



ASSOCIATION OF BRITISH INSURERS RESPONSE TO THE DRAFT REGULATION ON THE APPLICATION OF ARTICLE 81(3) OF THE TREATY TO CERTAIN CATEGORIES OF AGREEMENTS, DECISIONS AND CONCERTED PRACTICES IN THE INSURANCE SECTOR

EXECUTIVE SUMMARY

The Association of British Insurers (ABI) welcomes the support from the European Commission in their draft Regulation for a partial renewal of the Block Exemption Regulation (BER) relating to joint compilations, tables and studies and insurance pools. However, we do have some serious concerns relating to the amendments made to the scope of the BER in both these areas.

We are extremely concerned about the removal of the areas relating to the establishment of Standard Policy Conditions (SPC) and the cooperation on the testing and acceptance of security devices. The ABI believes that the BER should be renewed for both of these areas, as the cooperation under these elements is specific to the insurance sector and provides positive effects for competition in the market and for consumers. We would ask that the Commission do not replace the removed parts of the BER with guidelines or any other guidance. We do not view these alternatives as legally adequate and are concerned they would not provide sufficient legal certainty for the insurance market. We prefer to rely on self assessment under Article 81(3) as we are confident that insurers' activities comply with this provision and there is no need for additional commentary.

The ABI strongly believes that all four forms of cooperation under the BER should be extended, as the BER has proven beneficial for competition in the market, has provided both legal clarity and certainty, and led to the opening up of the insurance market to new businesses and new products. The Commission itself has agreed that cooperation under the BER has been to the advantage of consumers. By not renewing it would endanger all of these benefits.



INTRODUCTION

The ABI represents the collective interests of the UK's insurance industry. The Association speaks out on issues of common interest; helps to inform and participate in debates on public policy issues; and also acts as an advocate for high standards of customer service in the insurance industry. The Association has around 400 companies in membership. Between them, they provide 94% of domestic insurance services sold in the UK. ABI member companies account for almost 20 per cent of investments in the London stock market.

The ABI's registration number on the European Commission's Register of Interest Representatives is: **730137075-36**.

JOINT COMPILATIONS, TABLES AND STUDIES

The ABI supports the Commission's extension of the BER in this field. Cooperation in this area provides many benefits to both the consumer and the insurance market.

We welcome the change in term from 'calculations' to 'compilations.' We believe this term better reflects the activities that insurers carry out under the BER, which is collecting and compiling information, rather than calculating the average cost to cover certain risks.

We believe the ABI fully complies with the requirement as set out in Article 3(2)(c) of the proposed BER. Access to the information produced by the ABI is available on reasonable and non-discriminatory terms to all ABI members and other insurance undertakings that request it. Regarding Article 3(2)(e), we would like clarification that access to insurance information relates only to the aggregated data and the results of the information exchanged, rather than the raw data provided by insurers. We would have extreme concerns if this requirement provided for access to the raw data we collect. Such a requirement would involve a careful consideration of the degree of information we collect and could result in a decision to reduce the information collected.



Lastly, we are unsure what the Commission intends under Article 3(2)(e) whereby non-disclosure is justified on the grounds of public security. We would ask the Commission to clarify their intention with this requirement.

POOLS

The ABI welcomes the Commission's extension of the BER in this field and the recognition that risk sharing is essential to ensure that all such risks can be covered. We are pleased with the definition for 'new risks' in Recital 17 and Article 1(6) and the clarity it brings to insurer cooperation in pools, however, we are concerned the Commission has not extended the period of exemption from three years. We do not believe that three years is a sufficient period to enable insurers to acquire sufficient experience and understanding of how to price new risks. Therefore, we ask that the Commission change the period from three to five years as this would allow insurers to properly understand and price potential risks. Furthermore, it is not clear what the Commission understands by 'objective analysis' and a clarification would be welcomed.

We are unhappy with the changes made in the proposed BER regulation regarding aggregate market share and the simultaneous membership of pools. The draft Regulation under Article 6(2) refers to the 'aggregate market share held by participating undertakings inside and outside a pool' in contrast to the current BER which refers to 'products underwritten within the grouping arrangement'. This modification restricts the scope of the BER by driving out insurers with a large or even medium market share from participating in pools that operate under the BER. This will also impact on smaller insurers who are willing to participate in pools, as they benefit from the larger insurers' experience, but as a consequence will stop cooperating in this field. The current BER provides suitable requirements for insurers operating within pools and we support the previous requirements regarding aggregate market share.

We are also concerned about the inclusion of Article 7(g) in the proposed BER regulation where an insurer or reinsurer is simultaneously a member of two pools active in the same market. This requirement, combined with the new method of



calculating market share and tighter thresholds, will result in the BER requirements being unable to be met. These requirements restrict the scope of the BER and effectively drive out larger insurers from specialising in niche markets. We ask that the Commission remove this condition.

The reference in Recital 20 to the exclusion of 'ad-hoc co-(re)insurance arrangements on the subscription market' from the scope of the BER is irrelevant. References to areas of co-operation falling outside the scope of the BER and requiring assessment under Article 81(3) are unnecessary and we would ask the Commission to remove the reference to 'ad-ho co-(re)insurance in Recital 20 from the draft Regulation.

SECURITY DEVICES

The Commission's removal of the BER for cooperation on the development of specifications regarding the installation and maintenance of security devices is disappointing. The argument that this cooperation is not necessary due to the introduction of EU harmonised standards is not correct. The purpose of industrial standardization is to agree minimum standards to allow for free circulation of goods and services in a single market. The purpose of insurer led cooperation in the field of security devices is to reduce losses, and to preserve life and property. The difference in focus means that certain areas regarding protection of property remain unaddressed by Commission standards and as insurers and their customers require more detailed requirements, necessary guidance is developed under the protection of the BER.

It needs to be recognised that a particular benefit of insurer-led guidelines and standards is that they can be issued and updated rapidly to take account of new needs and innovations in the market. Intruders rapidly develop methods to counter security systems. On the other side, technological developments bring in new means of prevention. For example the RISC Authority¹ is able to issue guidelines quickly following consultation between the relevant panel members and stakeholders. This

¹ In the UK, cooperation between insurers regarding security devices and safety equipment is conducted on a voluntary basis within the framework of the RISC Authority.



timeline provides certainty and ensures that all the parties involved in the business property insurance sector – consumers, manufacturers and insurers – can use guidance to deal with pressing commercial issues, as opposed to waiting potentially for several years for the enactment of CEN/CENELEC standards approved by all the Member States.

The argument that the development of guidelines and standards under the BER could be considered de facto mandatory for security device producers or for installation and maintenance undertakings is untrue. Whilst we agree that the issue of such standards for security devices bears with it a risk of imposing inadvertent barriers to trade, we do not think that the BER should be used to justify exclusionary practices. Because the BER might be mis-used is not a justification for its withdrawal and if there are exclusionary practices found, they should be addressed on a case-by-case basis. In the UK, every effort is made to ensure that guidelines and standards are not restrictive.

Furthermore, the Commission's argument that manufacturers and service providers are not adequately consulted with in the setting of standards is simply not the case in the UK. The RISC authority, tasked with producing updated and new standards, extends invitations to the sprinkler installer and manufacturer trade associations. These bodies directly participate in the production of these standards prior to publication.

If the Commission does remove the BER in this field of cooperation, the most likely outcome is that a gap in guidance would encourage insurers to specify requirements on an individual basis making it harder for smaller insurers to compete in the market. This would restrict competition in the market and product choice for consumers. It would be wiser for the Commission to extend the current BER whilst waiting for standardisation to catch up to ensure that the benefits of life-safety and property security would be maintained.

STANDARD POLICY CONDITION'S

Despite the Commission acknowledgement that SPC's give rise to positive effects for competition in the market and for consumers, it is difficult to understand why this part



of the Regulation has not been renewed. This deletion will have a large impact on small, medium, new and foreign enterprises, and in particular on the wholesale and specialist markets. Where underwriters are dealing with many clients and with short timeframes, the availability of SPC's is essential to legal clarity and efficiency. In the absence of these, each contract would need to be negotiated and drafted without the advantages of previous experience. Furthermore, the establishment of SPC's benefits insurers seeking to enter new markets as they can't always bring their domestic contractual terms to a new market. This is of great benefit in circumstances where EU policy is actively to encourage the integration of a single market in sectors such as financial products like insurance.

The current BER provides clear requirements that need to be met by insurers when developing SPC's. Without these clear requirements, insurers would be obliged to take further advice, involving further costs in time, fees and administration. Furthermore, the cost implications arising from removal of the block exemption would be impact most on small, medium, new and foreign enterprises as the legal costs for these insurers would be proportionally higher than for the larger more established companies.

TRANSITIONAL PERIOD

In contrast with the Article 11 of the current BER, the draft Regulation does not provide for a one year transitional period for agreements already in place before its entry into force. We would urge the Commission to include such an article in the draft Regulation that would allow insurers to take time for self-assessment and to get legal advice in relation to the proposed Regulation.

Such a provision could read: *The prohibition laid down in Article 81(1) of the Treaty shall not apply during the period from 1 April 2010 to 31 March 2011 in respect of agreements already in force on 31 March 2010 which do not satisfy the conditions for exemption provided for in this Regulation but which satisfy the conditions for exemption provided for in Regulation EEC No 358/2003.*



CONCLUSION

The ABI welcomes the support from the European Commission in their partial renewal of the BER. We are pleased the Commission has recognised that these areas of cooperation should continue under the Regulation. However, we do have serious concerns relating to the amendments made to the draft BER, in particular the changes made to the market thresholds for Pools and the requirement for insurers to provide third party access to joint tables, studies and compilations.

We are also disappointed about the removal of the fields of SPC's and the cooperation on the testing and acceptance of security devices. The ABI believes that the BER should be renewed for both of these areas, as the cooperation under these elements is specific to the insurance sector and provides positive effects for competition in the market and for consumers.

The ABI strongly believes that all four forms of cooperation under the BER should be extended, as the BER has proven beneficial for competition in the market, has provided both legal clarity and certainty, and led to the opening up of the insurance market to new businesses and new products. The Commission itself has agreed that cooperation under the BER has been to the advantage of consumers. By not renewing it would endanger all of these benefits.

ABI November 2009