



Insurance and reinsurance news

THE EUROPEAN COMMISSION REVIEWS THE INSURANCE BLOCK EXEMPTION

This newsletter looks at the recent developments around the insurance block exemption and the effects of the European Commission's potential reforms.

Introduction

The insurance block exemption exempts certain agreements between insurers from scrutiny under the European rules on agreements between competitors (article 81 of the EC Treaty).

The block exemption expires in March 2010 and the European Commission is currently consulting on its renewal. Initial proposals indicate that key parts of the block exemption will not survive and other parts may be significantly revised.

At a public meeting held on 2 June, Neelie Kroes, the European competition commissioner, stated that the Commission 'does not renew such exemptions lightly', but called for further input from the industry.

This edition of *Insurance and reinsurance news* explores the Commission's proposals and examines their consequences.

The insurance block exemption

The current block exemption was introduced in 2003. It exempts, subject to conditions, certain categories of agreement from article 81, which prohibits anticompetitive agreements.

This exemption was introduced before the 2004 reforms, which removed the possibility of obtaining individual exemptions for particular agreements from the Commission. In certain industries, such as insurance, block exemptions were introduced to provide

certainty without the need for a multiplicity of (likely similar) notifications. However, since those reforms, the possibility of obtaining explicit exemptions has been removed and the Commission expects companies to 'self-assess' their agreements to conform with competition law. Taking the view that this should be the general rule, it has been steadily reducing the number of block exemptions in force.

Thus, under the new regime, even if the block exemption were to be removed entirely, it would not mean that the agreements covered by it would cease being legal. Rather, they would simply have to be assessed on a case-by-case basis as happens in other industries.

The categories of agreement that are currently covered by the block exemption are:

- joint calculations, tables and studies;
- standard policy conditions;
- insurance and reinsurance pools; and
- standards for security devices.

The Commission's review of the block exemption

In 2007, the Commission completed its wide-ranging business insurance sector inquiry. The enquiry provided an early indication of the Commission's scepticism on the continued need for the block exemption. Finding that its usage varied significantly between insurers in different member states, the Commission warned that it might not be renewed when it expired.

The Commission began its formal review of the block exemption's operation in 2008 and received responses to its consultation paper from a range of insurers and other interested parties.

In March 2009, the Commission followed this up with its formal report to the European Parliament and Council on the functioning of the block exemption, setting out its recommendations.

The Commission's recommendations

Joint calculations, tables and studies

The Commission recommends that the exemption for joint calculations, tables and studies should, in one form or another, be renewed. It concludes that one of the key conditions that the block exemption imposes is particularly valuable – that the studies must be made freely available to other market participants. The Commission considers this helps smaller insurers and new entrants, which would otherwise lack the statistics to allow them to price the risks they insure (although there were dissenting voices on this point at the recent public hearing).

The Commission does note concerns that the exemption may, in some cases, be used as a cover for wider information-sharing. It also raises questions about whether the existing exemption is wider than absolutely necessary and is clear enough about what information can and cannot be shared.

For these reasons, the Commission does not rule out making amendments to the terms of this exemption (although there was strong support at the public hearing for maintaining a broad exemption).

Standard policy conditions

By contrast, the Commission proposes to drop the exemption for standard policy conditions. It concludes that in many cases, the block exemption is not necessary for it to be clear that the conditions are permissible and that many or most would exist even without it.

Insurance pools

The picture is mixed for insurance pools. The Commission's report clearly indicates an appreciation of their value, and a belief that the lack of a block

exemption may cause some insurers to lessen their participation. However, it also notes concerns that many pools falling outside the terms of the block exemption (for example, its market share thresholds) are apparently being described as justified on the basis of the block exemption. Those pools, the Commission observes, need a full assessment under article 81.

The Commission leaves open the possibility of renewing the block exemption for insurance pools, albeit possibly on a more restricted or clarified basis.

Standards for security devices

Finally, the Commission indicates that it does not propose to renew the exemption for standards for security devices. The Commission considers that this sort of standard setting is far from unique to the insurance industry and a specific block exemption is therefore not needed.

The public hearing and what happens next

On 2 June, the Commission held a public hearing at which representatives of the insurance industry and other interested parties were invited to give their views.

Commissioner Kroes suggested little or no movement from the position set out in the report. She told the audience that it was the Commission's job to 'ask hard questions' – in particular about whether 'exemptions are necessary in the first place and, if so, are they causing market problems?' Indeed, she asked whether 'tighter restrictions on co-operation between insurers [might] be more beneficial in the long run.'

Voices from the industry largely supported the continued existence of the block exemption, though not without dissent.

The commissioner and her colleagues promised that the Commission was still open to these industry views, but it seems likely the final proposal will broadly reflect the report. This proposal will be put out to consultation in the autumn with a view to the revised block exemption (if any) being put in place in the new year.

Effects of the Commission's proposals

Given the scepticism voiced by Commissioner Kroes at numerous points in this process, many were surprised that the Commission's report supported the retention of any part of the block exemption.

It seems likely, though, that a much-reduced exemption will emerge. What effect will this have?

If, as was indicated by the sector inquiry, the current block exemption enjoys very different levels of usage in different countries and in differing business sectors, the picture may not be consistent. In Germany, for example, the sector inquiry found high usage levels of each of the categories of agreement covered by the block exemption. In the UK, by contrast, there was relatively little usage of common data (likely to lose its exemption) but relatively high usage of insurance pools (likely to be more restrictively exempted).

At a general level, a clear message emerges from the Commission's report: some insurers have claimed too quickly that the block exemption applies to their agreement. The Commission is clear that detailed scrutiny needs to be given to whether the conditions that attach to each category of exemption are met in each particular case. Given that the renewed parts of the block exemption are likely to be subject to even more significant caveats and restrictions, any new block exemption will be more closely scrutinised.

Similarly, for those insurers participating in agreements that cease to be exempted, existing agreements will not have to be abandoned – but will require examination to confirm whether they fall outside article 81(1) altogether or can be justified under article 81(3) on the basis of the benefits they create. This will require some detailed case-by-case analysis.

It is worth noting that the Commission's data collection – both in the process of reviewing the block exemption and through the sector inquiry – means that it now possesses a lot of information on the sector and the agreements that are in place within it. If anything, this amplifies the need for careful scrutiny of all existing and future agreements. As Neelie Kroes said at the public hearing, the Commission is not going to be 'afraid to ask hard questions' of the industry going forward.

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