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OPINION, FINDINGS AND DECISION
ON THE OPERATION OF COMPETITION
IN PRIVATE PASSENGER MOTOR VEHICLE INSURANCE IN 2008

Docket No. R2007-03

I. PROCEDURAL HISTORY

On April 20, 2007, the Division of Insurance ("Division") issued a notice of public hearing to consider commentary, both oral and written, concerning whether the Commissioner of Insurance ("Commissioner") should renew the fix-and-establish rate-setting procedures for 2008 private passenger motor vehicle insurance rates pursuant to G.L. c. 175E, §5 ("Section 5").

The hearing took place on May 18, 2007 at the Division's office in Boston and was well attended. A representative of the Attorney General presented comment at the hearing, as well as an expert on behalf of the State Rating Bureau ("SRB"). Speakers on behalf of numerous insurance companies also submitted comments, in addition to various insurance producers. Additionally, representatives of two consumer advocacy groups provided statements as well as spokespeople, including experts, for certain insurance organizations and insurance company coalitions.

The record was left open until June 15, 2007, to receive additional written comments. Many of these same individuals and organizations provided supplemental comments during this period. Other people, including a state representative, also submitted written statements during

this period. A list of all the people, agencies, organizations and companies that provided oral and written comments in this proceeding is attached to this Decision as Appendix “A”.

II. G.L. c. 175E

In 1976 the Legislature enacted what is substantially the current version of G.L. c. 175E (“c. 175E”). Chapter 175E eliminates the system of Commissioner-fixed rates in the first instance and sets forth a presumptive process for file-and-use rate approval (competitive or company rating). The Commissioner may not automatically fix-and-establish rates under Section 113B. She can do so only if she first makes the following requisite findings under G.L. c. 175E, § 5 that indicate that the marketplace cannot sustain competitive rating: competition is either (i) insufficient to assure that rates will not be excessive; or (ii) so conducted as to be destructive of competition or detrimental to the solvency of insurers. Furthermore, the decision to allow file-and-use rating under Section 5 need not be an all-or-nothing decision; the Commissioner may make the requisite finding solely as to (1) any territory, (2) any kind of insurance, (3) any subdivision of insurance, or (4) any class of insurance.

The Commissioner has broad discretion and authority in the area of motor vehicle insurance rate regulation. *Metropolitan Property and Liability Insurance Co. v. Commissioner of Insurance*, 382 Mass. 515, 517 (1981). The Legislature has provided her with an “arsenal” of tools under c. 175E to regulate the market as it becomes more competitive. *Attorney General v. Commissioner of Insurance*, 370 Mass. 791, 795, n. 2, 353 N.E.2d 745, 750 (1976). As the Court observed in *Metropolitan Property*:

In prior decisions, the commissioners of this Commonwealth have extensively interpreted both the legislative purpose of G.L. c. 175E, and the nature of the remedial powers given to the Commissioner under the statute. The Commissioner has emphasized that the “arsenal” of regulatory powers given the Commissioner under the statute is strong evidence that the Legislature did not express an overriding preference for competitive rating. Rather, the Legislature saw the statute as a means of lowering insurance rates: “(P)ricing freedom was intended to be granted only so long as reasonable rates were guaranteed to the public. The plethora of safeguards the statute contains is ample evidence of the Legislature's unwillingness to leave the outcome to a laissez-faire marketplace.”

Id. at 522.

III. HISTORY OF DIVISION DECISIONS UNDER G.L. C. 175E

Competition was implemented almost immediately after the Legislature's promulgation of c. 175E in late 1976. It commenced on January 1, 1977 but ended approximately seven months later. The 1977 experience became a model of what not to do in a file-and-use system and Commissioners have refrained from reintroducing such system in the 30 years since such time based on various reasons.¹ Various study groups and task forces comprised of representatives from the legislature, the Attorney General, consumer groups, the industry and the Division have convened periodically over the years to review whether competition in the private passenger motor vehicle insurance market was sufficient to allow companies to file competitive rates. Invariably rates were fixed-and-established. We can no longer be held hostage to the failed 1977 experience.

Our Decision and Order is more extensive, and comprehensive, than is legally required under c. 175E.² This extensive review demonstrates that no time is better than now to utilize the file-and-use system so that consumers, and the industry, can reap the multitude of benefits of a less regulated system.

The Division has held a hearing under Section 5 of c. 175E every year since 1977. In each one of the decisions, the Commissioners have (except in the commercial market in 1981) renewed the fix-and-establish rate setting process pursuant c. 175, §113B. A variety of reasons and a few major themes permeate throughout. Commissioners in the past often have found that certain then-existing laws could have undermined increased competitive rating or found that the marketplace was too unstable to support a less regulated market. These major reasons for abstaining from competitive rating, and renewing the fix-and-establish system, no longer exist. A review of some of these decisions, beginning with the 1977 Decision, illustrates that no major issues remain in our market or in our laws to require the Commissioner to fix-and-establish private passenger motor vehicle insurance rates for 2008.

¹ File-and-use was introduced in the commercial motor vehicle market only in 1981.

² In connection with this review, we have cited to other competition hearing decisions from various Commissioners of Insurance and public reports regarding the marketplace, some of which are not part of this docket. Therefore, we have attached Appendix "B" to this Decision with all of the public records that have been cited in our Decision but that were not part of this Docket.

A. The 1977 Experience

In November 1976, following enactment of c. 175E, 22 large companies and 89 small companies submitted rate filings to the Division's State Rating Bureau ("SRB") for effect on January 1, 1977. The Commissioner allowed all of the rates, either as originally made or as reduced, to go into effect on January 1, 1977. The SRB also received a filing from the Massachusetts Motor Vehicle Reinsurance Facility ("Facility"), the residual market entity then operating pursuant to G.L. c. 175, §113H.³ The filing was made under a new Facility Plan of Operation for 1977 and proposed that (1) companies writing policies through normal marketing processes, but reinsuring those policies through the Facility, rate those policies using the voluntary market rates charged by the companies; and that (2) policies issued by brokers who could not obtain a voluntary agency contract with an insurance company and whose policies were ceded to the Facility automatically be rated at 80% of the voluntary market rates of all companies.⁴ *American Manufacturers Mutual Insurance Co. v. Commissioner of Insurance*, 374 Mass. 181, 185 – 187, 372 N.E.2d 518, 523-524 (1978).

The *overall* average rate increase across the state during this period was 14.5%, a few percentage points higher than the increase in the prior year when the Commissioner fixed-and-established the rate. *Id.* at 186, 372 N.E. 2d at 523. The rates in certain urban areas, however, increased dramatically, while significant rate *decreases* occurred in rural areas. *Id.*; *Metropolitan Property, supra* at 518, 417 N.E.2d at 3. A furor arose from the public in response to the rate increases in urban areas. As a result, in early August 1977, the Legislature enacted an automatic reduction of the 1977 rates for those insureds whose rates increased by more than 25%.⁵

Prior to the Legislature's action, however, Commissioner Stone responded to the problem by noticing a hearing under Section 5 to review the effects of competition on the market and on consumers. After the 1977 hearing in which many consumers, companies, the Attorney General, the SRB and legislators testified, Commissioner Stone determined that there was no assurance

³ The Facility was the predecessor to today's Commonwealth Automobile Reinsurers ("CAR").

⁴ Our laws no longer allow for this type of disparity in rates in the residual market.

⁵ This legislatively-mandated reduction became the subject of litigation shortly thereafter. *Automobile Rating and Accident Prevention Bureau v. Commissioner of Insurance*, 381 Mass. 592, 595, 411 N.E.2d 762, 764 (1980). This rate reduction was upheld as constitutional by the Supreme Judicial Court in *American Manufacturers*.

that competition at that time would prevent rates from being excessive. *Opinion and Findings on the Operation of Competition Among Motor Vehicle Insurers, Rendered June 1977*, (“June 1977 Decision”), P. 58. He ordered a reopening of the record and noticed a second hearing to further consider this issue. *Id.* at 59.

Numerous individuals, carriers and the Attorney General provided comments at a second hearing, following which, Commissioner Stone issued a final decision, almost simultaneously with the Legislature’s premium rollback (“August 1977 Decision”). Many asserted at the second hearing that the Commissioner had no valid option but to fix-and-establish rates throughout the state, rather than only in certain territories or classes, if he did not allow file-and-use rate making. The Attorney General, however, emphasized that the Commissioner’s discretion under this statute was quite broad “in shaping the size and extent of a remedy.” *August 1977 Decision*, P. 2.

Commissioner Stone ultimately decided to fix-and-establish *all* motor vehicle insurance rates under c. 175, § 113B, and convened a hearing within 60 days to commence the fix-and-establishment process, as statutorily required.⁶ He found that competition failed during its brief seven-month run for the following three reasons: (1) a lack of pricing information to enable consumers to “shop” for the best rates; (2) a lack of desire on the part of companies to increase their market shares; and (3) a lack of willingness on the part of companies to accept business at the prices quoted consumers.⁷ The Supreme Judicial Court in *Metropolitan Property*, endorsed these criteria as appropriate measures for determining whether to renew the fix-and-establish rate-setting procedure. 382 Mass. at 524. In determining whether the state of competition today

⁶ Commissioner Stone noted his discomfort with a partial rate-setting process and a partial competitive system: “...partial rate-setting might well cause undesirable reversals in the rate structure. For example, the average premium level in a competitive territory might turn out to be higher than that in a territory with state-made rates even though the past experience of the former was indisputably better than that of the latter. Based on the evidence at this time, we conclude that a partial determination of competitive insufficiency is unsupportable and that the application of a partial remedy is impractical.” (*Id.* at 4).

⁷ One contributing factor to the failure of competition in 1977 that was not mentioned in the *June 1977 Decision* was the Division’s resetting of the territories immediately prior to the introduction of competition. Many of the urban territories that were carved out of Boston by regulation in anticipation of the implementation of competition, such as Dorchester, Roxbury, Charlestown and Chelsea, were the territories that suffered the greatest rate increases. *American Manufacturers* at 186.

justifies the imposition of fix-and-establish ratemaking, we shall examine these criteria in light of the facts in the record of this docket.

Consumers must have ready access to information to make educated decisions. The *June 1977 Decision* found that “[r]elevant evidence on the availability of price information would include the following: the informational content of advertising; the extent of dissemination of rate information to consumers by direct mail or similar means; the swiftness with which companies informed their agents and existing policyholders of their rates; and the responsiveness of agents and companies to customer inquiries concerning rate information.” *Id.* at 25. This information was not readily available to consumers in 1977. “Consumers testified repeatedly that their shopping efforts had been stymied by an inability to obtain price quotations.” *Id.* at 28. A majority of the carriers failed to launch any advertising campaigns and instituted no direct mailing. *Id.* at 28 – 29. Consumers could shop only by telephoning individual companies or their agents to determine pricing information. In many of these instances, the consumers’ efforts were thwarted by agents’ inability to provide information. This was in part because carriers were very slow to provide rate information to their agents: “[M]ost companies waited until the threat of Division rate challenges had been minimized to begin the distributions [of rate manuals],” *Id.* at 29-30. In 1977, consumers had only a six-week window within which to find a new policy under the file-and-use system. The lack of available information and the reticence of the companies to provide actual rate quotes was debilitating.⁸

Secondly, the *June 1977 Decision* found that companies made no concerted effort to gain market share. *Id.* at 46-47. They did little, if any, advertising to grow their businesses. This failure is contrary to a truly competitive market, in which players strive to expand their market shares. Additionally, some companies discouraged their agents from expanding their businesses, and other companies set astronomically high rates likely intended to discourage substantial classes of business. *Id.* Furthermore, and more troubling, was the study’s finding that many companies “forced” insureds into the residual market. *Id.* at 41–42. Indeed, the residual market grew to 25%, which was a “substantial” increase from the prior year. *Id.* at 53.

⁸ In 1977, all policies renewed on January 1 of each year. *Id.* at 30-31.

Thirdly, the *June 1977 Decision* found that companies were unwilling to do business at their posted prices. *Id.* at 47. A “take-all-comers” law existed at the time prohibiting companies from declining any business.⁹ Companies were required to write all risks and either retain them or cede them to the Facility. The record suggests that, to circumvent this requirement, companies issued high price quotes for the business they did not wish to write so as to deter potential new business. Companies also failed to honor the prices quoted new business by ridding themselves of such business and ceding a high percentage of such business to the Facility. *Id.* at 52 - 53. Commissioner Stone found that “direct Facility placements were used to reject a high percentage of new applicants in 1977” and that “the pattern of Facility placements [constituted] sufficient grounds to conclude that sellers are unwilling to accept approximately one-fourth of all policyholders and a higher percentage of new applicants at posted prices. Such an environment necessarily implied serious market break-down.”¹⁰ *Id.* at 56-57.

Additionally, the procedure for ceding risks to the Facility and the effect on prices of ceded business were materially different in 1977 than it is today. In 1977, cessions occurred through three different venues. Companies could cede risks (consistent with today’s system), the companies’ appointed agents could cede risks or “designated brokers” (who could write policies only on behalf of the Facility) could cede risks.¹¹ *Id.* at 52. Risks ceded to the Facility by the companies or their appointed agents were charged the same rates as those charged by the

⁹ There is no “take all comers” law in the voluntary market today. *Commerce v. Commissioner of Insurance*, 447 Mass. 478, 486 (2006) (“Take all comers, since 1983, is legislatively required in the residual market only.”).

¹⁰ The Supreme Judicial Court recognized the problems in a two-tiered rating system in the residual market:

Under the 1977 Plan, the Facility Governing Committee authorized any broker or agent automatically to cede a policy to the Facility, to be carried by the Facility as a “servicing carrier policy.” From experience under previous plans, the Commissioner assumed that within the competitive rating system, these “servicing carrier policies” written at 80th percentile rates would be used only as a market of last resort for undesirable new business. The effect of the 1977 Plan, however, was to increase greatly the number of servicing carrier policies, such that approximately 35% of the insurance market was placed in this category. The filing included no information concerning the number of insureds likely to fall into each of these two classes. . . . The combined effect of the territorial reassignments, made by the Commissioner, the territorial relativities applied by the companies, and broad expansion by the Facility of servicing carrier policies written at the 80th percentile, resulted in rates which, to many policyholders, were unexpectedly and unprecedentedly high.

American Manufacturers, supra, at 186.

¹¹ The “designated brokers” were the precursors to today’s Exclusive Representative Producers (“ERPs”).

company in the voluntary market. The rates charged by the “designated brokers” were set at 80% of the voluntary market rates of all companies. *American Manufacturers* at 185–187.

B. The Early 1980’s

A few years after the promulgation of c. 175E, the Division of Insurance again reviewed the feasibility of competitive rating. In 1981, Commissioner Sabbagh determined that he was unable to renew competitive rating for private passenger market but he succeeded in doing so for commercial automobile insurance. This market, by all accounts, continues to be a success story to this day.

For the years 1980, 1981 and 1982, Commissioner Sabbagh repeatedly voiced his desire to allow companies to file their own rates, which he believed to be the intent of the Legislature by virtue of its promulgation of c. 175E in 1976:

The idea that price competition for automobile insurance is not feasible and will never come to fruition in Massachusetts is difficult to accept. It is well known that automobile rates in every other state are the subject of competition among insurers. . . . The Legislature of this Commonwealth, however, has seen fit to keep Chapter 175E in the General Laws. We understand the intent of the Legislature is, therefore, to attempt to put the automobile insurance system on a competitive scale, as it is in other states and as it is with other lines of insurance in this state. To achieve this intent and purpose, the Insurance Commissioner has been given extraordinary powers which must be exercised with extraordinary care.

*Report of the Determination of the Commissioner of Insurance Relative to the Operation of Competition Among Motor Vehicle Insurers Pursuant to M.G.L. Chapter 175E, Section 5 (“1980 Competition Decision”), P. 7-8.*¹²

Notwithstanding this belief, Commissioner Sabbagh found that all parties, whether advocates or opponents of increased competition, agreed that certain sections of Chapter 175 needed to be amended in order for more competitive rating to be successful. Specifically, the

¹² See also *Report of the Determination of the Commissioner of Insurance Relative to the Operation of Competition Among Motor Vehicle Insurers Pursuant to M.G.L. Chapter 175E, Section 5 (“1981 Competition Decision”), P.2 (“the competitive rating will work in Massachusetts provided the Insurance Commissioner exercises sufficient supervisory authority without over-regulating”); see also Report of the Determination of the Commissioner of Insurance Relative to the Operation of Competition Among Motor Vehicle Insurers Pursuant to M.G.L. Chapter 175E, Section 5 (“1982 Competition Decision”), P.5 (“we stand ready, willing and able to cooperate, participate and assist in every way with the legislature, the insurance industry and any interested party to prepare and coordinate a smooth transition from the present regulatory system to a competitive system consistent with the provisions of Chapter 175E”).*

sections of concern were: (1) The “Mandatory Offer” Law (§ 113C), which resulted in accident-free insureds subsidizing other motorists who had surcharges; (2) the “Merit Rating System” Law (§ 113P), which was believed to be too costly and inefficient; and (3) the “Facility” Law (§ 113H), which failed to “recognize the quality, kind and types of risks, an insurer in this state is required to assume involuntarily.” *1980 Competition Decision* at 5, 9. In 1981 and 1982, as the Legislature still had not acted on the requisite statutory changes, Commissioner Sabbagh again set the rates for private passenger motor vehicle insurance.¹³ *1982 Competition Decision*, P.4.

In the meantime a new impediment arose in 1982. The residual market had grown to 50% of the entire market. This fact, in and of itself, was a compelling deterrent to finding a healthy competitive environment: “[t]o think that Massachusetts licensed or authorized insurers will not voluntarily insure more than one half of the private passenger classification is strong evidence that a competitive environment is lacking and does not exist at this time.” *Id.* at 3. Although the statutory concerns repeatedly addressed by Commissioner Sabbagh in his three competition decisions were ultimately resolved by the mid-1980’s through legislative amendments,¹⁴ the residual market in Massachusetts continued to grow unabated for the next five years, thereby suppressing any appetite to challenge the decision to fix-and-establish rates.

¹³ Notwithstanding his belief that the statutory fixes were critical to the success of competition, he was abundantly clear of his disdain for the fix-and-establish system:

‘Average rates’ have meant that all companies, without regard to their own operating methods or particular expense efficiencies have not had to be concerned with rate competition within the industry. That system has led to both excessive and inadequate rates at one and the same time. Some companies have been able to operate profitably, others have not. More important however, our present system has not attracted new companies and new capital to our state. Innovation from the industry that is here is totally lacking. . . It is apparent then, that the present system has only refined inequities, discrimination, abuses, and inefficiencies that can no longer be tolerated. *1981 Competition Decision* at P. 4-5.

More than 25 years later, Commissioner Sabbagh’s description of the fix-and-establish market is timely and directly on point.

¹⁴ The “Mandatory Offer” law, G.L. c. 175, §113C, was amended as suggested under Section 17 of St. 1983, c. 241. The “Facility” law, G.L. c. 175, §113H, was changed to eliminate differential pricing in the residual market by creating a “fair and equitable apportionment among such insurance companies of premiums, losses or expenses or any combination thereof.” St. 1983, c. 241, § 17. The Division changed the merit rating regulation. Finally, the

C. Competition Hearings in the late 1980's and early 1990's

In the late 1980s, the residual market swelled to its historical maximum of approximately two-thirds of the entire market. *Opinion, Findings, and Decision on the Operation of Competition Among Motor Vehicle Insurers*, Docket No. G-89-8, June 28, 1989 (“1989 Competition Decision”), P. 3. Automobile insurance rates also were rising and the general sentiment was that changes once again were needed in our private passenger motor vehicle insurance market. Several study groups and task forces convened to identify the major problems with the system and to suggest potential remedies. Concurrently, the Legislature promulgated Chapter 273 of the Massachusetts Acts of the General Court in 1988, to “restructure the automobile insurance system so as to provide residents of the commonwealth with effective automobile insurance protection at rates which are adequate, just, reasonable and nondiscriminatory.” 1988 Mass. Legis. Serv. 273 (“1988 Mass. Reform Laws”). The reforms made changes in various areas, such as Personal Injury Protection coverage, salvage rules, adoption of standards for vehicle damage repair shops, reduced rates for less damageable vehicles or those with anti-theft devices, and implementation of the Safe Driver Insurance Plan. *Id.* Each of the Commissioners during these years sought input from the Attorney General, the SRB, the Industry and all other interested parties about how they could most effectively implement increased competition if it were appropriate to do so.

The two Attorneys General during these years, Attorneys General Shannon and Harshbarger, supported a gradual move towards increased competitive rating. In the first of these years, 1988, Attorney General Shannon, through his Insurance Division Chief, Hilary Rowen, stated that he believed that a competitive system was in the best interest of consumers and would result in greater cost controls by the companies, a general reduction in fraud and greater efficiencies in the marketplace. *Testimony of Hilary Rowen, Chief, Insurance Division Department of the Attorney General at the Competition Hearing Held Pursuant to G.L. c. 175E, § 5* (“1988 Rowen Testimony”) P. 9. Importantly, he also stated that the Legislature preferred a competitive rating system rather than a fix-and-establish rating system based on the construction

“Take-All-Comers” law that was perceived as a newly identified statutory impediment by Commissioner Hiam in his 1983 Competition Decision was eliminated in the voluntary market by the Legislature.

of c. 175E. *1988 Rowen Testimony*, P. 4. He also noted the Commissioner's broad authority under this statute and the many tools the Commissioner had at his disposal:

Thus, in the view of the Attorney General, the Commissioner may choose not to set rates for only the optional property damage coverages, may impose a flex rating system, may continue to mandate territories and age symbol relativities and may continue to mandate a safe driver insurance plan – either as an interim measure or on a long-term basis.

Id. at 5.

The Attorney General submitted a comprehensive plan for achieving competition in a gradual, conservative fashion. This plan recommended that the Commissioner institute a variety of creative measures under c. 175E, including a flex band of 10% for optional property damage coverages in all cells and territories.¹⁵ Gradually, the flex bands would be expanded to other coverages over the next three to five years provided the launch proved successful. *Id.* at 19. This would help to prevent excessive rates in certain classes and territories after the onset of competition, the Attorney General explained. *Id.*

Over the next few years, and into Attorney General Harshbarger's tenure in the early 1990's, the Attorney General continued to advocate for a gradual and conservative transition away from fix-and-establish rate-setting. In all instances, flex rating (premium capping in these instances) was recommended. In each year, the Commissioners of Insurance chose not to allow increased competition for a variety of reasons. In the first three of these years, Commissioners Singer, Gailey and Doughty wanted to give ample time to the 1988 Mass. Reform Laws to see whether any of the new provisions remedied certain problems in the market, thereby making the market riper for competitive rating. *1989 Competition Decision*, P. 4; *Opinion, Findings, and Decision on the Operation of Competition Among Motor Vehicle Insurers*, Docket No. G-90-1, July 16, 1990, P. 13-14; *Opinion, Findings, and Decision on the Operation of Competition Among Motor Vehicle Insurers*, Docket No. G-91-16, August 20, 1991, P. 11. By 1991, however, the size of the residual market was once again increasing and numerous insurance companies were fleeing the automobile market. Thus, Commissioner Doughty decided that a transition should not occur until the market had once again stabilized. *Id.* at 24.

¹⁵The "flex rating" described in the individual cells and territories is what is understood by the industry to be a premium "cap" rather than actual "flex banding" or "flex rating." The latter terms, as they are understood, apply only to statewide average rates rather than to individual cells and territories.

D. The 2002 – 2003 Hearings

In 2002, a renewed interest to reform the private passenger market arose. Attorney General Reilly wrote Commissioner Bowler on June 25, 2002, to inform her that he had conducted a study of the private passenger motor vehicle insurance market. *Attorney General Reilly Letter to Commissioner Bowler* dated June 25, 2002. He stated that the residual market was not “fair and equitable” as required under c. 175, Sec. 113H because the losses were not “fairly and equitably apportioned among the companies.” *Id.* at 2. He also raised concerns regarding the health of the voluntary market in view of the decreasing number of carriers. *Id.* at 5. The Division once again reviewed the feasibility of increased competition in rate setting. In the 2002 Competition Decision for 2003 rates, Commissioner Bowler found that rates would be excessive under the conditions at the time. Looking forward, however, she concluded: “...that it is time to form a new task force to reexamine issues relating to the current system and to the potential for competition within that system . . . I find it would be appropriate for a task force to consider alternatives that could be implemented within the fix-and-establish system including, but not limited to recommendations on appropriate subjects for endorsements and for procedures to be followed by companies that wish to utilize this approach.” *Opinion, Findings and Decision on the Operation of Competition Among Motor Vehicle Insurers*, Docket No. R2002-02, June 7, 2002, P. 4-5.

Numerous interested parties provided comments at the next Section 5 Hearing in 2003 regarding the Commissioner’s authority to implement limited forms of competition in 2004 under the “current statutory framework.” *The Operation of Competition Among Motor Vehicle Insurers*, Docket No. R2003-09, June 20, 2003, P. 1. These recommendations were offered without legal support, thus prompting Commissioner Bowler to issue an interim order requesting “explicit statutory or common law authorit[y]” in support of five specific inquiries as to her authority to introduce competition under the current system. *Id.* at 1-2. Numerous parties responded and Commissioner Bowler issued a final decision on August 8, 2003. *Opinion, Findings and Decision on the Operation of Competition Among Motor Vehicle Insurers*, Docket No. R2003-09, August 8, 2003 (“2003 Competition Decision”). The 2003 Competition Decision noted that the majority favored reform of the voluntary market through a controlled and gradual introduction of competitive rates. *Id.* at 17. Despite this consensus, vastly divergent

views existed as to how best to implement increased competitive rating under the current fix-and-establish framework. One of the companies even encouraged the Commissioner to set a rate at the high end of what was legally permissible, with the companies competitively discounting below this rate.¹⁶

Commissioner Bowler concluded that she did not have the legal authority to implement some of the suggested methods, such as flex banding, under the current fix-and-establish system of Section 113B. *Id.* at 18. Additionally, she expressed her disfavor of the hybrid approaches of expanding the authority under the fix-and-establish statute. *Id.* Accordingly, Commissioner Bowler decided against a hybrid approach and further found that the alternative of a move to full competition in 2004 was not advisable. *Id.*

IV. COMPETITION IS SUFFICIENT IN THE MASSACHUSETTS PRIVATE PASSENGER MOTOR VEHICLE INSURANCE MARKET TO ASSURE THAT 2008 RATES WILL NOT BE EXCESSIVE AND TO ASSURE THAT THE MARKET WILL NOT BE DESTRUCTIVE OF COMPETITION OR DETRIMENTAL TO THE SOLVENCY OF INSURERS.

A. Application of c. 175E

Chapter 175E governs private passenger motor vehicle insurance rates in Massachusetts. Section 5 of c. 175E manifests a legislative preference for price competition in motor vehicle insurance rates. It requires the Commissioner to review, with respect to any territory or to any kind, subdivision or class of motor vehicle insurance, whether competition is either (i) insufficient to assure that rates will not be excessive; or (ii) so conducted as to be destructive of competition or detrimental to the solvency of insurers. If the Commissioner finds that either condition exists, she must fix-and-establish the rates for such insurance or territory pursuant to G.L. c. 175, §113B. If she does not find the existence of either condition, she must allow insurance companies to “file-and-use” their own rates, subject to her review and the conditions found in the remainder of Chapter 175E. The first Section 5 criterion requires the Commissioner to determine whether conditions of monopoly or oligopoly exist so that a dominant company or companies could reap unreasonably large profits under competitive rating by charging rates that

¹⁶ Arbella recommended this measure during the 2003 Section 5 Hearing and again recommended it during this hearing.

are disproportionate to the insurance provided and disproportionate to the risk assumed.¹⁷ Under the second Section 5 criterion the Commissioner determines whether conditions of monopoly or oligopoly exist that might allow a dominant company or companies to destroy competition or drive other companies to resort to underpricing in order to compete within the market subject to the monopoly or oligopoly.

No one in this proceeding provided any facts that would support a finding that competition within the private passenger motor vehicle insurance market is either (i) insufficient to assure that rates will not be excessive, as defined by c. 175E,¹⁸ or (ii) conducted so as to be destructive of competition or detrimental to the solvency of insurers. To the contrary, each of the companies that testified in this proceeding, including those three that would prefer to see a renewal of Commissioner-fixed rates,¹⁹ agree that competition currently exists in the Massachusetts market. The insurers' current competitive tendencies are demonstrated by the large number of group discounts the companies offer and the deviations that occur in various years.

¹⁷ Peter R. Jones, Ph.D. (Business Economics, Harvard University; former Assistant Professor of Finance, Harvard Business School), offered commentary on behalf of Arbella and argues that affordability should be an element in determining whether rates are excessive. Section 4 of Chapter 175E, however, dictates that no rate shall be held to be excessive unless such rate is reasonably high for the insurance provided, not whether it is affordable. As the Legislature has addressed affordability in other lines of insurance (See G.L. c. 26, § 7A, G.L. c. 111M, § 2 and G.L. c. 175G, § 4), the omission of affordability in the automobile insurance rating statute indicates an understanding by the Legislature that excessive in terms of rates applies to the cost of providing the insurance, not to the income of the purchaser.

¹⁸ In its testimony, Arbella is critical of "deregulated price competition." Simply because private passenger motor vehicle insurance rates are not fixed-and-established under G.L. c. 175, § 113B, does not mean they would not be regulated. Rates would still be subject to the Commissioner's oversight pursuant to c. 175E and any rules or regulations promulgated there under.

¹⁹ James A. Ermilio, Executive Vice President of Commerce, in his written statement dated May 18, 2007 writes: "There are many good examples today to support the statement that our industry is healthy in Massachusetts, including not only Commerce but St. Paul/Travelers, Metropolitan, Liberty Mutual, Hanover, Safety, Arbella, and many others that have been competing in this Commonwealth for more than twenty years and remain healthy and profitable today." Paula W. Gold, Vice President and Chief Regulatory Counsel of Plymouth Rock, in her written statement dated June 15, 2007 asserts: "Consumers have more than enough companies from which to purchase insurance and companies do compete for business based on price Any proposal to introduce additional competition to Massachusetts should be judged in the context of [the] testimony indicating that, based on economic analysis, our existing system is stable and competitive." John F. Kittel, Senior Vice President of Arbella, in his written statement dated May 18, 2007 declares: "It is important to focus my comments towards 'deregulated' price competition because the existing Massachusetts automobile insurance marketplace is already highly competitive within its structure of defined pricing variables."

A key consideration in assessing the market's ability to operate in a healthy manner and support rates that are not excessive is the extent to which the industry supports less regulated rates. In this proceeding, industry support for more competitive rating is overwhelming. Only three of the 19 companies writing private passenger motor vehicle insurance in Massachusetts oppose a move to increased competition.²⁰ The statements of a majority of the insurers who attended the May 18 hearing also promise an increase in competition -- in pricing, products and service -- if Massachusetts allows more competition in private passenger motor vehicle insurance.

The majority of the insurers who attended the May 18 hearing stated that they would use price as a means to compete for the business of Massachusetts drivers. Amica Insurance ("Amica"), United Services Automobile Association ("USAA"), Premier Insurance Company of Massachusetts ("Premier"), OneBeacon Insurance Company ("OneBeacon"), Liberty Mutual Insurance Company ("Liberty Mutual"), Encompass Insurance ("Encompass"), and Hanover Insurance Company ("Hanover") were among them. Each company proclaimed a willingness to expand their voluntary writings in the Commonwealth if they were able to price risks more accurately. Several industry groups, including the Fairness for Good Drivers Coalition ("Fairness Coalition"), American Insurance Association and Property Casualty Insurers Association of America also testified in support of file-and-use rating under c. 175E rather than rate-setting under Section 113B.

A number of the carriers that support increased competition, including Premier, Amica, and Encompass, stated that less rate regulation would enhance opportunities to compete against other insurers based on products and services. Some of the innovative products and discounts that are available to consumers in other states, but not in Massachusetts under the fix-and-establish system, include unlimited accident forgiveness, good student discounts, and discounts for hybrid cars or cars equipped with GPS systems.

Two economists who analyzed the Massachusetts private passenger motor vehicle insurance market on behalf of the State Rating Bureau and the Fairness Coalition, Glenn A.

²⁰ The three companies that testified against file-and-use rating, Commerce, Arbella and Plymouth Rock, are ranked first, third and seventh, respectively, with an aggregate market share of over 47%, according to 2006 data.

Watkins and Sharon Tennyson, PhD,²¹ respectively, offered additional compelling support for increased competitive rating. They agreed that the number of carriers currently writing private passenger motor vehicle insurance in Massachusetts, in combination with other factors, leads to the conclusion that the Massachusetts market already sustains a certain level of competition and that rates could become more competitive prospectively. This analysis was based in part on the Herindahl-Hirshman Index (“HHI”),²² an indicator designed to gauge the level of competition within an industry or market by considering the number of suppliers in a market and their respective market shares. Mr. Watkins explained:

The HHI is a statistic designed to simultaneously take into account both the number of and market shares of sellers in a line of business. The HHI is defined as the sum of the squares of the market shares for each and all of the sellers. In its limits, the value of the HHI can be 10,000 (total monopoly) or close to zero (atomistic competition).

A Report on the Level of Competition in Massachusetts Relating to Private Passenger Automobile Insurance for Docket No. R2007-03, (“Watkins Report”), 2003, P. 5.

On a statewide basis, using 2006 premium data, Mr. Watkins determined the HHI for the Massachusetts private passenger motor vehicle insurance to be 1,457. Dr. Tennyson stated in her written commentary that the HHI for the Massachusetts private passenger motor vehicle insurance market was 1371 in 2005. Although higher than the HHI for the same line of business in other states, both Mr. Watkins and Dr. Tennyson testified that these HHI results fell within a “moderately concentrated” range, which would not raise concerns for federal regulators who monitor horizontal mergers for anti-trust concerns.²³

The competitive nature of the Commonwealth’s private passenger motor vehicle insurance market appears to be constant across the state according to Mr. Watkins’s review of

²¹ This was not Dr. Tennyson’s first time analyzing the MA private passenger insurance market. In 2002, she co-authored a paper published by the Brookings Institute, “Automobile Insurance Regulation: The Massachusetts Experience.”

²² The HHI is used by the United States Department of Justice in its regulatory oversight of business transactions to determine whether to oppose horizontal mergers.

²³ Mr. Watkins suggested that higher HHI for the Massachusetts private passenger motor vehicle insurance market was likely due to the “significant absence of major U.S. insurers in the Commonwealth.” Both he and Dr. Tennyson stated that comparison to other states was irrelevant because the other states’ statistics fell within “highly competitive” ranges.

the economic condition in three sub-markets within the state, including: (1) territories numbered 14 - 16, which he referred to as “other urban;” (2) territories numbers 17-26, the “Boston” territories; and (3) all other territories, which were “non-urban.” For each sub-market, Mr. Watkins analyzed the HHI using exposure data and the number of current writers with regard to all business written (voluntary and ceded from all sources), only voluntary business written, and voluntary business written from voluntary agents only, excluding exclusive representative producer (“ERP”) business. Significantly, the HHIs across the various sub-markets, and for each underwriting and producer category, were consistent with each other and with the statewide statistic as calculated on a premium basis. In addition, none of the sub-markets were underrepresented in terms of the number of carriers offering coverage.

Aside from the number of carriers, Dr. Tennyson proposed that the degree of rivalry among insurers in Massachusetts was another indication that competitive rating would not be destructive or result in excessive rates. Dr. Tennyson pointed to a number of factors that suggested a high degree of rivalry. In addition to the limited price competition prevalent in the current market, as evidenced through group discounts and/or rate deviations, she pointed to movements in market share among the state’s insurers in the top ten and top five between 2000 and 2005. Dr. Tennyson supported her opinions by the following analysis:

Given insurers’ lack of collusion even when cooperation is aided by state coordination of rate-setting, collusion appears extremely unlikely should that coordination be removed. The record of testimony presented by insurers in the May 18 competition hearing supports this point. The hearing record demonstrates that the carriers themselves are divided on whether competition is feasible or desirable. The largest carriers in the market are opposed to introducing competition, but groups representing national and other insurers presented testimony advocating for the opportunity to compete more freely in the market. These dynamics alone suggest that collusive pricing -- which requires cooperation and joint decision-making -- is unlikely to succeed in the market in the absence of fixed-and-established rating.

Supplementary Letter to Testimony, June 12, 2007.

Mr. Watkins also cited to the notable absence of major national writers offering private passenger motor vehicle insurance in Massachusetts as presenting an opportunity for increased competition among insurers. In his opinion, this void “presents a significant potential to increase competition further in Massachusetts.” *Watkins Report*, P. 8. Despite the adequate number of

insurers writing private passenger motor vehicle insurance in Massachusetts, the relative low barriers to market entry were further mentioned as factors that increase the likelihood that a competitive system may be sustainable over time with an appropriate regulatory scheme under G.L. c. 175E.

Ultimately, both Mr. Watkins and Dr. Tennyson separately concluded that competition could sustain company filed rates in 2008. Mr. Watkins's opinion was based on a quantitative analysis, in which he equally weighted and attributed a score to five factors, including (1) the HHI, (2) the number of companies writing business, (3) the number of companies seeking new business, (4) the average return on equity in MA between 2000 and 2004, and (5) the number of years during that period when the average return of equity was clearly inadequate. *Watkins Report*, P. 2.²⁴ Based on the results of his review, Mr. Watkins determined that the Massachusetts private passenger motor vehicle insurance market was competitive under a strict, moderate or lenient standard. This, coupled with his comparison of the Massachusetts market to country-wide experience and his sub-market analysis, led him to conclude that "sufficient competition exists in the Massachusetts Private passenger motor vehicle Insurance market to allow competition to be an effective regulator of rates in the Commonwealth of Massachusetts." *Id.* at 9.

Dr. Tennyson based her analysis on common competition indicators²⁵ as well as her experience studying the Massachusetts private passenger motor vehicle insurance market and regulated markets. She concluded that (1) competition exists in Massachusetts currently, and that (2) competition will not lead to either destructive competition or to excessive rates. She described her observations as follows:

Analysis of the commonly used markers of competition indicate that the conditions for a workably competitive market place are present in Massachusetts private passenger automobile insurance, despite the state practice of fixing-and-establishing rates for the past 30 years. These findings are an encouraging signal

²⁴ Mr. Watkins explained that these criteria were selected and ranked in an attempt to capture, "the economic principles, which demonstrate that a market is more likely to function competitively when: (1) the number of suppliers is comparatively large; (2) seller concentration is relatively low; (3) average profitability is not exceptionally high; and (4) profitability is volatile over time." *Watkins Report*, P. 3.

²⁵ These considerations include market structure, the number of writers, the degree of rivalry, barriers to entry, and price behavior.

of the potential for competition in the market if the regulatory reforms should occur.²⁶

Evaluating Competition in Insurance Markets, May 16, 2007 (“Tennyson Report”), P. 17.

Dr. Tennyson also testified that the level of competition in the Massachusetts private passenger motor vehicle insurance market would neither be destructive nor adversely affect the solvency of insurers. *Id.* at 19. She defines destructive competition as a competitive market that cannot achieve a stable equilibrium. A destructively competitive market would be characterized by highly volatile pricing, unstable industry structure and frequent bankruptcies. She notes that economists who study regulated markets and the political economy of regulation view the concept of destructive competition with skepticism. Dr. Tennyson emphasizes that there is little in the history of regulation and deregulation of automobile insurance markets to suggest a tendency towards destructive competition. Like other insurance markets, the automobile market is cyclical, but it is not inherently unstable and price volatility does not cause financial distress for a significant number of insurers. Studies show, she asserts, that market variability is greater in highly regulated markets than in those less regulated, an outcome she attributes as likely due to the effects of regulatory lag and regulatory uncertainty on prices and profits in those markets. Dr. Tennyson stated that a file-and-use system of regulating price still allows sufficient regulatory oversight to prevent the setting of inadequate rates. *Id.* at 19-21.

B. There is sufficient pricing information for consumers to allow them to “shop” for the best rates; companies have expressed a willingness to increase their market share; and the companies are willing to accept business at the prices quoted consumers.

Access to pricing information

The Supreme Judicial Court endorsed Commissioner Stone’s identification of the lack of readily available pricing information as the greatest impediment to the success of competition in 1977. *Metropolitan Property* at 523. With the advent of the Internet and all of its attendant features, availability of information will not be an impediment when we transition to increased

²⁶ According to Dr. Tennyson, “Under competition the output, pricing and quality decisions of sellers will be responsive to consumer demand; sellers will have incentives to operate as efficiently as possible; and sellers who are best able to meet consumers’ desires will be successful. Competition assures that society’s scarce resources are employed in profitable uses.” *Tennyson Report*, P. 1.

competitive rating. We have had a revolution in our communications industry with the introduction and relative pervasiveness of personal computers and technology. It has become, for many, the preferred means of communication and of educating consumers. Companies will be able to post their rates and, ideally, provide an interactive site to compute a potential premium for a prospective applicant.

Consumers also will have more readily available information as to how to contact a company's agent for product and price information. When Ms. Blank checked the websites for all of the 12 carriers that write private passenger motor vehicle insurance through independent agents, 11 of such companies "provide a simple pathway for identifying those agents from whom they accept business." *Testimony of Cara M. Blank, FCAS, MAAA, Property and Casualty Actuary, State Rating Bureau for Docket No. 2007-03*, ("Blank Testimony"), June 15, 2007, P. 2.

Finally, under Section 11 of chapter 175E, the Commissioner has the explicit authority to direct companies to produce information guides to its insureds or to individuals who solicit such company or its agents for insurance, thereby further promoting the dissemination of product and pricing information and the education of consumers.

Increased market share

The majority of the insurers who attended the May 18 hearing stated that they would be willing to expand their voluntary writings in the Commonwealth if they were able to price risks more accurately. Specifically, Amica represented that it intends to continue to grow in Massachusetts, and stated its willingness to write homeowners insurance throughout the state should assist in increasing its private passenger motor vehicle insurance growth. USAA noted that, if permitted to offer a product based on its own losses and expenses and not on an industry average, it was more likely that it would be willing to market aggressively in the Commonwealth. Premier stated that it is "poised and committed" to growth in a competitive market and would aggressively promote its prices to reach as much of the market through its independent agents as possible. To the extent that it would be able to price its product individually based on the risk profile of the operator, OneBeacon commented that it would be willing to increase its writings in an effort to write more business it deems profitable. In addition, OneBeacon stated that its ability to price risks appropriately would allow it to write more risks voluntarily. Liberty Mutual went so far as to represent that its plan under a more

flexible rating program would be to increase its growth rate in Massachusetts through significant investment in its sales operation, such as by hiring additional sales representatives in its local offices, increasing its volume of direct mail solicitations and finding additional traffic for its website. Hanover, likewise, stated that under a more flexible and appropriate rating system it would expect to aggressively seek new private passenger motor vehicle insurance business in Massachusetts. Encompass noted that when New Jersey moved to a more equitable system, it grew its market share and took advantage of that opportunity to grow with its agents.

Accepting business at posted prices

To sustain competitive rating, insurers also must be willing to write business in the voluntary market at their posted prices. Allowing companies the freedom to set rates based on their own average experiences will not alone encourage voluntary writings. For companies to write business voluntarily, they must have the freedom to price risks accurately.

Several insurers specifically commented on the industry's willingness to write business based on posted rates. Premier testified that it would write business at its posted rates, stating that the current market conditions make a move to a competitive market "entirely possible paving the way to Premier's full participation and willingness to write at its posted prices."

Statement of the Premier Insurance Company Concerning Competitive Rating for the Automobility Insurance Market, May 18, 2007, P. 5. Hanover opines that insurers will be willing to accept any and all risks they perceive will be profitable and with a "myriad of rating variables" available to companies, it is unlikely a company will reject any appropriately priced risk. *Addendum to the Submission of the Hanover Insurance Company*, May 18, 2007, P. 3.

USAA commented that, as a company serving a particular group, its superior pricing would be available to prospects in all areas of the Commonwealth if it is permitted to offer a product based on its own losses and expenses and not an industry average. OneBeacon noted that the ability of companies to price risks appropriately will allow the industry to write more risks voluntarily.

Ms. Blank's testimony was particularly useful in providing specific examples of how, in the context of the current Massachusetts private passenger motor vehicle insurance market, carriers could more accurately price risks for 2008 by setting rates that are neither "inadequate, excessive or unfairly discriminatory," thereby ensuring the companies' willingness to write the business at the posted prices. Specifically, she explains that companies are more willing to

provide voluntary coverage to different risk categories if they are able to (1) identify different levels of risk objectively, and (2) price and service various types of risk adequately. *Blank Testimony*, P. 3.

Ms. Blank explained that statistical data is used to identify different levels of risk objectively. Insurers, therefore, have an advantage over the Commissioner because companies collect more detailed information about their insureds than is captured by the Commissioner's statistical agent, Commonwealth Automobile Reinsurers ("CAR"). CAR's collection format is limited to variables historically used under c. 113B, such as accident and traffic violation history, number of years licensed and territory. Insurers also collect data such as age, gender and zip code. *Id.* at. 4. Ms. Blank also notes that insurers have access to individuals' driving and accident records, and the number of years licensed through the state's Merit Rating Board. The data collected by the insurers may be used to arrive at statistically justified rates that are more sophisticated than the Commissioner's fixed-and-established rates. Ms. Blank notes, "[w]hile some of the additional detail captured in individual insurance company data bases may not be used directly for pricing, if price competition is implemented in 2008, much of that data could be used to further refine existing rating factors, to expand the number or value of discount options, and to provide more accurate rates based on risk." *Blank Testimony*, P. 5.

Each company currently writing private passenger motor vehicle insurance in Massachusetts uses a "unique and proprietary" cession model to determine which risks to insure voluntarily and which to cede to the residual market. This is persuasive proof that companies presently have a strong ability to identify different levels of risk objectively. As Ms. Blank observes, "[t]he insurers' ability to evaluate price strength on a policy by policy basis, and voluntarily insure 95% of the [current private passenger motor vehicle insurance] market suggests they are well positioned to establish independent rates and rating plans." *Id.* at 5. This leads to the conclusion that private passenger motor vehicle insurance writers have a great deal of information and expertise to quantify risks statistically and to underwrite in a competitive rating environment.

Insurers must also have the flexibility to price and manage various types of risks adequately if Massachusetts is to have a strong voluntary market and competitive rating is to succeed. Ms. Blank discusses two distinct areas where insurers will be able to more accurately

price risks if they are permitted to file-and-use their own rates. The first area for potential improvement involves “driver class,” which captures the number of years a driver has been licensed, driver training and vehicle use. In ratemaking under G.L. c. 175, § 113B, the Division historically has used only three different levels of years licensed to define driver classes: (1) drivers licensed 1-3 years, (2) drivers licensed 4-6 years, and (3) everyone else. Ms. Blank notes, however, “There is a statistically known difference in the expected losses associated with the number of years a driver has been licensed. The more years licensed, the lower the loss expectation. Under state set rates, drivers licensed seven years are charged the same rate as drivers licensed 25 years. Using driver age as a proxy for number of years licensed, this means that a 22 year old driver is charged the same rate as a 40 year old driver.” *Id.* at 10.

The practice of using only three levels of years licensed in fixed-and-established rating results in substantial subsidies based on driving experience within each territory and class combination. “[P]remiums for operators within each of the three licensing categories are inadequate for those licensed a few amount of years, and are more than adequate for those licensed many years.” *Blank Testimony*, P. 10-11. This means that a large number of risks are either over or under priced from the outset. Ms. Blank explained, “In a price competitive market, insurers could begin realigning prices based on numbers of years each operator has been licensed to better match the policy premium with expected losses under the policy.” *Id.*

Ms. Blank identified merit rating as the second area where consumers would see benefits and companies would gain price flexibility if the file-and-use provisions of G.L. 175E were utilized for 2008 private passenger motor vehicle insurance rates. Merit rating is the practice of adjusting insurance rates for an individual driver’s accident and traffic violation record.²⁷ Rates fixed-and-established under G.L. c. 175, § 113B are subject to a state merit rating plan called the Safe Driver Insurance Plan (“SDIP”). The SDIP must be revenue neutral. Therefore, the sum of all the surcharges imposed under the SDIP must be equal to the sum of all of the discounts issued under the plan. The result of the revenue neutrality requirement is that premiums are

²⁷ Ms. Blank explained merit rating plans as follows:

Merit rating plans customarily assign a certain number of points for various types of traffic violations or insured at-fault claims above a certain dollar threshold. Each point is worth a certain percentage surcharge which raises the premium above the average premium. Drivers without at-fault accidents or traffic violations typically receive discounts that reduce their premium below the average. *Id.* at 11.

considerably higher than their expected costs for experienced operators with no points, and premiums are lower than expected for drivers with surcharges. Some bad drivers, therefore, receive merit rating subsidies.

Merit rating subsidies, like driver class subsidies, are in addition to territorial subsidies and exist for each territory and driver classification combinations under fix-and-establish ratemaking. If companies are to set their own rates, this likely will not be the case. Companies will devise their own merit rating plans under G.L. c. 175E, § 4, and will not be constrained to adopt or to adhere to any of the SDIP's provisions, including the revenue neutrality restriction. Accordingly, price competition would result in more accurate rates and increased competitive pricing for experienced drivers with clean driving records.

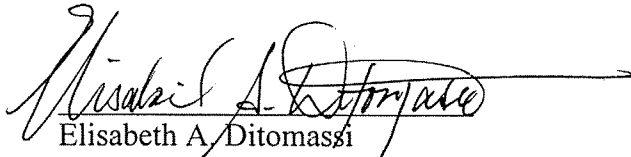
All of these factors lead to the conclusion that companies will offer business at their posted prices.


V. CONCLUSION

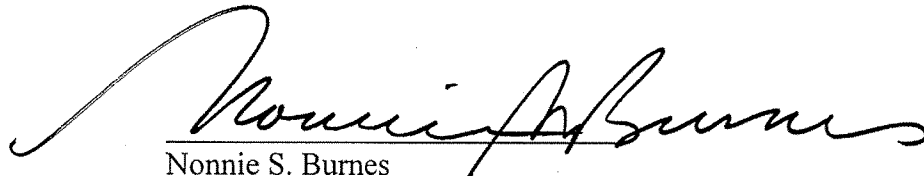
A competitive market is the clear preference expressed by the Legislature in G.L.c. 175E. The Commissioner must determine, with respect to any territory or to any kind, subdivision or class of motor vehicle insurance, whether competition is either (i) insufficient to assure that rates will not be excessive; or (ii) so conducted as to be destructive of competition or detrimental to the solvency of insurers. It is only if the Commissioner finds that either condition exists that she must fix-and-establish rates.

No testimony or other evidence was presented at this hearing to support a finding that competition is insufficient to ensure rates will not be excessive, or that it is so conducted as to be destructive of competition or detrimental to the solvency of insurers. All of the evidence presented on these two points supports a finding that these two criteria have not been met and the Commissioner cannot fix-and-establish rates for 2008.

This decision has been filed this 16th day of July 2007 in the office of the Commissioner of Insurance and with the Secretary of State as a public document. Any party aggrieved by this decision may, within twenty days, file a petition for review in the Supreme Judicial Court for Suffolk County.


Elisabeth A. Ditomassi
Presiding Officer


Stephen M. Sumner
Presiding Officer


Nonnie S. Burnes
Commissioner of Insurance