WHICH CONSEQUENCES IN THE INSURANCE MARKET FOR THE END OF THE BLOCK EXEMPTION?

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Abstract: In 1992 the European Commission adopted an exempting regulation for the insurance market that was replaced in 2010 by the so called Insurance Block Exemption Regulation (IBER) that will expire on 31 March 2017. The exemption regards the application of competition rules to certain types of agreements in the insurance sector, joint compilations, tables and studies which involve the exchange of information between insurers; and also the common coverage of risk via co-(re)insurance pools. On 17 March, the European Commission released a report focusing on the future of the Insurance Block Exemption Regulation in which it is recommended to not renew IBER. This recommendation comes from the consideration that consumers were not receiving a fair share of the resulting benefits from the cooperation exempted by IBER and that is a Commission’s long-term strategy to eliminate industry-specific exemptions from competition law. This paper aims to investigate, under a law and economics approach, if other factors can be relevant in deciding to not provide any more exemptions for the insurance companies. After an introduction, in the following part, the economics effects of the exchange of information are analysed in terms of asymmetric information remedy and competition restrictions; then the story of the block exemption is presented and the next paragraph deals with the change in the insurance market after the end of the exemption; finally, some conclusive remarks are drawn in the light of the Big Data era.

1. INTRODUCTION

In 1992 the European Commission decided to introduce an exempting regulation for the insurance market\(^2\). Since then, the Commission has enacted three Block Exemption Regulations for the Insurance sector (IBER).

The current IBER was adopted on 24 March 2010 and will expire on 31 March 2017\(^3\).

This Regulation grants an exemption to the application of competition rules to certain types of agreements in the insurance sector, joint compilations, tables and studies which involve the exchange of information between insurers; and also the common coverage of risk via co-(re)insurance pools.

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\(^1\) University of Salento.

\(^2\) “Commission Regulation on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector”, no. 3932/92 of 21 December 1992.

\(^3\) “Commission Regulation on the application of Article 101(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector”, OJ L 83, 30.3.2010, of 24 March 2010.
On 17 March 2016, the European Commission released a report focusing on the functioning and future of the Insurance Block Exemption Regulation in which it is recommended to not renew IBER⁴.

In the Commission Report the following two questions are addressed:

“Question 1: Is the insurance sector still characterised by distinct features that present a heightened need for cooperation in the fields in which the remaining IBER exemptions apply?

Question 2: If so, is an exceptional instrument such as a BER still needed in order to protect that enhanced need for cooperation?”

The answers presented in the Report rely on the negative consumer feedback. Particularly, the Commission concluded that consumers were not receiving a fair share of the resulting benefits from the cooperation exempted by IBER, as required for Article 101(3) to apply. Moreover, the move not to renew IBER is part of the Commission’s long-term strategy of eliminating industry-specific exemptions from competition law.

But it appears that many other factors can be relevant to decide to not provide any more the exemptions for the insurance companies. Specifically, in this paper we are going to investigate, under a law and economic point of view, if the end of the exemption will have positive effects on insurance market functioning.

In the next paragraph, the effects of the exchange of information are analysed in terms of asymmetric information remedy and competition restrictions; the following paragraph deals with the change in the insurance market after the end of the exemption; then the story of the block exemption is presented; and finally, some conclusive remarks are drawn in the light of the Big Data era.

2. ASYMMETRIC INFORMATION IN INSURANCE MARKET AS A REASON FOR THE EXEMPTION

The insurance market is characterized by different problems of asymmetric information. Firstly, insured individuals do not have complete information or understanding of complicated insurance contracts and lack the ability to assess the adequacy and proportionality of the premium to their risk. Secondly, informational problems can be on the assessment of the ability of the insurance company to meet its obligations (being the insurance, a typical contract deferred in time). Thirdly, insurers suffer from lack of information regarding the risk posed by a given insured individual.

So, supply crucially depends on the process of collecting information for screening insurance applicants and monitoring their performance. At the screening stage, insurance companies need information about insured individuals’ characteristics of riskiness. After the policy is

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signed, insurers need information about customers’ behaviour to monitor the actions taken by the insured individuals.

In reality, the insurance companies encounter difficulties in obtaining data on the insured’s characteristics and behaviours; this information is never freely available. The insurance company can acquire more information about customers than the information supplied by its own customers. But in many cases this acquisition can only be done at a cost and it may be cheaper to acquire information by exchanging it with other companies.

In this sense information exchange can be seen as a useful instrument because it allows insurance companies to improve their own information about their contractual counterparts, the insured individuals.

A further argument in support of the advantages that can derive from the exchange of information comes from the utility of data on customers’ risk characteristics; this constitutes precious information that can improve the quality of the contracts supplied. As in Padilla and Pagano (2000), the exchange of information in the banking market, and in the insurance market as well, reduces the lock in effects that we can have when customers deal with banks or insurance companies that they have patronized before. While this is a disadvantage for the firm ex post, it constitutes an advantage ex ante in initial contracting, avoiding the problem associated with reduced market penetration for asymmetric information.

The law and economics approach considers risk classification on the basis of informational market failure to see whether it might reduce transaction costs and discourage opportunistic behaviour, which includes moral hazard and adverse selection. Theoretically, in determining the premium to be charged, insurers should estimate the expected losses for each individual being insured. Accordingly, insurance companies use risk classification systems in an attempt to ensure that individuals are grouped in such a way that those with a similar likelihood of loss are charged the same premium.

The insurer has to identify risks that are independent, uncorrelated and equally valued and to aggregate them in order to reduce the total risk of the set. By identifying independent risks and aggregating them into a risk pool, exploiting the law of large numbers, insurers employ a variety of methods to narrow risk pools.

An efficient risk classification reduces adverse selection, because it makes insurance more attractive to the low-risk members of the pool. In fact, placing insured individuals into separate risk pools according to their specific exposure to risk allows insurers to charge premiums that are as close as possible to the insured’s expected loss, thus attracting also the relatively low-risk customers who would otherwise drop out of insurance, finding it too expensive. At the end of the day, this virtuous process increases the availability of insurance to the whole society.

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5 Porrini (2000).
In this sense the exemption that allows the information exchange in the form of joint compilations, tables and studies, makes insurers able to collate more reliable statistics and develop a better understanding of the insured risks. This understanding allows them to rate risks more reliably and, as a result, to reduce mark-ups and ultimately the prices paid by consumers. The exchange of past statistical data is thus conducive to the efficient functioning of the insurance market. Furthermore, by undertaking such studies jointly, insurers become more aware of the likely future development of the risks in question.

However, there is a problem with this argument. In fact, it should be noted that insurers are not the only producers of services that have to deal with uncertainty. The uncertainty, which is in this case related to necessary information for premium calculation, is a normal business risk of an entrepreneur and does not in itself justify the exemption.

Moreover, we have to consider the negative effects on competition of the exchange of information, as we are going to do in the next paragraph.

3. COMPETITION RESTRICTIONS IN THE INSURANCE MARKET AS A REASON AGAINST THE EXEMPTION

The exchange of information may lead to restriction of effective competition on the market, in particular when such exchange enables companies to be aware of the future or present strategies of their competitors; moreover, the exchange of information between competitors may constitute concerted practice within Article 101(1) TFEU.

In one decision of the Italian Competition Authority (“AGCM”): information exchange behaviour has been explicitly condemned because of its anti-competitive object, i.e. because of its mere potentiality for giving rise to a collusive equilibrium.

“The car insurance agreement involved—along with other minor issues—a concerted practice of information sharing, concerning both aggregate and individual data. The former included, among others, information on revenues from sales of insurance policies, on accidents disaggregated according to the Italian provinces, as well as on the standard terms of communication between the insurer and the insured. Such aggregate data extended well beyond the kind of information that insurance firms can legally share according to the exception granted by the European Regulation (this information is indeed provided by ISVAP, i.e., the Italian industry regulator). Yet, still more relevant from the perspective of competition law was the exchange of individual data, which included current prices of individual firms for a huge number of types of risk (Grillo, 2002, pp. 161, 162).

In other words, considering the case not covered by the exemption, information exchange...
behaviour has been considered a “facilitating practice”\textsuperscript{8}.

We can define as facilitating, various practices, like information exchange, that try to limit the influence of factors that destabilize co-operative outcomes and enhance the factors that support co-operative outcomes. So, even if information sharing in itself is not a restriction on competition, the competition authorities can concentrate on detecting specific information exchanges in their role of sustaining explicit and tacit collusion.

The evaluation of information exchange behaviour as a facilitating practice comes from the fact that attempts to collude are often accompanied by intensified communication between firms and usually collusive behaviour is not directly verifiable by the competition authorities. Given that an effective policy against collusion has to rely on suppressing only behaviours facilitating collusion, the correlation between communication and collusion that shows this behaviour is a particularly credible signal of anti-competitive conduct.\textsuperscript{9}

The economic advantage of a facilitating practice consists of the effect on the firm’s environment such that every firm has the appropriate incentive to follow an industry joint profit maximizing strategy. As Kühn and Vives (1995) make clear, the sharing of information among firms produces the benefit of being better informed (this is the so-called “precision” effect) about the choices of all the firms operating in the market with subsequent collusion on a joint target.

So exchange of information behaviour is considered as a facilitating practice in the case where the competition authority cannot directly combat collusion on price. And this is quite common for two reasons. First of all, collusion is notoriously difficult to prove in court due to the scarcity or lack of statistical evidence that goes along with collusive agreements. Secondly, in many cases there are no explicit collusive agreements in a legal sense, but only forms of tacit collusion.

Nevertheless it is important to identify the specific type of information involved in the exchange because different kinds of information imply different potentially collusive effects\textsuperscript{10}. A relevant distinction is between “hard” and “soft” information. Hard information is verifiable and includes data about current and past behaviour, such as customer transaction data or cost and demand conditions. Soft information includes information about intended future conduct, such as future prices or production, new products or capacity development. The incentive to share information hangs on whether or not it is verifiable, which is often partially solved by a data provider that supplies a credible mechanism to share information truthfully and can audit.

\textsuperscript{8} Porrini (2004).

\textsuperscript{9} “The prominent role of communication in collusion cases suggests that restrictions on communication may be among the more powerful instruments to fight collusion. I will argue that certain types of communications are so highly correlated with collusion and have such a small likelihood of efficiency benefits that they are good targets for anti-trust enforcement” (Kühn, 2001, p. 171).

\textsuperscript{10} Peeperkorn (1996).
and check the information reported by their customers.

This is clear in one AGCM decision about information exchange, RAS-Generali/IMAConsulting\textsuperscript{11} that did not provide for the application of the exemption. In this case, the AGCM investigated a concerted practice by insurance companies whereby all companies acquired access to the same database which included detailed information on life assurance and pension insurance products. The AGCM found that the acquisition of the database by the insurance companies amounted to a concerted practice to exchange horizontal sensitive information between them. The decision is interesting because the market structure was not very concentrated and because the information that was included in the database was public. The AGCM argued that even in non-oligopolistic markets an exchange of information may be restrictive of competition if it concerns prices and if consumers do not benefit from the greater transparency.

As for the public nature of the information, the AGCM argued that (i) the information contained in the database was supplied by the insurance companies themselves, and was not independently collected from the market by the consultant; and that (ii) the information contained in the database had an added value in comparison with the information that individual insurance companies could collect directly from the market and from public sources.

As we have already said before about the distinction between “soft” and “hard” information, generally, the competition authorities distinguish between exchange of information that consists of communication about planned future conducts in the market, such as planned prices, production and capacity expansion, and exchange that consists of communication about the current situation and past conduct of the firm, such as information about customers, orders, input prices, past decisions, that is commonly the object of exchange of information.

Data on current or on recent past behaviour is the type of information that can be expected to increase the likelihood of collusion. This comes from theoretical considerations about the fact that the imperfect observability of actions of rivals makes collusion more difficult in the sense that periodic price wars are needed to sustain collusive outcomes\textsuperscript{12}. If past price and production choice can be revealed, the problem can be eliminated through information exchange and this facilitates collusion in the market.

Another relevant distinction is between aggregate and individual data. The exchange of this last kind of data is in general more likely to help collusion than the exchange of aggregate data concerning the whole market. Information on individual firms can be used as an instrument to monitor the firm’s behaviour. And this


\textsuperscript{12} Green and Porter (1984).
instrument is more precise if the information exchange is frequent. In fact, the higher the frequency of the information exchange the higher in general the likelihood of collusion.

A third distinction concerns private and public information. The exchange of data available to the public seems to be harmless in terms of market competition. The exchange of private information can be seen as behaviour that makes collusion easier, but in one instance the exchange of public information about intended future price can be seen as pro-collusive behaviour because this constitutes a kind of commitment with competition-distorting effects.\(^{13}\)

Another very important point in defining information exchange as a collusive behaviour is the structure of the market.

Generally economic theory teaches that collusion becomes more difficult when a number of factors increases: the number of firms in the market, product heterogeneity, inequality between companies concerning demand and costs, uncertainty about demand and costs, rate of technological development and threat of entry.\(^{14}\) Collusion becomes more difficult for different reasons. Each company’s market share diminishes and therewith the interest to stay within a collusive arrangement. Differences between the companies and their products result in increased divergence of interests between them. More information is required in order to monitor each others’ behaviour. In other words, the incentives for free riding increase while the possibilities to detect and punish free riding diminish (Peeperkorn, 1996, p. 7).

The negative effects on competition that we have just analysed are in contrast with the positive affects on asymmetric information examined in the second paragraph. We are going to see now the final possible effect in terms of market functioning in the next part.

4. The Story of the Block Exemption

In 1992 the Commission adopted a block exemption. In particular, as stated literally by art. 2, the exemption concerns agreements, decisions and concerted practices which relate to:

“(a) the calculation of the average cost of risk cover (pure premiums) or the establishment and distribution of mortality tables, and tables showing the frequency of illness, accident and invalidity, in connection with insurance involving an element of capitalization – such tables being based on the assembly of data, spread over a number of risk-years chosen as an observation period, which relate to identical or comparable risks in sufficient number to constitute a base which can be handled statistically and which will yield figures on (inter alia):

– the number of claims during the said period,
– the number of individual risks insured in each risk-year of the chosen observation period,”

\(^{13}\) Boshoff et al. (2015).

\(^{14}\) Clarke (1983).

\(^{15}\) See above: Note 1.
– the total amounts paid or payable in respect of claims arisen during the said period,

– the total amount of capital insured for each risk-year during the chosen observation period;

(b) the carrying-out of studies on the probable impact of general circumstances external to the interested undertakings on the frequency or scale of claims, or the profitability of different types of investment, and the distribution of their results”.

About information exchange on common risk premium tariffs, the Commission takes into account that, to determine its premium, an insurer needs to know statistical data on the frequency and the volume of claims made in the past. Often insurers are not in a position to collect a sufficient amount of reliable data on the basis of their own business alone and agree with other insurers to exchange data in order to draw reliable statistics.

The Regulation, in its Title II, deals with this type of agreement. In fact, it first exempts agreements for the common calculation of net premiums (premiums which only take past experience into account). These agreements should be limited to an exchange of actual statistical information on categories of identical or comparable risks, such as mortality tables or tables showing the frequency of illness or accidents.

Title II also exempts “the common carrying-out of studies of the probable impact of general circumstances external to the insurers to the frequency or scale of claims”. These studies, such as the analysis of the evolution of car repair costs or of medical costs, are necessary to adjust the pure premium in light of future developments. This adjusted pure premium is normally referred to as risk premium. It should be noted that any cooperation on the calculation of premiums going further than determining the risk premium (e.g. any exchange of information on administrative or commercial costs) could not be exempted.

In any event, the exchange of data in order to elaborate common statistics is exempted if one additional condition is fulfilled: insurers exchanging data should not be obliged to use the statistics obtained for the calculation of their premiums. In relation to this condition, common statistics should always indicate that they are purely illustrative.

The Commission Regulation made clear that the exchange of data that is more detailed than what it is necessary to calculate net premiums would not be allowed. In addition, the exchange of information aggregated in such a way that it becomes meaningless from a statistical point of view and attempts only to harmonize prices between insurers, would also not be covered by the exemption provided by the Regulation.

In a law and economics literature, the introduction of the exemption was mainly interpreted as a restriction in competition in contrast with the general tendency of the EC Commission to establish more freedom to provide service. And some critics emerged in

16 “It seems, at first sight, highly worrisome that the EC Commission has exempted certain agreements within the insurance industry from the cartel prohibition. Competitive pressure on the insurance markets has in recent years been strengthened by the impetus toward competition resulting from the freedom of establishment and freedom to provide services, as laid down in EC-Law. There is also a growing diversification through the provision of insurance services by companies outside the insurance industry,
the sense to attribute the reason of this regulation to the insurance companies lobbying. “The insurance also succeeded in convincing the European Commission that insurance is so much different from other service or products that a general exemption from the cartel prohibition is necessary. Their influence is therefore not limited to national regulators any longer” (Faure, Van den Bergh 1995 p. 83).

In the current IBER, entered into force on 1 April 2010, the exemption, subject to certain conditions, has been limited to only two cases: agreements between insurers to exchange information in the form of joint compilations, tables and studies, and the common coverage of certain types of risk by means of co-(re)insurance pools.

So the European Commission decided for a Regulation that renewed two of the four categories of agreements originally exempted, in consideration that certain information exchange can be justified in order to allow insurers to accurately assess risks and that pooling is also important in order to ensure that all risks can be covered.

In the words of the Commission, the key changes to this regulation are:

- a change to the approach to market share calculation in order to bring it into line with other general and sector-specific competition rules so that not only gross premium income earned within the pool by the participating undertakings, but also outside the pool will be taken into account;

- a broadening of the definition of ‘new risks’ to cover risks the nature of which has changed so materially that it is not possible to know in advance what subscription capacity is necessary in order to cover such a risk.

After a review of the effects of the previous regulation, given that neither agreements on standard policy conditions nor agreements on security devices are specific to the insurance sector, they were excluded from the new regulation.

The Commission declared the intention to cooperate with national competition authorities, which have been closely involved in the review to ensure that insurance companies and in particular pools, assess correctly whether their agreements meet the exemption conditions.

Critically, the revision in 2010 still provides for a special treatment of the insurance companies and, following the competition law literature, it looks like “A Missing Step in the Modernisation Stairway of EU Competition Law”. In this sense, the Commission lose the opportunity to “adopt a clear-cut policy to abrogate all BER (both general and industry specific) and to issue corresponding substitutive general guidelines—which could even absorb some or most of the content of current BER, but presenting it with a


19 Marcos, Sanchez-Graells (2010).
real informative and nonbinding character” (Marcos, Sanchez-Graells, 2010 p. 201).

On 31 March 2016, the Insurance Block Exemption Regulation (Regulation 267/2010) (IBER) is due to expire. After the Commission has conducted extensive research into the insurance sector over the past few years, on 17 March, the European Commission released a report stating that it is minded not to renew IBER20.

In the next paragraph we will focus on the possible effects on the insurance market functioning because of the end of the exemption.

5. THE INSURANCE MARKET FUNCTIONING AND REGULATION AFTER THE END OF THE EXEMPTION

The insurance industry currently benefits of an exemption from the competition rules and IBER till now have provided a safe haven by conclusively stating that certain agreements are permissible under Article 101(3).

If IBER will not be renewed, insurers and reinsurers would be less certain that their cooperation does not infringe competition rules. Certain arrangements in the insurance industry, once IBER expires, may break competition law and the Commission could act against them. On the other hand, insurance and reinsurance companies will need to assess individually the arrangements previously exempted by IBER to ensure they are still compliant and, if not, how they must be changed.

But the general competition enforcement environment in the insurance market has changed greatly since the early 90s, when the insurance industry first benefited from a block exemption. In fact, guidance and case law on the exchange of information between competitors and its effects on competition have expanded in recent years.

First of all, Commission’s most recent edition of its Horizontal Guidelines21 has a specific chapter on information exchange agreements. This sets out principles that are fully applicable to the insurance sector and provide a good basis for carrying out a self-assessment of the admissibility of the joint creation and distribution of compilations, tables and studies.

The Guidelines explicitly recognise that "[e]xchanges of genuinely aggregated data, where the recognition of individualised company-level information is sufficiently difficult, are much less likely to lead to restrictive effects on competition than exchanges of company level data". Furthermore, "[c]ollection and publication of aggregated market data (such as sales data, data on capacities or data on costs of inputs and components) by a trade organisation or market intelligence firm may benefit suppliers and customers alike by allowing them to get a clearer picture of the economic situation of a sector. Such data collection and

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20 See above: Note 3.

publication may allow market participants to make better-informed individual choices in order to adapt efficiently their strategy to the market conditions. More generally, unless it takes place in a tight oligopoly, the exchange of aggregated data is unlikely to give rise to restrictive effects on competition”.

The Guidelines protect the existence of certain type of cooperation in the insurance sector and Commission guidance is in place to help insurers to self-assess the admissibility of their cooperation. So, unlike agreements among competitors to fix prices that are illegal per se, agreements simply to exchange information are understood to be potentially beneficial to competition and therefore competition authorities must consider whether the anticompetitive harm of the information exchange outweighs the pro-competitive benefits of the exchange, and the exchange is only found unlawful if its harm outweighs its benefits.

Without the exemption, the antitrust risk posed by information exchanges will result to be directly correlated with how likely it is that the information being shared can be used to undermine competition, depending of various factors. First of all, the oligopolistic configuration that comes from the concentration of the market; the nature of the information involved; the level of aggregation of the data to prevent identification of individual competitors; the nature of the data when it was disseminated, if they are historic or forward looking; and industry structures tending to stabilize or raise prices or restrict output.

The European Commission advises that an “information exchange can constitute a concerted practice if it reduces strategic uncertainty in the market thereby facilitating collusion, that is to say, if the data exchanged is strategic”.

The strategic nature of the data is connected to the pre-existing level of transparency. So the exchange of strategic information may affect the level of transparency on the market, thus increase it and hence limit uncertainties about future conduct of the competitors and variables affecting competition, e.g. prices, output, demand, costs. Such information can be used to determine the actions of the competitors as to achieve the collusive outcome on the relevant market.

In short, EU antitrust regulators would likely see many information exchanges as increasing market transparency, reducing market complexity, buffering instability, and compensating for asymmetry. And, although the European Commission acknowledges that, under these circumstances, information exchanges may lead to efficiency gains and may allow companies to make better investment decisions and to better allocate capital resources toward growing markets, such exchanges must be properly structured to avoid being viewed as facilitating collusion.

6. CONCLUSIVE REMARKS ABOUT THE FUTURE ERA OF BIG DATA

So, after the end of the exemption and the conclusion of the “safe haven”, the insurance companies will be compelled to thoroughly
consider antitrust risks before agreeing to exchange information. But the insurance market is actually changing due to an increasing use of new datasets covering, for example, social media activity, purchasing behaviour, as well as advanced technologies to generate, store and analyse such data.

For some insurers, the production process already involves Big Data, especially in an area like telematics, which uses devices in cars to track driving behaviours and then calculate insurance premiums accordingly. But we can expect also different use of Big Data technologies for other insurance branches, such as for life insurance (for example the diffusion of fitness wristband, to track the health records).

Not only the possibility to use technological devices, but also the availability of information from social networks, will give the opportunity to the insurance companies of tailoring insurance products on the base of each customer profile, given the availability of a great amount of information that can be directly collected and elaborated by the insurance companies or by buying the services supplied by data dealers.

On the insurers side, internet and social networking give the possibility of comparison of the different policies supplied and consequent easy mobility between providers. These trends will accelerate, leading to a situation where customers will be more willing to buy ‘direct’ using their online and this will result in a fundamental redefinition of the competition strategy in the insurance market.

On the insurance companies side, Big Data can be useful in acquiring new market knowledge and making competitor comparisons, which provides instant business insights to make internal amendments to strategy, reporting, sales and technological processes.

Such complexity makes more difficult to understand how an insurer assesses risks and determines the corresponding premiums. Moreover, insurers have legitimate incentives to restrict transparency over this process, as it can be a key source of competitive advantage. Insurers, that take advantage from Big Data, could try to exchange information to acquire access to databases or data analyses from their competitors or companies that provide this kind of services.

With a reduced transparency there is a risk that Big Data could harm competition and

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22 About this, the Guidelines acknowledge that “exchange of consumer data between companies in markets with asymmetric information about consumers can also give rise to efficiencies. For instance, keeping track of the past behaviour of customers in terms of accidents or credit defaults provides an incentive for consumers to limit their risk exposure. It also makes it possible to detect which consumers carry a lower risk and should benefit from lower prices. In this context, information exchange can also reduce consumer lock-in, thereby inducing stronger competition. This is because information is generally specific to a relationship and consumers would otherwise lose the benefit from that information when switching to another company. Examples of such efficiencies are found in the banking and insurance sectors, which are characterised by frequent exchanges of information about consumer defaults and risk characteristics”.
consumers, as well as making it more challenging for regulators to monitor firms.23

Till now, the regulatory provisions, and particularly the Horizontal Guidelines, have not taken sufficiently into account the fact that in the next future world of Big Data, information sharing could be very different, also for antitrust enforcement.

In an insurance market characterised by the use of Big Data, the evaluation of the risks associated with information exchanges is going to involve peculiar highly fact-specific analyses of the nature of the information as well as the industry and market characteristics.24

It is possible that information that historically did not raise antitrust concerns may increasingly raise collusion risk. That risk is especially true in the age of Big Data because the enhanced ability of parties to access further information and to process data through technological instruments may allow them to disaggregate or extrapolate from exchanged information in ways that were not available in the past.

The challenge for the competition authorities will be, for any given information exchange, to critically evaluate the procompetitive business rationale for the exchange, as well as to evaluate who will have access to the information and in what form and what may be the impact on competition from the exchange.

Moreover, the Big Data issue is at a global level and needs a coordination between regulatory instruments that will be applied by different competition authorities facing international connections among data-providers.

For all these reasons, the end of the exemption will make the insurance market more open but more regulation appears to be necessary to overcome all the problems connected with the exchange of a new generation of information.

7. REFERENCES


