Justyna Majcher-Williams
Policy Officer
European Commission
DG COMPETITION
Unit A3 State aid policy and scrutiny
Rue Joseph II 59 3/66
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Belgium

Amsterdam, 17 September 2012

Dear Ms. Majcher-Williams,

Herewith the International Credit Insurance & Surety Association (ICISA) would like to share its comments on the draft Communication from the Commission to the Member States on the application of articles 107 and 108 TFEU to short-term export-credit insurance.

While earlier versions of the Communication focused on reducing distortions of competition between private and public insurers this draft appears to focus more on defining when and how public insurers can enter into the domain of private credit insurance.

The short-term credit insurance market in the OECD should be open exclusively to private market players. Public insurers, or companies supported by governments, should only be allowed to offer a complementary service. This new communication appears to move further away from that principle.

In addition to a change in tone, the areas where interventions are defined have been expanded from ‘countries’ to also include categories of risk such as ‘single risks’, ‘SMEs’ and ‘other supply conditions’ in Member States. We believe that the ‘non-marketability’ of these new categories of risk are inherently difficult to define and potentially encroaching on the private market space. There is also the concern that this opens up more categories of risk to public insurers, especially as the criteria for proving ‘non-marketability’ are not very strict.

As such we believe that the Communication should focus on the non-marketability of buyer countries only.

However, if on a case by case basis there is sufficient evidence to show that a particular exporter is demanding a product/cover that the private market is not offering and that the public market is able to provide, permission to public insurers can be given as a complementary service in the context of supporting trade. It is important to note that the right of the public insurers to intervene in these areas should only exist until such time as the private insurer is able to offer such a product/cover.

In this context it is perhaps relevant to note that private and public insurers from time-to-time quote on the same prospects.

ICISA is also concerned that the new Communication is seeking to be too prescriptive about the justification and mechanism for intervention by laying down conditions that must be fulfilled by public insurers. We fear that it will be difficult to follow many of the pre-conditions which could result in changes being made without due consideration in the midst of a crisis. In particular the technical aspects of pricing and reporting seem to have some loose ends as far as the provision of cover is concerned.
While ICISA fully accepts that there are situations where risks can become temporarily non-marketable and also understand the desire of Member States to intervene, ICISA is not supportive of the mechanism outlined in the draft Communication to identify/determine non-marketable. We believe it is overly prescriptive and attempting to cater up-front for situations which could be so varied in their nature that it seems nonsensical to try and set out the means of justification and mechanism for intervention up-front.

We will be pleased to provide further input regarding the above positioning by the credit insurance companies assembled in ICISA. We look forward to contacting you in September to suggest a date to share our views with you.

Best regards,

Robert Nijhout
Executive Director
ICISA would like to comment in more detail on the draft Communication from the Commission to the Member States on the application of articles 107 and 108 TFEU to short-term export-credit insurance.

In our comments, we choose to briefly summarize our key messages and general remarks, before going into detail per chapter and paragraph.

Key Messages

- The short-term credit insurance market in OECD countries is the exclusive territory of private credit insurers. Public players and companies supported by governments should only be allowed to offer a complementary service. The draft Communication appears to move further away from this principle.
- Scope of the Communication should focus on the non-marketability of buyer countries only and not on individual risks or individual companies.
- The credit insurance industry is capable of dealing with the full economic cycle.
- ICISA welcomes a Communication that focusses on avoiding distortion. However, this draft Communication seems to focus on defining how and when the public players can enter into the domain of marketable risks.
- An ECA is not a player in the private market and should therefore be subject to different disclosure rules.

General Remarks

We have also reviewed the draft Communication with regard to its objectivity, transparency and openness. In our opinion these elements are breached in a number of instances:

OBJECTIVE CRITERIA

- Marketability should be determined based on credit insurance data rather than on generic macroeconomic indicators.
- The withdrawal of one major international credit insurer from a specific market is not indicative for a market becoming non-marketable.
- Non-marketability should be determined by capacity or risk appetite only - a poor risk is a poor risk regardless of who underwrites it.

TRANSPARENCY OF PROCESS

- Consultation on marketability should involve all market players in a Member State. Six members of ICISA offer products in each Member State. In some Member States up to 10 members of ICISA offer credit insurance. Additional providers of credit insurance (non-ICISA members) in these Member States are outside of the scope of ICISA. It is not clear how all market players will be identified.
- Marketable risks that are deemed as being non-marketable and that are insured by a public underwriter should be subject to full disclosure, including premium, policy conditions and other relevant data. The draft Communication is not specific on this point.

OPEN APPROACH

- Once in force the Communication will be open to improvements and amendments, but it is not clear how this process will work.
- The private market is free in its price setting and may not be capped by so-called safe-harbour premiums. It is unclear how safe harbour premiums for ECAs are set, if these take the effect of insurance premium tax (IPT) into account and whether these are flexible to reflect variable policy terms and conditions (e.g. credit terms, trade sectors, securities, country risk etc.).
Comments and Questions Per Chapter

CHAPTER 1: INTRODUCTION

- The introduction starts by highlighting the potential adverse effect of export subsidies for rival suppliers of goods and services, however it does not mention the potential adverse effects of government support on the private insurance market due to the preferential terms granted to public credit insurers. It is remarkable that export subsidies in the draft Communication are only related to credit insurance and not to banking products. We understand the primary aim of the draft Communication to be to support the continuation of trade and are surprised that in the present context the banking industry is not included in this scope and subject to such intervention.
- In section 6 'risks that are in principle non-marketable' (i.e. risk period of two years or more) are specifically mentioned as outside of the scope of the Communication, however:
  - ICISA is not in agreement with the 24 month period mentioned as ICISA members offer Special Products that go well beyond the 24 month period and hence are marketable.
  - With reference to the above there is an open question of how the Commission wants to address distortions of competition between state supported public and private insurers when it comes to credit periods beyond 24 months.

CHAPTER 2: SCOPE OF THE COMMUNICATION AND DEFINITIONS

- The definition of 'Export Credit Insurance' is not clear:
  - It refers to 'Commercial and / or Political' risks, but only commercial risk events are listed;
  - It is not specifically defined that it purely relates to shipments/services across border.
- The definition on page 4 point 9 of Political Risk does not mention war or natural disasters (force majeure).
- The definition on page 4 point 9 of 'Top-Up Cover' states that top-up cover is 'additional cover over a credit limit established by another insurer'. However, there are products in the market where additional cover over the original credit limit is established by the same credit insurer.
- The definition on page 4 point 9 of 'risk period' states that it is 'manufacturing period plus the credit period'. However, the manufacturing period is not covered as standard – only when Pre Credit Risk cover is included in a policy.
- The definition of "marketable risk" in terms of maximum risk period of 24 months is not agreed for special "single transactions" products (see above).

CHAPTER 3: APPLICABILITY OF ARTICLE 107 (1) TFEU

- Section 11 does not refer to States that act as insurers themselves.
- On page 5 point 13 the last sentence states that 'This requires that they (ed. public insurers) do not insure marketable risks' which conflicts with point 15 (page 6) where there is a number of conditions which must be met if a public insurer wants to insure marketable risks.
CHAPTER 4: CONDITIONS FOR THE PROVISION OF EXPORT-CREDIT INSURANCE FOR MARKETABLE RISKS

Paragraph 4.2 - Exceptions to the definition of marketable risks (page 6-7)

18. (a)
- ICISA is concerned by the decision to split the instances where a risk can become ‘non-marketable’ into the 4 categories. It is not clear how the Commission arrived at the conclusion that SMEs with limited export turnover and Single Risks with credit periods greater than 180 days are not supported by the private credit insurance industry. The private market offers solutions for both categories throughout the EU. In the event that public insurers wish to intervene in these areas we would prefer to see exemptions granted on a case by case basis rather than in generic EU wide specifications. Ideally we would expect the draft Communication to focus on the marketability/non-marketability of buyer countries only.
- Throughout section 4.2 it is stated ‘if the Commission decides’, but it is unclear how the Commission will decide and what evidence will be used. Chapter 5 outlines some procedures, but these are different for each. In our opinion this poses a competitive threat where areas of the short term credit insurers market become open to public insurers (ECAs).
- Section 4.2 relates in 18 (a), (b), (c) and (d) to “non-marketable”, however the definition of “non-marketable” is not consistent for all cases.

18. (b)
- The risk should be the determining factor to determine if a risk is marketable or not and not the size of the exporter. Exports are no indication of the size of a company; e.g. a company with domestic sales of EUR 48 million and exports of EUR 2 million would fall under this intended exception. (Private underwriters insure domestic sales as well as exports.) Moreover, private underwriters offer credit insurance products for all types of companies (including SMEs) in EU Member states on a whole turnover basis. Single transactions of SMEs are also insurable.

18. (c)
- There is no regulation for single risks with credit terms up to 180 days.
- It is not clear what objective criteria are used by the Commission to determine if single risk cover with credit periods between 181 days and two years are non-marketable.

18. (d)
- It is not clear what objective criteria apply to determine “other factors” and “certain risks”. ICISA is therefore not comfortable with this section and would prefer that non-marketable is restricted to buyer countries only. It is impossible to determine supply conditions in other Member States and we would prefer a more transparent and inclusive decision making process in this context.

Paragraph 4.3 - Conditions for the provision of cover for exempted marketable risks

4.3.1 - Quality of cover

20.
It is not clear what process will be put in place to determine:
- if a risk was assessed and refused
- whether this was done under a whole turnover policy or another policy type
- whether this was economically justified

-The statement “The risks specified in point 18 (b) and (c), [...] cannot be covered.” is difficult to understand. If the respective risks are included in a whole turnover policy but the limit has been rejected based on sound underwriting assessment then the risks are in principle marketable but simply do not warrant cover. A poor risk is a poor risk regardless of who underwrites it. As such they should also be out of scope for ECAs.
4.3.2 - Underwriting principles

21. It is not clear how the application of these underwriting principles are monitored:
   - Are there sanctions or other consequences if these rules are not adhered to?
   - How are ‘internal ratings’ defined?

4.3.3 - Adequate pricing

23. “Average premium rates under publicly supported schemes must be set at a higher level than the average premiums charged by private credit insurers for similar risks.” (Art. 4.3., 22.). The private market is and must be free in its price setting. A fixed premium as proposed assumes that the private market has a constant average premium for certain risks. By setting public premium levels the assumption is made that the average private market’s premiums will be below this level until 31 December 2018, which could be interpreted as a collective agreement in the private market and therefore as collusion.

- It is further stated that the safe harbour premium applies unless Member States provide evidence that these rates are inappropriate for the case in question (23), however it is not clear how Member States will do so. Some specific comments about the proposed pricing:
  - The classification into the categories ‘Bad’ to ‘Excellent’ is not clear in particular in cases where no ratings exist.
  - It is not clear whether the pricing matrix refers to the quality of customers or buyers.
  - Nor is it clear if the Member States are forced to follow this pricing principle.
  - It is not clear of this is an average premium for the whole export book to a country, per transaction, or per buyer segment.
  - The brackets of risk premium are very wide.

- As a general comment ICISA would like to add that many credit insurers follow sophisticated pricing models that take into account not only the expected loss, but also operation costs, capital costs, etc. Premium is also dependent on the policy terms and conditions etc. This means that premium rates move upwards and downwards over time through the cycle, but also vary significantly based on the terms and conditions. In that respect it appears not logical to compare safe harbour premiums with any properly calculated premium.

24. ICISA recommends using the term “own retention” as this is a unique term. Co-insurance has various different meanings in the market.
- It is not possible to give appropriate reinsurance premiums and it is therefore not clear why reinsurance is included here.
- Is it the intention of the draft Communication to set a premium for own retention, and if so, how?
- It is not clear whether ‘at least [20%]’ refers to co-insurance, reinsurance, top-up cover or all three.
- It is not clear why the Commission feels that 20% is sufficient. In case of top-up cover the increased premium would be needed to cater for the significantly higher risk. A 20% increase would usually not cater for that.

25. It is not clear as to what type of fee the draft Communication is referring to; i.e. administration fee related to reinsurance, application fees in case ECAs offer direct credit insurance or other.
4.3.4. Transparency and reporting

26. Transparency should include publication of the premium rate charged as well as all applicable conditions. To ensure full transparency it is important that the ECAs publish exposure and claims levels in different non-marketable markets. Preferably per quarter to allow private credit insurers to constantly monitor the development of different non-marketable markets and to demonstrate that ECAs are not competing on more favourable terms against the private market.

CHAPTER 5: PROCEDURAL ISSUES

Paragraph 5.1 - General principles

31. It is not clear what is intended here. Although the final Communication will be open for improvements and amendments, it is not clear how this process will work. E.g. what is the process of involving private insurers and other market players in modifications to the conditions? A simple ‘notification’ by the Member State to the Commission seems very lenient and it is not clear on what basis a Member States’ proposed modifications will be assessed.

Paragraph 5.2 - Modification of the list of marketable risk countries

33. (a) It is not clear how a significant decrease in insured amounts or acceptance ratios can be determined in an objective and transparent manner.
- It is not clear who monitors total insured amounts and acceptance ratios at Member State level.
- Are private underwriters expected to report on capacity development and acceptance ratios?
- There are no exhaustive lists of all private underwriters operating in any Member State and it is therefore not clear what assurances are in place that all private players are considered.
- What is the purpose of the 12-month period?
- When does this period start?
- Does this mean that unavailability of cover will only be delivered through public ECAs after 12 months?
- The withdrawal of a major international insurer from a specific market” is not necessarily indicative for a market becoming non-marketable.

33. (b) and (c)
- It is not clear how the 12-month period is measured.
- It is not considered valid to determine whether a buyer country is marketable or non-marketable based on CDS spreads and/or rating agencies. Macroeconomic indicators have no relation to marketability. Credit insurance companies are capable of dealing with the full economic cycle and that includes downturn phases resulting in deterioration of macroeconomic indicators. Portugal could serve as an example: In spite of several downgrades of Portugal, proper portfolio management resulted in exposure developments similar to the development in the average buyer countries showing stable exposure and risk acceptance over the last 24 months.
- Marketability should therefore be determined based on credit insurance data rather than generic macroeconomic indicators.

34.
- It is not clear what “relevant data” determine this.
- It is not clear who at Member States provides these relevant data.
35.  
- It is not clear how interested parties to be consulted are identified.  
- All private underwriters licensed to operate in the EU should be consulted, but it is not clear on what basis these are or can be identified.  
- If so, how is an exhaustive list of all private underwriters operating in a market compiled?  
- It is not clear how often the private credit insurers will be formally informed.

**Paragraph 5.3 - Notification for exceptions in point 18(b) and (c)**

39.  
- It should be noted that private players are free to determine if and when a reply to a request is given. Not replying within the required 30-day period does not and should not imply that cover is not available from the private market. 
- The article includes a one-sided sanction for not replying to a request. Nowhere in the draft Communication is there any sanction for a Member State for not adhering to the proposed regulation.

- ICISA recommends that contacting just "two major insurers" should be replaced by "two major credit insurers".

- In case of single risk, cover is often granted by non 'major' insurers; hence, it should be the obligation of the Member State to contact "all" credit insurers. Frequently, credit insurance products are offered in a specific country via a sales organisation that reports to a unit based in a different country. The Member State should be obliged to contact those units as well.

**Paragraph 5.4 - Notification in other cases**

40.  
- It is not clear who in the Member State demonstrates this.  
- It is not clear on what basis a Member State can make an objective comparison to what range of products are available in other Member States.  
- There does not seem to be any indication in the draft Communication that points at the obligation to check for the availability in a market of other trade finance products that may substitute credit insurance.

- Overall ICISA would like to comment that a growing percentage of ECA business is reinsured in the private market, blurring the distinction between pure private and pure public insured risks. To what extend does this draft Communication take this growing practice into account?
Unspecified Statements That Need Clarification

In the draft Communication the following terms are not defined. ICISA welcomes a (more specific) description:

- "economically justified" (Art. 4.3.1., 20)
- "major" in major credit insurer (Art. 5.2., 33 (a), 39, Art. 5.4., 40.)
- "sudden" in sudden changes in credit ratings (Art. 5.2., 33 (b)
- "big" in big increase in CDS spreads (Art. 5.2, 33 (b)
- "deterioration" in deterioration of corporate sector performance (Art. 5.2., 33 (b)
- "sharp" in sharp increase in insolvencies (Art. 5.2., 33 (b)
- "insufficient" in insufficient market capacity (Art. 5.2., 34.)
- "relevant" in relevant data (Art 5.2., 34)
- "interested parties" (Art. 5.2., 35, 37)
- "shock" in supply shock (Art. 5.2., 40)
- "reduced" in reduced capacity (Art. 5.4., 40.)
- "other factors" in due to other factors (Art. 4.2., 18 (d)
- "certain risks" in certain risks are temporarily unmarketable (Art. 4.2., 18 (d)
- "internal ratings" in internal and/or external financial ratings (Art. 4.3.2., 21)