

INSURANCE DAY

30-32 MORTIMER STREET, LONDON W1W 7RE
TEL 020 7017 4600 FAX 020 7436 8397Specter's Fair
battleground

IT comes as little surprise that the plan put forward last week by Arlen Specter, the chairman of the Senate Judiciary Committee charged with addressing the issue of asbestos in the US, has met with immediate opposition.

At the weekend the Coalition for Asbestos Reform (Car) — a group of manufacturing, energy, construction and insurance companies — argued that the bill would leave defendant companies in a worse condition than the current system of resolving claims in court.

The Fairness in Asbestos Injury Resolution Act (Fair) proposed by Mr Specter calls for the creation of a \$140bn trust fund that would be used to resolve hundreds of thousands of asbestos claims and remove them from the US court system.

But ever since Mr Specter took over as chair of the Senate committee he has been confronted by a raft of competing interests that have lobbied he and his cohorts vigorously over the issue.

Mr Specter decided last week to push ahead with introducing the bill after discussions with several dissatisfied Republicans, and has said that his aim now is to resolve all outstanding differences and get the bill voted out of committee by April 28.

Judging by the response of the Car and all of the major property/casualty insurance trade groups, Mr Specter has a fight on his hands.

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EU puts the spotlight on
competition in insurance

Is competition fair within the insurance industry? The European Union is watching with interest and those within the industry are ready and waiting to defend themselves.

LIZ BOOTH looks at the possibility that a shake-up in the industry may be coming

BACK in February, European Union (EU) competition commissioner Neelie Kroes pledged to put financial services under review with a particular focus on the insurance sector.

Ms Kroes' plan was to identify and remove remaining barriers to free competition. "Such barriers could be regulatory, or they could be the result of private practice or even state subsidy," she said at the time.

When this message was reiterated last month, a furor of opposition emerged from the insurance sector. The UK's British Insurance Brokers Association (Biba) led the way, and chief executive Eric Galbraith argued that the sector was already subject to strict regulation. Mr Galbraith's case was that the market was functioning well and a high level of competitiveness already existed within the industry.

Completely unfounded

"EU suggestions that competition in UK insurance does not appear to be functioning well are completely unfounded," said the Biba chief executive. "The size and strength of the brokers and intermediaries market in the UK ensures a very high level of competition within the market. In fact it has been said that the UK market is too competitive and overly regulated, thus damaging the financial strength of the industry."

David Strang, competition law partner at law firm Barlow Lyde Gilbert, adds: "I am surprised there is a prospect of a shake-up in the industry so soon after the adoption of the insurance block exemption in 2003. This followed a comprehensive analysis of the sector by the commission. While the information revealed to date about this investigation is quite bland, many will be wondering what changes to current market practices might eventually emerge."

But while some figures within the industry feel it is functioning correctly, a loud and clear message is coming from Brussels, saying that



Kroes: remove the barriers

the sector needs investigation. Philip Woolfson, a partner in the Brussels office of Steptoe & Johnson, believes this is because of the commission's concerns about the fragmentation of the European financial services market. Fragmentation prevents the full benefits of a market comprising 25 member states and 450m consumers from being realised.

"The recent controversy over foreign acquisitions in the Italian banking market is an example of such difficulties," Mr Woolfson explains. "As in similar cases in the past, the commission has questioned the Italian government and central bank in relation to allegations that they oppose attempts by banks from other member states to acquire controlling shareholdings in Italian banks."

Ms Kroes has said the investigations will start this summer, and as a result Mr Woolfson says there are a number of issues for the industry to watch out for. One of these is the extent of the commission's powers.

"Companies and associations should be aware that the commission's fact-finding capabilities include both the issue of requests for information and inspections," Mr Woolfson says.

The commission has extensive powers to:

- Enter the premises, land and means of transport of an entity (including

the homes of directors, managers and other members of staff

- Examine books and other records related to the business (and take copies or extracts in any form)
- Seal business premises and books or records
- Ask any representative or member of staff of the entity for explanations of facts or documents relating to the subject matter and purpose of the inspection
- Take statements from any person who consents to be interviewed

Although much of the enforcement role has been delegated to national and individual levels leaving companies and association to self-assess, Mr Woolfson warns: "Community-based sanctions remain draconian. The commission can impose a fine of up to 10% of the company's annual turnover. In June 2002, the European Commission imposed a fine of more than €124m (\$166m) on eight Austrian banks for their participation in a price cartel. In addition to a fine, the damage to a company's reputation may also be considerable."

Self-assessment

He suggests any self-assessment should be regular and based on an effective and comprehensive compliance programme (which can also address any "legacy" issues) — the commission will take into account an effective compliance programme as a mitigating factor when deciding the size of fines.

Although there is no hard and fast rule as to what constitutes an effective compliance programme Mr Woolfson says there are some practical pointers:

- Tailor-made: The compliance programme must be tailor-made for the company or association using it by addressing the specific competition issues in the sector. Defining the financial service or product and where it is sold therefore become key issues in understanding market share

• Legal audit: This will ensure that there are no "skeletons in the closet" and, if there are, will give the company the opportunity to apply for leniency and avoid a fine

• Compliance manual: This sets out the company's compliance programme and serves as guidance to both employees and management. However, compliance with the EC competition rules must be pervasive. Companies need to ensure that appropriate cross-references exist in other manuals and procedures

• Robust policies and procedures: the programme should set out effective disciplinary procedures

• Training: In addition to a compliance manual, staff training is vital to alert them to applicable EC legislation and its impact on working practices

• Legal vetting of documents: certain documents may require legal review

• Information exchange: guidance on disclosure of confidential or other information in both professional and social interactions with competitors is vital

• Senior management: compliance must have the full backing of senior management. The appointment of a senior manager as the compliance officer is now recommended practice

• Regular evaluation: as market conditions and the business of the company change, it is imperative that the compliance programme is updated accordingly

Mr Woolfson adds that compliance programmes do not only mitigate the risk of a commission fine.

"They reduce the risk of competition law infringements generally. Infringements can lead to legal actions for damages and/or interim measures in national courts, unenforceability of contractual obligations, and serious damage to a company's reputation, rating and share price," he says.