

EXAM 6 – UNITED STATES, FALL 2013

4. (2 points)

A multi-line insurer that writes business in multiple states is trying to increase its homeowners market share. The company has proposed the following new strategies:

- Boycotting insurance agents who also represent other insurers
- Requiring the purchase of a homeowners policy with the purchase of an auto policy

a. (0.5 point)

Describe the impact of the Clayton Antitrust Act on the insurance industry.

b. (0.5 point)

Explain how each of this insurer's actions would be addressed under the Clayton Antitrust Act.

c. (0.5 point)

Describe the impact of the McCarran-Ferguson Act on the regulation of insurance.

d. (0.5 point)

Explain how each of this insurer's actions would be addressed under the McCarran-Ferguson Act.

- c. Candidates did fairly well on this part. However, there were many candidates who lost some credit by providing only a partial answer (eg only describing an overlap or only describing a conflict). Other common errors included:
- Stating that ensuring availability was an overlap
 - Stating that ensuring policyholder obligations are met was an overlap (this is a solvency goal)
 - Stating that an area of conflict was: rate regulation wants to ensure rates not excessive while solvency regulation wants to ensure high rates (regulators want rates to be adequate, not necessarily high, to meet all costs and provide a reasonable profit)
- d. Candidates generally scored very well on this part. Some candidates lost credit by providing incomplete or partial answers.

4. Sample Answers

- a.
- Clayton Anti-Trust made illegal activities that lessened competition or created monopoly power.
 - Clayton Anti-Trust made illegal activities that created monopoly power, including tying, exclusive dealing, and mergers between competitors.
 - Cooperative arrangements (rate making in concert) is not allowed under Clayton Anti-Trust, which are necessary and incidental to establishing adequate coverages, and related concerns.
 - Robinson-Patman Act (Clayton Anti-Trust amendment) prohibits price discrimination with the exception of price differentials.
 - Clayton Act is a federal law and didn't apply to the insurance industry before the SEUA case.
- b. Boycotting: Not explicitly addressed by Clayton Act. Explicitly prohibited by the Sherman Act. Requiring purchase of both homeowners & auto policies: Tying of purchases explicitly prohibited by Clayton Act.
- c. Any two of the following:
- Returned insurance to the states.
 - Federal regulations still apply in boycotting, intimidation and coercion per Sherman Act.
 - Bureau ratemaking is allowed
 - Federal regulation still takes precedent in any law specifically regarding insurance and to the extent not regulated by the states.
- d. Boycotting: Explicitly prohibited by Sherman Act which is still applicable per McCarran-Ferguson Act. Requiring purchase of both homeowners & auto policies: Not explicitly addressed by Sherman Act. It is addressed by the Clayton Act or would be handled by state insurance law/statutes.

4. Examiner's Report

Parts a and c of this question are very straightforward. Parts b and d are slightly more difficult in that they require applying the Acts in a specific example.

- a. Most candidates knew the definition of the Clayton Act. However, some candidates were confused by the difference between the Clayton Act and Sherman Act.

- b. Most candidates knew how the Clayton Act applied to tying. Some candidates made the mistake of trying to stretch the Clayton Act to cover boycotting, even though boycotting is not addressed by Clayton.
- c. Most candidates knew the definition of the McCarran-Ferguson Act.
- d. Most candidates knew how boycotting would be addressed under McCarran and the federal regulation of insurance.

5. Sample Answers

- a.
 - Fallibility → regulators are human, human makes error
 - Forbearance → regulators may be unwilling to take action promptly on troubled insurers
 - Capture → tendency for regulators to side with interested party
- b.
 - Duplication (any one of the following):
 - Multiple states have the authority to regulate an insurer
 - Different regulators can perform several of the same regulation activities, to avoid potential errors
 - Peer review
 - Other regulator can request regulator to take action; peer pressure
 - Diversity of Perspectives (any one of the following):
 - An effective system considers diversified perspectives and strikes to reach compromise
 - Regulators having different viewpoints on issues and hopefully reaching centrist solutions
 - Extreme outcomes are unlikely due to shared information and common ground
- c. For each of the regulatory failures, any one of the descriptions:
 - Duplication counters fallibility
 - More than one set of eyes so less chance of human error
 - Less likely that the same error is made by different people
 - Peer review counters fallibility
 - Sometimes regulators do not have a perfect system in place to regulate effectively. When other regulators review and critique them, it improves their processes and leads to better regulation overall.
 - Duplication counters forbearance
 - One regulator may not take action but another might
 - Peer review counters forbearance
 - Peer review puts pressure on regulators to take action, so effectively reduces regulatory forbearance
 - Diversity of perspectives counters forbearance
 - Div. of Perspectives can address regulatory forbearance through communication/ discussion & bringing a reluctant regulator to a more reasonable position (if the majority of players believe the insurer is troubled)