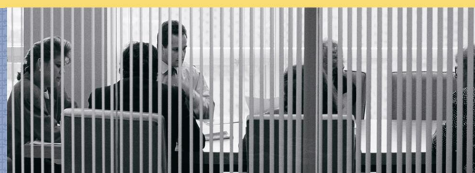


EU INSURANCE BRIEFING



May 2008

European Commission opens public consultation on the renewal of the Block Exemption Regulation for the insurance sector

Background

Directorate General for Competition of the European Commission (“DGCOMP”) recently launched a public consultation on the sector’s current exemption from competition rules (known as the “block exemption Regulation” or “BER”).

Competition Commissioner Kroes stated that its purpose is to assess “whether there are sufficient grounds to renew” the BER.

The final report published in September 2007 by the European Commission on its inquiry into competition in the business insurance sector already indicated that exemption may no longer be justified when the BER expires in March 2010.

This briefing sets out details of the public consultation and comments on its objectives and how market operators should present their views.

Introduction

The European Commission has indicated that, to date, it has not received compelling arguments from industry to justify renewal. The preliminary view is that the non-renewal of the BER should not affect the business practices that the BER currently covers.

Under a 2003 antitrust reform package, businesses have to self-assess whether their business practices comply with EC

competition rules. In this regard, DGCOMP has increasingly perceived sector specific regulations as an anachronism; compared to other industries, there appears to be no need for special antitrust treatment of the insurance sector.

Scope of the Commission’s review

The European Commission’s consultation seeks information from insurers and stakeholders on how the business practices of the industry would be affected without a block exemption. If the industry can provide convincing evidence that the withdrawal of the block exemption is likely to discourage the industry from entering into legitimate cooperative agreements, then the Commission will be prepared to engage a debate on the extension of the block exemption. Industry contributions to the questions set out by the Commission in its paper launching the consultation should thus enable the Commission to balance the economic efficiencies and consumer benefits brought about by the BER against any anti-competitive deficiencies.

While the consultation does not seek to erase 15 years of experience of legitimate cooperation among insurers in the matters covered by the BER, i.e. joint calculation of pure premiums, standard/model terms and conditions, insurance pools, and security devices, the Commission’s review should nevertheless focus on the substantive aspects of these arrangements.

Pure premiums. Joint calculation of pure premiums enjoys exemption under the BER.

The Commission asks the insurance sector to explain:

- the impact on the industry of removing the exemption applying to the collection and computation of statistics on the average cost of risks;
- what improvements, if any, can be made to the BER;
- whether the exemption has fostered sufficient benefits to consumers (e.g., through new market entry); and
- what would be the foreseeable market outcomes without the exemption.

In substance, the Commission questions whether the exemption is too broad in terms of the type of risks covered. For instance, mortality tables are widely available. More fundamentally, the Commission asks whether the uncertainty associated with pure premium calculation is not a normal business risk and, as such, should not enjoy special treatment.

Standard policy conditions. With regard to non-binding standard policy conditions, the Commission's concern is whether "customers should be involved in a more transparent way in the process of drafting standard policy conditions." This might suggest that, in the future, the exemption may be subject to ensuring that non-binding standard policy conditions are drawn up in consultation with representative customer associations in the Member States¹.

Insurance pools. Co-insurance and co-reinsurance pools have enabled the coverage of new risks and risks that one insurer would not have been able to cover alone. The Commission is nevertheless concerned that pools may not always be justified, especially when there is enough capacity for multiple pools to cover any given risk.

¹ This solution was adopted in 2005 in the aviation insurance sector.

Security and safety equipment. Regarding the technical specifications of security and safety devices, the Commission notes that the exemption only applies to installation and maintenance of such devices. This is because Community-wide rules have already harmonised specifications applying to the devices themselves.

Conclusion

By embarking on this review, the Commission may wish to demonstrate that removal of the BER will not significantly affect business insurance. Nevertheless, non-renewal of the BER in favour of an analysis based on the economic effect of cooperation may induce some national competition authorities to scrutinise certain forms of cooperation. The valuable guidance inherent in the BER and its status as a "safe harbour" for insurers might now be lost with unpredictable and negative consequences.

Contributions are due by 17 July 2008.

Stakeholders in key national markets should not hesitate to frame arguments and contribute to the process. Individual input, in particular from small insurers and consumer groups, will also be important to tip the balance one way or another. Mere repetition of the arguments set forth in the course of the sector inquiry will probably not be enough. Hard facts and sound economic evidence will become critical to secure renewal of some or all of the forms of cooperation permitted by the BER.

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