



Proposal for a Commission Regulation (EC) on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector

Joint observations from the German association for the protection of insurance customers (Deutscher Versicherungs-Schutzverband e.V. – DVS), the Federal association of insurance intermediaries and companies tied to a specific firm (Bundesverband firmenverbundener Versicherungsvertreter und -gesellschaften e.V. - BfV) and the Federation of German Industries (Bundesverband der Deutschen Industrie e.V. – BDI) on the planned amendments to the Block Exemption Regulation for the insurance industry.

The German association for the protection of insurance customers (DVS) was founded in 1901 by German industry in response to the increasing formation of cartels by insurers and has represented the interests of commercial insurance customers ever since. The association represents about 2000 members from the manufacturing, distribution and craft sectors, as well as service providers, banks, municipalities and associations. All forms of business from sole traders to internationally operating concerns are represented.

The Federation of German Industries (BDI) is the umbrella organisation for industrial companies and industry-oriented service providers in Germany. In its role of representing the interests of industry, the BDI helps its members to form opinions and make decisions. It provides information on all areas of economic policy. In this way the BDI supports the companies in dealing with the intense competition resulting from globalisation. Through its 36 member associations it represents the interests of more than 100 000 companies with over 7.5 million employees.

The DVS and the BDI view their role as representing commercial insurance customers in Germany. They represent the interests of both large and medium-sized companies.

The Federal association of insurance intermediaries and companies tied to a specific firm (BfV) is a union of leading insurance intermediaries and companies tied to a specific firm which are registered in Germany. It, too, represents the interests of commercial insurance customers and of large and medium-sized companies, provided they have their own in-house broker or captive insurance company that takes care of their insurance cover and risk management. Its successful performance of these tasks over several decades means that the BfV occupies an important

position among the associations on the German and European insurance market.

Initial remarks

The DVS, BDI and BfV have in the past been closely involved in discussions on the issues relating to the block exemption of insurance-industry agreements by the Commission. In a joint position, the DVS, BDI and BfV are availing themselves of this welcome opportunity to make known to the Commission their views on this draft. All the comments made below refer to the insurance market in the German Federal Republic and are restricted to commercial and industrial insurance.

The DVS, BDI and BfV have consistently stressed that the insurance industry differs from other economic sectors in matters of risk and information needs. Sound information on the risks to be insured is essential for the operation of the insurance industry.

Whether a BER is actually necessary for the smooth running of business must, however, at least be reviewed. It was therefore good to see the Commission address this issue in detail in its sector inquiry into business insurance. The Commission's answer to this question takes the form of the - amended - extension of the current BER proposed in this draft. We would like to make the following observations:

Agreement on joint compilations, tables, and studies (Articles 2 to 4 of the draft BER)

The insurance industry has always maintained that cooperation in providing statistics and recommended rates would make it easier for smaller companies to participate as providers in the relevant market segments. We do not contest this argument. We therefore consider it entirely reasonable to maintain this area for exemption in the new BER.

Whether the planned amendment binding insurers to disclose compilations, tables or study results to any interested third party, however, is a step towards greater transparency, at least in the area of industrial insurance, is, we feel, open to question. The BDI, DVS and BfV assume that the costing basis used by insurers will not be comprehensible, even if associations' statistics are made available. In Germany, at any rate, this is an extremely complex matter, which is actually impenetrable to all but experts, e.g. actuaries.

The insurance industry has argued that the obligation to disclose data will threaten cooperation between insurers in the joint production of statistics, compilations and tables. Though we do not know whether the insurers' fears are entirely warranted, a number of individual insurers have already announced that they would withdraw from cooperation on these matters in such circumstances.

Common coverage of certain types of risks (Articles 5 to 7)

The existing BER (Regulation (EC) No 358/2003) has in practice posed no serious problems for commercial insurance customers. We therefore have no objections to maintaining this area of exemption. We welcome the extension of the definition of "new risks", as it offers greater flexibility. We are unable to express an opinion,

however, on the new BER's planned changes to the way market share is calculated, since we cannot gauge their practical implications.

We note nevertheless that the Commission is now taking a more critical stance on ad hoc co-insurance. This form of co-insurance is vital to commercial insurance customers, especially when it comes to covering major risks, and works to the perfect satisfaction of all parties. In its report of 12 May 1999 on the then BER, the Commission quite rightly pointed out that ad hoc co-insurance raised no competition concerns. We regret the Commission's subsequent U-turn on ad hoc co-insurance, but we assume that the Commission will continue to see the German approach as raising no concerns about competition.

Standardisation of policy conditions and acceptance of security devices

The draft BER no longer exempts these two areas.

As regards the standardisation of policy conditions, we are not fundamentally opposed to cooperation between insurers. There are thoroughly positive examples of work on conditions by the German insurance association (GDV), though not all customers have had satisfactory experiences. Since we assume, however, that the insurance industry will continue to cooperate as before, i.e. without a block exemption, within the rules, we see no overriding need to maintain the current exemption.

The DVS, BDI and BfV had already expressed their opposition to exemptions for the agreements on security devices upstream of the proposal. We therefore share the Commission's view that cooperation between insurers in this area should not be specially facilitated in the future by a block exemption regulation.