

INSURANCE DAY



IDnewscentre.com

This article first appeared in *Insurance Day* and can also be found at www.IDnewscentre.com

Reaction to consultation on BER

LAST week the European Commission launched a public consultation into the insurance sector's block exemption regulation (BER). Below is some of the immediate reaction to the news.

Guy Soussan, member of the European Union (EU) insurance group, and Yves Botteman, member of the EU competition group, of Steptoe and Johnson, say: "In September 2007 the European Commission published its final report on its inquiry into competition in the business insurance sector. The report indicated that the sector's current exemption from competition rules (the BER) may no longer be justified when the BER expires in March 2010.

"[Competition] commissioner [Neelie] Kroes stated the purpose [of the consultation] is to assess 'whether there are sufficient grounds to renew' the BER. The commission has indicated that to date it has not received compelling arguments to justify renewal.

"The commission's consultation should test whether, as a matter of policy and when compared to other sectors, a specific exemption from competition rules can be objectively justified and, if so, whether any such exemption can be more clearly circumscribed.

"Industry contributions to the questions set out by the commission in its consultation paper should enable the commission to balance the economic efficiencies and consumer benefits brought about by the BER against any anti-competitive deficiencies.

"The consultation does not seek to erase 15 years of experience of legitimate co-operation among insurers in the matters covered by the BER – ie, joint calculation of pure premiums, standard/model terms and conditions and insurance pools. The consultation should nevertheless focus on the substantive aspects of these arrangements.

"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 certainties of the BER in favour of an analysis based on the economic effect of co-operation may induce some national competition authorities to scrutinise certain forms of co-operation. The valuable guidance inherent in the BER and its status as a 'safe harbour' for insurers might now be lost with unpredictable negative consequences."

Soussan and Botteman warn: "Contributions are due by July 17. 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 arguments set forth in 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 co-operation permitted by the BER."

Meanwhile, lawyers from CMS Cameron McKenna say: "It is not surprising that the commission has launched this consultation, given its conclusions in the

insurance sector investigation in September 2007, in which it noted that it had yet to be persuaded the insurance BER was still necessary.

"Areas of particular interest to the commission include:

- Whether the block exemption is being used, where and why;
- Whether the business risks or other issues in this sector make it special and different from other sectors (which operate without a sector-specific block exemption); and
- Whether the block exemption gives rise to any anti-competitive effects which harm consumers, such as higher prices or reduced supply of certain insurance products.

"This is a crucial opportunity for the insurance industry to make its views known. Failure to convince the commission looks highly likely to lead to the withdrawal of the insurance block exemption, which is generally regarded by the industry as a valuable tool."

Lawyers from US firm Sidley Austin warn: "Non-renewal of the block exemption, which seems a real possibility, would threaten the continuation of some practices regarded by insurers that do business in the EU as standard."

European Commission: competition commissioner Neelie Kroes says that so far she has not heard any 'compelling arguments' for retaining the BER



© EUROPEAN COMMUNITY