



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
D(2010)

12 FEB. 2010

Opinion

Title **DG COMP - Impact Assessment on: Options for the Future Competition Policy Framework Applicable to Certain Agreements in the Insurance Sector**

(draft version of 15 January 2010)

(A) Context

Treaty article 101(3) allows agreements which restrict competition on condition that they generate and transfer to consumers a sufficient amount of benefits. The undertakings concerned have to assess whether these conditions are fulfilled on the basis of individual self-assessments. They may, however, benefit from regulations exempting whole categories of agreements (so-called block exemption regulations – BER). Commission Regulation 358/2003 does so for the following categories of agreements, decision and concerted practices in the insurance sector: (i) joint calculations, tables and studies; (ii) standard policy conditions (SPCs) and models on profits; (iii) the common coverage of certain types of risks (pools); and (iv) security devices. As the Regulation expires on 31 March 2010, the Commission is considering which changes may be required taking into account the results of an extensive review of experience.

(B) Overall assessment

The Board is of the view that the overall presentation of the analysis needs to be significantly improved, and that further work is needed on a number of important issues. The report should better substantiate the reasons for continuing or not to grant sector specific block exemptions to certain agreements. In addition, the nature and magnitude of the problems highlighted in the context of the policy review should be analysed more systematically. This would provide a better basis for explaining and justifying the modifications in the regulation which are proposed under the preferred option. The reasons for the selection of the latter should be clarified by deepening the impact analysis and providing illustrative examples and data of the benefits for different stakeholders of the revised policy framework. Finally, the provisions for monitoring and evaluation should be strengthened.

(C) Main recommendations for improvements

(1) Present the problems that are being addressed more clearly, and analyse them more extensively. The report should better substantiate the reasons for continuing or not to grant sector specific block exemptions to certain agreements in the insurance sector (economic specificities of insurance provision, effects of standard policy conditions on consumer welfare, fragmentation of the market for security devices etc.). However, it should not limit itself to these issues but also illustrate systematically the nature and magnitude of the shortcomings identified in the current regulation (§ 49) which currently are only presented in the impact section (for example, the risk of product standardization - § 156 – and poor understanding of BER provisions - § 182 and 207) or need to be inferred from the presentation of option 2 (see section 4.1.2).

(2) Expand the analysis of options. The report should include a brief analysis of those options which were discarded early in the policy process such as granting the benefits of a BER to further categories of cooperation or using sector specific guidelines rather than regulations. The report should also explain better the content of the individual measures envisaged under option 2 against the background of the expanded analysis of problems suggested above, as well as the reasons why they have been selected rather than the available alternatives. Finally, the report should assess better the role that public or private third party arrangements may have in meeting the needs currently seen to justify cooperation among insurers (collection and availability of information, harmonization of technical specifications for security devices).

(3) Clarify the reasons for the selection of the preferred options. The report should provide a better analysis of the impacts that the revised policy framework would have on the insurance sector and its clients. It should make a greater use of examples and statistics (such as those presented in annex II) to illustrate these impacts. It should identify more clearly the benefits the revised legal framework will produce for the different types of insurance companies, clients and competition authorities. As part of this analysis it should indicate whether there are likely to be any changes in the incentives for cooperation among insurers. In this context, the report should, in particular, better explain and substantiate the advantages of cooperation for large insurance companies, and the different legal risks for companies entering agreements covered by the BER or by self-assessments under Art. 101. It should also clarify the role of applicable BER market share thresholds in the case of pools and the applicability of Art. 101 in cases where pooling is necessary to allow the coverage of certain types of risks (§ 169). This analysis should be integrated consistently into the comparison of the relevant options. Finally, the report should strengthen the analysis of changes in compliance costs. Given that the industry has not provided detailed figures in response to the consultation, the report should provide broad orders of magnitude or a categorization of the costs which are likely to arise under the different options.

(4) Strengthen the provisions for monitoring and evaluation. The report should clearly indicate when an evaluation of the competition policy framework for the insurance sector will be carried out. The report should identify the criteria and indicators which will be used to assess the impact of the proposed revision

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report needs to be shortened considerably towards the 30 pages length limit indicated in the Commission Impact Assessment Guidelines. The executive summary should reflect the above recommendations, and it should present the individual measures envisaged under option 2.

(E) IAB scrutiny process

Reference number	2010/COMP/002
External expertise used	No
Date of Board Meeting	10 February 2010