

INSURANCE DAY



BER time is running out for industry

With little more than three weeks to go before the deadline for submissions on the insurance block exemption regulation, European Union officials have been urging the industry to put forward the case for retaining it. **LIZ BOOTH** investigates

THE INSURANCE industry is running out of time to get its point across on insurance block exemption regulation (BER).

Speaking at a conference organised by law firm Steptoe & Johnson, Eithne McCarthy, project leader of the European Commission's Directorate General for Competition, based in Brussels, says the industry must not just make claims but provide substantive evidence to support those claims, if it wants to keep the block exemption regulation in place.

The BER is up for its 10-yearly review and will automatically expire on March 31, 2010 unless the commission renews it.

No compelling reason

So far the European competition commissioner, Neelie Kroes, has made it clear that she sees no compelling reason to maintain the status quo. For her, the exemption should only stay in place if the industry can convince the commission that it will bring benefits to consumers that would be lost if the exemption were ended.

However, last Wednesday,

McCarthy made it clear that the commission has yet to make up its mind. The consultation period with the industry is due to end on July 17 and the competition directorate will then analyse the submissions before producing a final report for the European Parliament by March 2009.

McCarthy adds: "The important point to make is that the commission has not reached any conclusion so far. There are several areas of interest – where the BER is being used, when and why; whether BER gives rise to any anti-competitive effects and whether non-renewal of BER would lead to a heavier burden on the supervisory authorities."

Conference speakers have debated the possible impact of change on information exchange in relation to pure premiums and standard policy conditions. Dieter Pscheidl, from the Association of Austrian Insurers, says: "We are mainly active in the exchange of risk data and standard policy conditions."

He goes on to explain that the association membership covers the whole Austrian market but within that 70% of the market is

covered by just four insurers, with the remaining 30% covered by myriad small firms.

"The cost of obtaining risk data may be a factor of 100, while setting-up costs are a factor of 10 and maintenance is about a factor of one. It is clear that the most expensive part is obtaining the risk data," Pscheidl says. "There is scope for improvement. The wording of the BER is quite old and could be improved especially when it comes to sharing risk data."

However, he warns that the debate around the BER is not about a "safe harbour but about swimming or drowning".

'Claims without evidence'

Again, McCarthy stresses: "In the business insurance sector inquiry a lot of replies were claims without evidence. What we would like to see now is substantive facts. Where possible, please substantiate your claims with evidence. The commission will then be able to weigh that evidence." She adds that questions provided in the consultation document were there purely to give industry ideas of the areas that they could focus on

and that any evidence provided was for the industry members to determine.

Philippe Bourguignon, president of the environmental pool Assurpol, which is based in France, echoes Pscheidl's concerns. One of the worries about the loss of BER for insurance pools is that it could result in loss of capacity and coverage. Bourguignon fears smaller companies may well find that it is unprofitable to operate without a BER on pooling because they could not afford to set up the necessary specialist teams individually.

"If the BER were removed, this kind of pool would have to stop," he warns. Again, it is the smaller members of the pool that are likely to suffer the most and which could lead to less choice in the market.

Yves Botteman, of Steptoe & Johnson, adds: "A common thread of concerns is that without a BER there would be a lot of legal uncertainty. And it seems that what is at stake in this review is the extent to which the commission will be able to strike a fine balance between achieving what has

been done in the last four to five years in simplifying the rules on competition and on the other hand making sure there is availability to insure a certain number of risks."

Imagine BER-free situation

He suggests that industry and the commission need to put themselves into the shoes of insurers in a situation where there was no BER. He says there is already growing awareness of the need to comply with competition rules but there are costs attached to compliance, adding that no BER may increase costs significantly for national authorities and questioning whether there is enough experience at that level to ensure commission standards are met.

McCarthy says: "It is for the commission to determine whether business risks or other areas make the [insurance] industry different from other sectors." She says that if the BER is to be removed, the commission will publish impending changes well ahead of the 2010 deadline to give companies plenty of notice. It will also spell out the reasons for ending the

BER – as it would if it is to keep the BER in place as it is or as an amended version.

However, Pscheidl has concerns that an end of BER will also end legal certainty and he is concerned about the need for uniformity across the 27 member states. He says: "The second aspect is there will be new legal requirements established under Solvency II and also under the gender directive."

He calls for clarity, saying: "We need clarification between the new insurance laws and anti-trust rules. It should be clarified in a permanent unified basis." Pscheidl points out that some of the new rules will require insurers to base figures on risk data – something that could be hard for smaller companies to do if they are unable to access such information with the use of a BER.

He concludes: "For us, the case for renewal or reforming is strongly linked to a higher numbers of providers and an open market."

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European Commission: while competition commissioner, Neelie Kroes, has said she has seen no compelling reason to retain the block exemption regulation, the industry can still put forward its case