Review of the Insurance Block Exemption Regulation (IBER)

Report to Parliament/Council on the functioning and future of the IBER

Meeting with Stakeholders

DG COMP, 26 April 2016
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1. The Insurance Block Exemption Regulation

EU Competition rules enforcement

**Article 101 (1) TFEU**
- Prohibition of anti-competitive agreements

**Article 101 (3) TFEU**
- Not prohibited if 4 cumulative conditions fulfilled
  - Improving production or distribution of goods / technical or economic progress
  - Consumers get fair share of benefit
  - Restrictions limited to the minimum
  - No substantial elimination of competition

**Procedural reform of EU competition rules in 2003**
- Council Regulation 1/2003
  - Removed notification obligation for undertakings
  - Decentralised enforcement (Direct application by NCAs and National Courts)
- Self-assessment
- Approach since procedural reform:
  - More economic-based approach
  - Non-sector specific Guidelines
1. The Insurance Block Exemption Regulation

**BERs**

**Block Exemption Regulation**

- Commission may adopt a **BER** declaring categories of agreement to fulfil the conditions of Article 101 (3) TFEU

- For a BER to apply:
  - **Market share thresholds**; and/or
  - **Specific conditions**

- When adopting a BER Commission must balance:
  - Obligation to ensure **Effective competition supervision**
  - Need to **Simplify administration**
1. The Insurance Block Exemption Regulation (The IBER)

- Council Regulation 1534/91
  - empowers the Commission to adopt Regulations declaring that certain categories of agreements in the insurance sector fulfil the 4 conditions of Article 101 (3) TFEU (IBERs)
  - requires to submit to Council/Parliament a **Report on the functioning and future of an IBER** (after 6 years of its entry into force)

- Commission Regulation 267/2010 (the IBER) exempts two categories of agreements:
  - **Exchange of information**: Joint compilations, Tables and Studies
  - **Co(re)insurance pools**: Common coverage by (re)insurers of certain types of risks

- A **Communication** was also adopted in 2010 to provide guidance on the application of the IBER
2. IBER Review

Assessment approach

As in the past, the current Review applies two basic Evaluation and Impact assessment benchmarks:

**Question 1**

Is the insurance sector still characterised by distinct features that present an enhanced need of cooperation in those fields in which the remaining IBER exemptions apply?

**Question 2**

If that is the case, is an exceptional instrument such as a BER still needed in order to protect that enhanced need for cooperation?
2. **IBER Review**

**Consultation process**

- **2013**
  - Study on co(re)insurance pools and ad-hoc agreements

- **2014-2015**
  - Consultation of NCAs
  - Roadmap / Inception Impact Assessment
  - **Public Consultation**
    - 40 questions
    - (Profile / Market Developments / IBER application / Policy Options / Impact)
    - 37 replies
  - **Targeted questionnaires**
    - (Pools / Customers / Intermediaries' federations - Brokers / Mutual insurance associations)
  - **Meetings / Conference calls with stakeholders**
2. IBER Review
Consultation process 2016

- **Two Studies** on issues raised in the public consultation
  - Switching of tangible and intangible assets between different insurance products (Supply-side substitutability)
  - Impact on competition of different forms of co(re)insurance cooperation

- Discussion on findings with National Competition Authorities (NCAs)

- Report to Parliament/Council on functioning and future of the IBER

- Stakeholder Meeting on 26 April 2016

- Ongoing bilateral contacts with Stakeholders
Question 1
Is the insurance sector still characterised by distinct features that present an enhanced need of cooperation in those fields in which the remaining IBER exemptions apply?

Question 2
If that is the case, is an exceptional instrument such as a BER still needed in order to protect that enhanced need for cooperation?
3. The Report to the Parliament / Council

Findings: **Enhanced cooperation need?**

**Information exchange** (Joint compilations / Tables / Studies)
- Insurance cost: Unknown at moment of sale
- Need of accurate statistical prediction of risks
- Past claims track + Studies on future development of risks
- Solvency II Directive: Best estimate liabilities

**Co(re)insurance pools**
- Unconventional risks (e.g. Terrorism, Nuclear risks, Natural disasters)
- Insurance undertakings cannot on a stand-alone basis provide necessary capacity

**Conclusion**
Enhanced need to cooperate in these fields which appears to be specific in insurance
3. The Report to the Parliament / Council

Findings: Is a BER needed?

Information exchange

- **Revised Guidelines on Horizontal cooperation agreements (January 2011)**
  - Recognise pro-competitive effects of risk data dissemination in insurance
  - Aggregated and Anonymised

- **No substantial effect if lapsed**
  - Similar principles already exist
  - Federations already carry out self-assessment under these principles

**Conclusion**

Comprehensive guidance already in place, therefore a BER is no longer needed
3. The Report to the Parliament / Council

Findings: Is a BER needed?

Co(re)insurance pools

- Limited number of pools
  - 46 according to Study on co(re)insurance pools

- Growing trend towards more pro-competitive ways to co(re)insure
  - Co(re)insurance arrangements are very heterogeneous
  - Not reliant on institutionalised pools

- Difficulties for NCAs to enforce competition rules in respect of pools

Conclusion
Marginal use-relevance.
Can no longer be presumed that the agreements exempted by the IBER genuinely produce pro-competitive efficiencies. Detailed case-by-case assessment that restrictions are limited to what is strictly necessary.
4. Follow-up

- Mid 2016: Studies on IBER-related issues
  - Supply-side substitutability
  - Effects of different co(re)insurance arrangements
  - If necessary, discussion of conclusions with stakeholders

- Ongoing discussions with Stakeholders

- Ongoing discussion with National Competition Authorities

- Early 2017 → Impact Assessment Report
5. **Focus questions**

- Alleged costs increases or other negative effects on the market
  - *What evidence exists to quantify these effects?*

- Horizontal Guidelines, which indistinctly apply to all sectors, already provide guidance on Information exchange and Joint production
  - *Is this guidance adequate for agreements currently covered by the IBER?*