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L'Europa preoccupata: aumentano i costi per le riassicurazioni. Le Faq



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[Insurance sector under EU antitrust scrutiny](#)

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The European Commission's antitrust department, led by Neelie Kroes, is getting 'serious' about practices in the insurance sector, which it says may run counter to EU rules, especially regarding reinsurance, coinsurances and insurance brokerage by intermediaries.

[Competition: final report of the sector inquiry into business insurance - frequently asked questions\(see also IP/07/1390\)](#)

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[Competition: Commission issues final report on Business Insurance Sector Inquiry](#)

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Brussels, 25th September 2007

Competition: final report of the sector inquiry into business insurance - frequently asked questions (see also [IP/07/1390](#))

Why has the Commission been looking at this sector?

The Commission has the power under European anti-trust rules to carry out enquiries into economic sectors where it believes that the markets do not appear to be functioning as well as they could, and there are sufficient elements to raise concerns of anticompetitive activities.

What has happened since publication of the interim report?

The interim report (see [IP/07/74](#)) clarified where the Commission wanted to focus its attention. This included the areas of so-called "best terms and conditions" clauses, SMEs, long term agreements, the remuneration of intermediaries, the insurance Block Exemption Regulation and the need to listen to the voice of customers. Following the public consultation, the Commission sent out questionnaires to insurers, brokers, reinsurers, and reinsurance brokers covering these issues. It also discussed the issues with several market players and customers. Contributions to the public consultation are available on-line at:

http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/financial_services/business.html

The Commission suggests in the final report that it believes the insurance industry is quite profitable, although the

industry has questioned the methodology. What is wrong with businesses making money?

It is certainly normal that businesses strive to be profitable. Sustained very high profitability may, however, be an indication that competition is not working well in a given market. The purpose of the Commission's investigations on this point was merely to screen the market from this standpoint. No other conclusions were drawn.

The Commission has confidence in its analysis and the documents speak for themselves. The Commission recognises that the industry had a certain number of relevant observations on the methodology used but believe that these do not alter the overall picture contained in the report.

What exactly is the Commission concerned about in the coinsurance and reinsurance sectors?

The Commission is concerned about certain procedures in the field of coinsurance and co-reinsurance when more than one insurer or reinsurer is involved in covering a single risk. The Commission's concerns relate exclusively to the procedure in two stages; this involves the selection of a lead insurer in the first round and then the attribution of the remaining risk to insurers who do not reassess it but simply conclude agreements on identical terms to those of the lead insurer.

Whilst it could be argued that this is efficient and increases capacity, the Commission questions in particular whether the element of premium alignment is indispensable, or whether the same efficiencies could not be achieved from auctioning the remaining part of the risk. Such a procedure appears to be used in a limited number of cases and could potentially lower overall premiums if used more widely.

Are these concerns about coinsurance and reinsurance a new element in the final report?

No. Out of thirteen "Issues for Consultation" listed in the Interim Report (p. 159), four concerned the "Best Terms and Conditions" clause (BTC). The Commission was concerned by this type of clause because it might align and raise premiums and because it increased price transparency, raising risks of co-ordination of prices (p.93). The French national Competition Council has also expressed concerns about this type of clause. The Commission made clear in the Interim Report that both reinsurance and coinsurance were concerned by this issue (p. 155).

Following publication of the interim report, the Commission carried out further fact-finding and established that one reason why this type of clause might have fallen out of favour was because the market tended to operate in a way that resulted in a harmonisation of terms without the need for an explicit mechanism in the form of a BTC condition in contracts or quotes. These practices were qualified by certain market participants as "*de facto* BTC", although other respondents said that they worked to the benefit of customers.

In the interim report, the Commission made it clear that it was not only concerned about a contractual clause but also about a market practice which might operate without such a clause. The questionnaires required respondents to identify all types of procedure leading to the conclusion of a coinsurance/reinsurance agreement, and not only those where, in their view, BTC was used. Therefore the Commission had a strong factual basis for its conclusions.

How has industry been involved in these findings?

Industry has been fully involved in the findings. Questionnaires were sent to 40 insurers, 24 brokers, 20 reinsurers, and 10 reinsurance brokers. The Commission also discussed these issues with market players and customers. The Commission now looks forward to further discussions on the findings of the final report.

What happens next?

It is up to market participants to read the report and draw their own conclusions. Under European competition law companies have to assess for themselves whether they are in compliance with Articles 81 and 82.

The Commission will see whether market participants change their practices or believe they are able to defend them and it will engage in dialogue to assist in this process. If the Commission were to conclude that the practices could infringe competition law and industry did not take steps to change them, then enforcement proceedings might need to be considered.

Isn't it more efficient to have a single premium than go to the trouble of negotiating separate premiums with each

participant?

The Working Document recognises that attempting to achieve varying premium levels might not be worth the effort required. However, the Commission is somewhat sceptical given the size of the contracts concerned and also because the role and responsibilities of the lead insurer and the costs that he assumes appear to be quite different from those of following insurers. This makes it likely that the price should vary on purely economic grounds. The Commission is not talking about a negotiation with each participant, but an auction process in which it is not ruled out, before the process even starts, that some insurers might offer lower prices in order to win the business. This is the essence of normal competition in any market, but is not the way the market works here.

When customers wish to proceed according to the subscription procedure with harmonised premiums, shouldn't they be allowed to do so?

It goes without saying that the commercial decisions of customers have to be given due consideration. However, it is not an automatic presumption under EU competition law that customers who are undertakings can proceed in all cases exactly as they wish. Obviously there may be a presumption that undertakings endeavour to get the best deal they can from suppliers but it is not excluded that other factors may change their incentives. If they do not believe that the market offers a real choice, then they may feel that they are not securing the best deal.

Is the Commission being critical of insurance brokers?

The final report does not criticise insurance brokers as such. It acknowledges explicitly that through their activities, which allow access to a wider choice of potential insurers (including the international insurance markets for the placements of larger or specialty risks), brokers may be able to stimulate competition in the insurance market place. However, in order to do so they have to act in the best interest of their clients at all times.

The sector inquiry established that many brokers do not disclose all the relevant information to their clients, such as the remuneration obtained from insurers with whom they place business or services provided to those insurers. The result is an environment in which business insurance clients, in many cases, are unable to make fully informed choices.

The sector inquiry also found that brokers are often exposed to conflicts of interest that could jeopardise the objectivity of their advice to clients. Certain practices specifically aimed at inciting brokers to place business with particular insurers have the potential to undermine fair competition in the insurance market around terms and conditions of cover, service and insurers' financial strength. Such practices might, instead, result in insurers' competing against each other on the level of remuneration afforded to brokers in an attempt to "buy" distribution, or at the very least influence the brokers' advice to clients.

Why do the remarks in the final report on insurance mediation not extend to exclusive agents?

According to the provisions of the Insurance Mediation Directive (2002/92/EC), an insurance intermediary is obliged to inform the customer whether he is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. Where an exclusive agent informs the customer correctly of his status, the customer should not expect to receive advice on the basis of a fair analysis of the market, but on the other hand, the customer would expect this from a broker.

The Block Exemption Regulation (BER) is good for industry and for competition so why does the Commission want to repeal it?

The BER expires by default in 2010 so a case has to be made to keep it.

Since the adoption of Regulation 1/2003 abolished the system of notifications, the onus is on undertakings to conduct their own assessment of compliance with competition rules. One sectoral BER has already lapsed (on airline tariff conferences â€" the so-called "IATA block exemption").

So to renew the BER in the insurance sector, the case would need to be made as to why the insurance sector would still need specific rules and exemptions, different from any other sector.

The Commission has not come to a final decision as to whether to propose prolonging the Block Exemption Regulation or not and intends to fully consult all interested parties, who will be able to make their submissions. Insurers should be prepared,

however, for the possibility that the BER might not be renewed.

It should be underlined that even if the BER were not renewed, this would merely mean that the practices which it covers would not benefit from an automatic exemption under the competition rules. This is a technicality and certainly does not mean that they would become illegal. The Commission would welcome pro-competitive forms of cooperation between insurers, such as sharing historical data on claims, continuing in the market. The question is merely whether or not a BER is needed for this to happen.

Is there any evidence that the BER actually exempts behaviour which is harmful?

There is a risk that the BER inadvertently exempts some restrictive conduct. For example, this may be the case in certain markets for security devices, which are artificially closed to competition by collective non-recognition of these devices by insurers.

Common standards aid switching between insurers, but at the same time there is a potential for abuse. This is the problem with form-based exemptions such as the BER, and explains why there should be as much scope as possible for an effects-based approach consistent with the need for legal certainty.

Why is the Commission against long term agreements when sometimes the clients themselves require them?

The Commission is not concerned by long-term agreements as such, only when they form cumulative networks which foreclose the market or when they are carried out by a dominant company. When so much of the market is locked up in such contracts, it is not economical for a new entrant to enter the market. In the case of cumulative networks, as always it is necessary to consider whether the restrictions of competition might be outweighed by efficiencies brought about by long term agreements, which benefit consumers

Does the Commission conclude that there is a specific problem in Austria regarding long term agreements?

The Commission is simply saying that at this stage its concerns in relation to the situation in Austria have not yet been addressed and that this requires further analysis. It intends to liaise with the Austrian Competition Authority.

The Interim Report expressed concerns about less favourable treatment of SMEs by insurers in certain countries. What is the final view on this?

As stated in the Interim Report, SMEs seem to pay more than large corporate customers in certain markets for the same type of cover. This may be due to the information asymmetry that SMEs face in regard to the role of brokers, which may give brokers a degree of market power and reduce competition between insurers on price. This problem is analysed in the final report and the Commission will look at it further in the review of the Insurance Mediation Directive (2002/92/EC). Several Member States are already concerned with the same issue.

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