Ref.: HT.352 Consultation on the draft Communication on short-term export-credit insurance

The Directorate-General for Competition has invited comments from stakeholders on the draft Communication, which sets out how the Commission will apply the EU state aid rules to short-term export-credit insurance.

DI has the following general comments in relation to the draft Communication:

Access to short-term export-credit insurance is of great importance for European exporters and is expected to become even more important in the future. Experience has shown that the private insurers do not always meet the exporters’ needs, even in cases with customers that have a healthy economy and are able to pay for goods or services received.

Therefore, it is crucial that the Communication sets the right framework for the short-term export-credit insurance market. The wishes of private credit insurers should not be favored at the expense of European exporters. It is important that public or publicly supported export-credit insurers can step in when the market is not working to ensure fair and equal conditions for European exporters. Experiences from different countries have further shown that it is possible to organize this in a way that is so close to the market that there are no competitive distortions.

It is particularly important to ensure a flexible and dynamic system with the right definitions as the EU is the only region in the world that has chosen to regulate short-term export-credit insurance. This has on several occasions been reflected in an uneven playing field to the disadvantage of European exporters. This situation should be avoided in the future by ensuring that the new Communication focuses exclusively on the part of the market that the private export-credit insurers actually cover, and by laying the framework for a flexible system that allows for quick adaptation.
DI has the following specific comments in relation to the draft Communication:

2.1 Scope of the Communication
DI knows of several cases where exporters have tried to cover contracts with credit periods between 180 days and two years but have been turned down by private credit insurers in spite of the fact that the customers were healthy companies fully able to pay their bills. Cases with credit periods down to 180 days are therefore not covered satisfactorily by the private credit insurers, and therefore the scope of the Communication should be adjusted as follows: “This Communication applies to export-credit insurance with a risk period of less than 180 days.”

4.2 Exceptions to the definition of marketable risks
DI is pleased that the Communication takes into account the specific challenges that exist for small businesses in relation to access to export-credit insurance. However, the limit for the annual export turnover is set at too low a level, and DI therefore recommends that it be raised to EUR 5 million.

4.3.3 Adequate pricing
It is important that the Communication works to ensure that public or publicly supported export-credit insurers choose solutions that are as close to the market as possible when the conditions require them to engage in short-term export-credit insurance. Therefore, the Communication’s text on pricing should create incentives to offer reinsurance and top-up cover rather than direct cover schemes.

5. Procedural Issues
The system of notifications has proven to be very opaque and slow and led to an uneven playing field for exporters in different EU countries. It is therefore important to establish a more dynamic and flexible system. DI recommends that a set of criteria are identified that can clearly define unmarketability. Whenever these criteria are met, a public or publicly supported export-credit insurer should be able to step in as long as this is done in a manner that is in coherence with the conditions for the provision of cover for exempted marketable risks. Notification should only be required in cases where a public or publicly supported export-credit insurer wants to go beyond the conditions for the provision of cover. Instead, a standardized system for reporting should be established in order to ensure transparency and consistency in coverage across EU countries.

5.2 Modification of the list of marketable risk countries
In relation to the list of marketable risk countries, it is important that there are no delays when assessing whether a country should be taken off the list or remain removed from the list for a while. It is unacceptable that exporters are left without access to export-credit insurance, and therefore the Commission should regularly and well in time evaluate the countries so that it can be published at least three months before a temporary exception expires, whether it is extended.

In relation to the validity of insurance policies signed for countries affected by changes in the list of marketable risk countries, DI finds that 90 days is too short a period, and recommends that this is extended to 180 days.
Finally, DI believes there should be a reference to the European Court of Justice’s **Deggendorf** case-law in the de minimis regulation, i.e. clearly stating that de minimis aid will not be applicable to companies, which are subject to an outstanding recovery order following a previous Commission decision declaring the aid illegal and incompatible with the common market. A wording similar to the one used in the current general block exemption Regulation (No 800/2008) could be considered:

“This communication shall not apply to the following aid:

- aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the common market;
- ad hoc aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the common market;”

Please do not hesitate to contact us if you have any questions or require additional information.

Yours sincerely

Marie Gad
Chief Advisor