PANEL DISCUSSION

OPEN COMPETITION — FOUR POINTS OF VIEW

MODERATOR
GERALD R. HARTMAN

What does "open competition" really mean? It means what I choose it to mean — neither more nor less. It also means different things to different people. This fact provided the idea for the format of our presentation, i.e., each panelist will discuss what open competition means to him as an insurance department actuary, a bureau and company actuary, a consulting actuary, and a college professor (and consumer) of insurance, respectively. The "open competition" label has been applied to the differently worded laws of several states, and, therefore, the meaning of the label is apt to vary geographically. New York, Illinois, and Minnesota, which are among the "open competition" states, are represented on our panel.

As a prelude to the remarks of our panelists it may be worthwhile to examine the sections of the rating laws, of the foregoing three states, which may justify the label of open competition. Just as one picture may equal a thousand words, in the search for the meaning of a rating law one careful reading thereof may equal a thousand opinions.

In contrast to the All-Industry Committee (AIC) model bills of the 1940's which were not "intended to prohibit or discourage reasonable competition,"[1] these open competition laws are intended to permit and encourage competition between companies on a sound financial basis to the fullest extent possible,"[2] "to encourage, as the most effective way to produce rates that conform to the standards of paragraph (a) [rates shall not be excessive, inadequate or unfairly discriminatory], independent action by and reasonable price competition among insurers,"[3] "to prevent practices that tend to bring about monopoly or to lessen or destroy competition,"[4] "to pro-

[1] Section 1 of All Industry Bills.
[2] Section 472.1, Illustrated Insurance Law.
[3] Section 1, Subdivision 2(b), Minnesota Insurance Law.
[4] *Ibid*, Subdivision 2(d).

hibit price-fixing agreements and other anti-competitive behavior by insurers, to promote price competition among insurers."[5]

Thus, while the wording of the AIC bills did not prohibit competition (but often their administration discouraged it), the avowed purpose of these laws is to encourage competition and to prohibit anti-competitive behavior which flourished for many years under the AIC type of laws. The pendulum has definitely swung in the opposite direction. The laws of all three states prohibit insurer agreements to adhere to rates.

Furthermore, there are teeth in some of these new laws which greatly enhance the chances of their purposes being achieved. For example, in New York "the *superintendent, through the attorney general,* and *any person* injured in his business or property by reason of anything forbidden in subdivision one of this section *may maintain an action to enjoin any violation"* of the law and "any person injured in his business or property by reason of anything forbidden in subdivision one of this section may maintain an action and shall recover *threefold* the *damages* by him sustained."[6] The impact of class actions under these circumstances would be considerable, to say the least. Not only may the superintendent, after a hearing, order premium adjustments when rates are charged that do not comply with the law but also "he shall order the payment of a penalty not to exceed five hundred dollars for each such offense, and if he so finds that such insurer, rating organization or other person knowingly violated this article he shall order the payment of a further penalty not to exceed twenty-five hundred dollars for each such offense. *The issuance, procurement or negotiation of a single policy of insurance shall be* deemed a separate offense."[7]

Another common aspect of the laws in these three states is that generally rates do not have to be filed, and therefore do not have to be approved by the insurance department, *before* they are used. Nor does supporting information have to be filed in all cases. On the other hand records and experience data must be maintained which will enable the commissioner to determine whether there has been compliance with the law, and in some states all rates and supplementary rate information are open to public inspection as soon as the rates become effective. This latter requirement seems especially important since the successful play of competition depends upon knowledgeable buyers and sellers.

---

[5] Section 175(1) New York Insurance Law.
[6] *Ibid,* Section 177(2)b and c. (author's italics)
[7] *Ibid,* Section 179(3). (author's italics)

Prior to the start of this panel at least one member of the audience quipped about the significance of the word "open" in the term "open competition"; he wanted to know how the term differed from closed competition. The answer may lie in the eleventh definition of "open" given in the unabridged edition of *The Random House Dictionary of the English Language:* "without restrictions as to who may participate: an open competition."[8]

We do not have time today for a thousand other opinions of what open competition really means. Therefore, we shall settle for other opinions from four informed and able men: Kevin Ryan, Steven Newman, Lewis Roberts, and C. Arthur Williams, Jr.

THE REGULATOR

KEVIN M. RYAN

Earlier this year, President Nixon's Council of Economic Advisors stressed the merits of free competition. Their analysis puts it this way: "Traditionally, this nation has accepted the premise that the individual should be as free as possible to decide for himself what goods and services will be best for him and where and how he will exercise his own talents and energies. By and large the resultant system serves us well."

It may not be clear in the non-life insurance business that the consumer has the opportunity to choose whether or not he will buy the product in the first place. For instance, the purchase of automobile and fire insurance is nearly universal due to social and economic necessity. The consumer *must* buy the product in most instances. There is no effective competition as to whether he will purchase or not, or as to alternative or substitute products. But this is true in other traditionally competitive industries, dealing in the so-called "necessities," e.g., automobile, refrigerators, communication, etc. The circumstance is not a compelling argument against open competition.

Open competition as we refer to it here on this panel is a misnomer. We are not referring to competition but to a pricing process which, for all practical purposes, is the "non-prior approval" pricing process. From the regulator's viewpoint, open competition is a pragmatic realignment of responsibilities with stress supplied by the public and price adjustment from the companies. The open competition which the regulator must look for

[8] Random House, New York 1969, p. 1008.