and consumer protection agencies which highlighted the increasing importance of these kinds of web platforms, together with their risks and advantages for consumers.

The European Commission underlined that comparison tools play an increasingly important role in EU consumers’ decision-making (70% of consumers use them as part of their decision-making process) and have a clear potential for empowering consumers, also facilitating cross-border purchases and allowing consumers to fully enjoy the benefits of the EU Single Market. However “(…), the rapid proliferation of CTs and the influence they can have on consumers’ decisions have also given rise to concerns about their trustworthiness. If the transparency and reliability of CTs is not guaranteed, they can become a source of consumer detriment and risk undermining consumers’ trust in the market as a whole” 2

With the aim of establishing good practices on comparison websites in the insurance sector, the European Insurance and Occupational Pensions Authority (EIOPA) issued a report to promote transparency, simplicity and fairness for internet users in the market for online comparison of insurance products.3

At a national level, the Italian regulator of the insurance sector (IVASS) conducted a market survey on commercial websites dealing with motor vehicle liability insurance, aimed at verifying the transparency level of the information disclosed to the public, the comparison criteria and the existence of possible conflicts of interest that may influence the result of the comparison.4

From a more general perspective, comparison tools are specific types of internet intermediaries. Since establishing the liability of intermediaries or internet platforms is always an issue when enforcing UCPD, the interest of these ICA proceedings is also based on the fact that they establish the liability of these comparison tools, identified as “traders” under the UCPD for their commercial practices, as transposed into the Italian Consumer Code. Therefore, as with any other trader, comparison tools

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4 “Investigation into comparison websites in the Italian insurance market”, Ivass, November 2014. Available at www.ivass.it.
must provide consumers with truthful and accurate information, in accordance with the requirements of professional diligence.

2. **THE ICA’S PROCEEDINGS AGAINST MOTOR INSURANCE COMPARISON TOOLS**

2.1 The ICA’s concerns

Two proceedings were initiated in October 2014 against Facile.it and 6 Sicuro.it, which are among the most important comparison tools (hereinafter also CT) in the insurance sector in Italy. The alleged unfair commercial practices were the following:

a) The **lack of transparency of information included in comparison tool websites** with respect to:

   i) Their **business model**: with specific reference to their source of income: it was not clear that these CTs act as brokers for some insurance companies, thereby gaining fees defined by bilateral contracts between the CT and the insurance company. Therefore, the consumer was not aware of any incentive for the CT to induce purchases of specific insurance policies in order to increase profits;

   ii) The **scope of the comparison**: consumers were not properly informed that they were not screening the whole market, since the number of insurance undertakings whose products are compared, their names and the comparison’s market coverage, was not specified;

   iii) The **criteria applied for ranking**: results were ranked by total price, but products compared were not always homogeneous, differing, for example, in insurance covering additional aspects to the mandatory one (civil liability);

   iv) The main **features and characteristics of products**: detailed information was missing with specific reference to differences in insurance covers and limitations (e.g. deductibles, coverage cap, limits, exclusions etc.);

   v) Information concerning the **seller’s identity**: when purchasing, consumers were not informed as to whether they were actually buying from the CT or the insurance company.

b) Possible **misleading advertisements** concerning:

   i) Claims such as “web price”, “discount”, referred to in specific insurance policies: it was not clear whether these savings could be obtained only through the comparison websites or if they were offered independently by the insurance company, sometimes under specific conditions;

   ii) Claims such as “save up to € XXX” or “save up to 50%”: it was not specified that these savings simply stemmed from comparison, being calculated as the difference between the highest and the lowest price of a representative sample of records of consumer queries on the website itself.
c) The “opt-out” mechanism for optional covers: the comparison results - occasionally, and for some insurance companies only – included covers, such as third party liability, fire and car theft insurance, even when the consumer only requested the purchase of civil liability insurance (mandatory by law). Sometimes, the results even included optional covers that were different to those requested by the consumer.

The ICA initiated these proceedings because the described conduct could qualify as misleading information and omission, and allegedly infringed Articles 6 and 7 of the EU Unfair Commercial Practices Directive (UCPD), as transposed into Articles 21 and 22 of the Italian Consumer Code. In fact, the lack of transparency on the characteristics of the service, the real source of the savings advertised on comparison tools, and the lack of information on the actual insurance firms included in the comparison could deceive the average consumer, and cause decisions to be taken that would otherwise not have been made.

Moreover, the lack of transparency concerning the economic incentives of the traders - differing among companies and also depending on the additional covers sold – have been considered likely to deceive consumers with regard to the impartiality of the comparison tool.

Finally, the “opt out” mechanism on additional covers and the inclusion in the comparison results of policies which have not been requested by the consumer, might alter the ranking, thus inducing consumers to choose those companies and policies which might ensure more profits for the comparison tool itself, and distorting consumers’ economic choices.

2.2 The commitments of the parties

To address the concerns stated by the ICA in the initiation of proceedings, Facile.it and 6Sicuro.it offered commitments that can be summarised as follows:

a) to provide detailed information on the website about: the business model of the comparison tool, the names of the insurance companies with whom the CT have commercial agreements, the companies included in the comparison and their total market share, the commercial relationship and the fees agreed upon with each insurance company;

b) to provide more transparent and detailed information on the website on the specific meaning of advertised savings (either when they are derived from a mere comparison between competitors or when they stem from specific tariffs applied by comparison websites). For example, the claim “save up to € xxx” will become “compare companies and save up to € XXX; discover how we calculate these savings”, with a link to a new web page, where more detailed information is given;

c) to include covers in the records that are additional to the mandatory civil liability insurance only if they are requested by consumers. Additional covers, if not requested, will be included in the comparison results only if the total price of the product is lower than the civil liability insurance. More generally, any additional cover can be added by the consumer only with an opt-in mechanism.
The Italian Competition Authority accepted the described commitments and made them mandatory without assessing whether the conduct infringed the Consumer Code. Comparison tool traders were also required to publish the full text of their commitments on the home page of their websites for 90 days.

3. CONCLUSIONS

The commitments of Facile.it and 6Sicuro.it, which the ICA made mandatory, resolved the concerns that prompted the initiation of the two proceedings.

A particularly detailed set of information has been introduced on CT websites, allowing consumers to be fully informed of the scope of the comparison by including the names of the companies compared as well as their total market share. Comparison is now carried out with more transparent ranking criteria, including more homogeneous products. The business model of the CTs and the functioning of the comparison process are described to a great extent. CT incentives are fully disclosed, releasing transparent information to consumers not only on commercial relationships with each insurance company, but also on the different fee levels agreed upon with each of them.

Moreover, CTs introduced an opt-in mechanism for the purchase of additional covers, requiring the consumer’s express consent in order to include services that are additional to the main one (mandatory civil liability insurance), rather than inferring the consent by using default pre-flagged options. This is compliant with the principles stated in the Directive on Consumer Rights, although it does not apply to financial services.

In its final decisions, the ICA emphasised the potential beneficial effect of motor insurance comparison tools for consumers, also because of the positive influence on the competitive dynamics of the motor insurance sector, together with the risk that consumers’ economic behaviour and market dynamics might be distorted if transparency and impartiality were not guaranteed.

The ICA is still monitoring the sector, ensuring a level playing field in the market. In this respect, it is interesting to note that, with specific reference to the opt-in mechanism for additional covers to the mandatory motor insurance, the ICA concluded two proceedings in March 2015 against two direct

5 Directive 2011/83/EU of the European Parliament. More specifically, Art. 22 “Additional payments” states: “Before the consumer is bound by the contract or offer, the trader shall seek the express consent of the consumer to any extra payment in addition to the remuneration agreed upon for the trader’s main contractual obligation. If the trader has not obtained the consumer’s express consent but has inferred it by using default options which the consumer is required to reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this payment.”
insurance companies, Linear (Unipol Group) and Zuritel. As a result of the commitments of these two companies, made mandatory by the ICA, additional covers will be added by consumers through opt-in mechanisms only. This result strengthens the commitments of the CTs, aiming to induce a switch from opt-out to opt-in mechanisms for additional covers, for all insurance companies and CTs, which guarantee more transparency and comparability in the market.