



NEW INSURANCE BLOCK EXEMPTION REGULATION

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The Review of the BER



- Implementing Regulation (1534/91) requires the Commission to report to Parliament and Council by 31 March 2009 – Report was adopted and published on 24 March 2009
- BER will expire automatically on 31 March 2010
- So Commission obliged to consider early whether to adopt a new BER before expiry

Recap of essential points



- BER codifies Art 81(3) in relation to certain forms of agreement where the Commission could say with sufficient certainty, such agreements (if they fulfill specified conditions) meet the exemption from prohibition criteria of Art 81(3)
- So an agreement may well continue to meet the Art 81(3) criteria without the BER
- Most sectors operate without a BER – self-assessment under Art 81(1) and (3) is required

The Review of the BER – what it has so far involved



- ECN (national competition authorities) consulted – November 07, January 08, February 09, July 09
- Consultation Paper and questionnaires – April 08
- Industry encouraged to submit evidence supporting their statements
- Follow-up questionnaires to small insurers, pools and producer federations (of security devices) – December 08
- Numerous meetings with industry and other stakeholders
- Report and Working Document to Parliament and Council on findings and proposals - published on 24 March 09
- Public Event to discuss findings and proposals – 2 June 09
- Follow-up questionnaires since Public Event – June 09
- ECN Meeting – 29 July 2009, to discuss draft BER
- Adoption of the new draft Insurance BER – 5 October 09

A First Principles Analysis



- Since primary objective (reduce notifications) no longer relevant because of modernisation (2004), we undertook a first principles analysis of each exemption under the BER separately, answering the following questions:
 - Is the insurance sector special so as to give rise to an enhanced need for cooperation in comparison with other sectors?
 - If so, is it necessary to protect/facilitate this enhanced need with a legal instrument?
 - If so, is *this* BER the right instrument?

What is exempt under the BER?



- Narrow exemptions in relation to specific forms of cooperation between insurance companies and subject to conditions
- 4 categories of agreements exempted in relation to:
 1. Joint calculations, tables and studies
 2. Standard policy conditions
 3. Co-(re) insurance pools
 4. Security devices

Standard Policy Conditions – Review findings



- In many cases will not fall foul of Article 81(1)
- Often pro-competitive *but* can lead to too much harmonisation and lack of non-price competition
- Does not appear specific since other sectors such as banking have SPCs and say they do not need a BER or have not been hampered by lack of BER
- Non-cooperation is unlikely
- No BER necessary
- Commission currently considering including SPCs in the (currently being) revised Horizontal Guidelines

Security Devices - Review findings



- Specificity of insurance sector
 - Does not appear specific – agreements on technical specifications fall into the general domain of standard setting
- Anti-competitive effects on the downstream market for security devices
- Obstacles to the free movement of goods, persons and services created by non-EU harmonised standards
- Remaining scope of the BER is significantly reduced or eliminated due to existing EU-level harmonisation
- Going forward, need transparency and non-discrimination in standard-setting

Proposal for security devices



- No necessity for a BER
- Guidance will be afforded by the general standardisation chapter in the Commission's Horizontal Guidelines (currently being revised)

Joint Calculations, tables and studies - Review findings



- Competitive effects
 - Not raising significant concerns
 - Appears to assist entry by smaller/foreign insurers
- Specificity of insurance sector
 - Yes since cost of the product unknown at time price is agreed and calculation of risk is key
- Necessity for a legal instrument
 - May be less cooperation if BER not renewed
 - Alternatives exist but appear less efficient or dependant on public purse
 - BER appears to be doing job effectively

Draft exemption – key changes for joint calculations, tables and studies



- Amend term to joint *compilations*, tables and studies as per review findings
- Narrow exemption to what is *necessary*
- Restructure entire BER
- Include access for consumer organisations and other interested parties

Pools - Review findings



- Specificity of insurance sector as regards co(re)insurance pools - crucial to ensure that large or new risks can be covered by insurance companies covering risk together
- Risk of non-cooperation
- Misapplication of the BER
- Method of calculating market shares is not consistent with other sectors
- Many comments requesting expansion of new risks

Draft exemption for pools – key changes



- Adjusted the structure
- Brought approach to market share calculation into line with other competition rules
- Raised flexibility in market share thresholds by 3 per cent
- Broadened definition of "new risks"
- Clarified the definition of pools to exclude ad-hoc arrangements

Additional points



- Expanded the right of withdrawal of the benefit of the BER to all Member States
- Deleted the transition period as no hardcore restrictions have been added
- Commission will be tougher on monitoring and enforcement

Next steps



- 30 November- consultation on draft BER closes
- December – Incorporation of comments
- January - second Advisory Committee meeting
- January/February 2010 - finalisation of Impact Assessment
- March 2010 - adoption of new Regulation (Impact Assessment will be attached as a staff working document)

Further Information



- Report and Working Document available at:
http://ec.europa.eu/comm/competition/sectors/financial_services/insurance.html
- Videos from Public Event available at:
http://ec.europa.eu/competition/sectors/financial_services/events/insurance_ber.html
- Final report on Sector Inquiry available at:
http://ec.europa.eu/comm/competition/sectors/financial_services/inquiries/business.html
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