SUMMARY
OF THE STAKEHOLDER MEETING ON THE IBER REPORT
26 APRIL 2016
DG COMP, MADO Auditorium

ATTENDANCE
Deputy Director-General Antitrust, DG COMP
Cecilio MADERO VILLAREJO

Acting Director, DG COMP.D
Alberto BACCHIEGA

DG COMP.D.2 Unit Antitrust – Financial Services
Head of Unit Joaquín FERNANDÉZ MARTÍN and members of Unit D.2

Stakeholders
80 participants attended the meeting:
- 21 insurance associations
- 17 law firms
- 11 insurance undertakings
- 8 pools
- 4 insurance intermediaries/insurance intermediary associations
- 4 mutual insurance associations
- 4 consulting Firms
- 3 industry Associations
- 2 representatives from other Commission Services
- 2 one National Permanent Representation of the European Commission
- 2 specialised Press
- 2 other
INTRODUCTION

The stakeholder event opened with a speech by Deputy Director-General Antitrust Cecilio MADERO VILLAREJO. Then, the Head of Unit Antitrust – Financial Services Joaquín FERNANDEZ MARTIN gave a presentation on the IBER Report.

In order to structure the discussion on the impact of a non-renewal of the IBER, the debate was divided into two parts. In the first part, participants had the opportunity to give their first reaction to the provisional recommendation of the Commission in the IBER Report. The second part consisted of an open debate on the impact of a non-renewal of the IBER.

Finally, the participants were offered the floor to give feedback on the preliminary findings of the IBER Report.

PART 1: PARTICIPANTS’ FEEDBACK ON THE FINDINGS IN THE IBER REPORT

Main points raised by participants:

- A representative of an insurance undertaking stated that for certain sensitive risks, e.g. terrorist attacks and nuclear energy, the insurance sector needs to cooperate in order to provide cover.

- Some representatives of insurance companies and industry associations remarked that cooperation would be generally important for the insurance sector particularly regarding the sharing of knowledge of costs. The need for cooperation between insurers would likely increase in the near future, especially for large new risks. One representative alleged that the IBER would strengthen the Internal Market, and that its renewal would therefore be consistent with the work on the Green Paper on Retail Financial Services. Further, the statement in the IBER Report that in the event of non-renewal of the IBER, the risk of less cooperation on joint compilations, tables and studies appears to be very low, was considered to be speculative by one representative. Finally, two representatives underlined the importance of information exchange under Solvency II and wondered if non-renewal of IBER could negatively impact such cooperation. Therefore, some representatives generally prefer to have a legal instrument in place. In case of non-renewal of the IBER, it should be considered whether additional guidance would be needed beside the Horizontal Guidelines.

- Two representatives of law firms referred to the difference between a legal instrument such as the IBER, and Guidelines. In this regard, the IBER would provide more legal certainty. One representative pointed out that even if cooperation agreements do fall outside the IBER, the IBER would be analogously applied in competition practice.

Main observations by Commission officials:

- The IBER Report already underlined that in certain instances, cooperation is necessary in the insurance sector. A non-renewal of the IBER would not mean that such necessary cooperation would be prohibited in the future. Cooperation agreements would merely need to be assessed under standard competition rules, as is the case in other sectors. A non-renewal of the IBER would therefore not have a negative impact on pro-competitive cooperation.

The IBER does not provide any legal certainty to insurance undertakings in relation to cooperation agreements that fall outside the IBER.

The responses from the insurance industry have so far not contained any concrete evidence of potential negative effects in case the IBER is not renewed.

The Horizontal Guidelines seem to be sufficiently broad to cover all manner of cooperation agreements and information sharing in order to enable undertakings to carry out their self-assessments. For example, the Horizontal Guidelines already explicitly state that an exchange of anonymised and aggregated information between insurers on the actual cost of risks is pro-competitive.

Regarding pools, the review indicates that the ways insurers choose to co(re)insure risks are very heterogeneous and sometimes differ between Member States. National specificities of the relevant market as well as the respective characteristics of the pool need to be taken into account when analysing whether the conditions for the application of Article 101(3) TFEU are fulfilled. It is difficult to establish a uniform set of criteria determining when Article 101(3) is fulfilled, given the different characteristics and national specificities. Harmonisation of the assessment in relation to pooling agreements would therefore not be justified in all cases.

PART 2: DISCUSSION ON THE IMPACTS OF A NON-RENEWAL OF IBER

Main observations by participants:

- A representative of an insurance company remarked that the shift from the IBER to the Horizontal Guidelines could make cooperation in some sensitive insurance sectors, e.g. nuclear and terrorist risks, more difficult.

- A representative of an insurance association alleged that the application of the Horizontal Guidelines could vary from one country to another, and that self-assessment under the Horizontal Guidelines would be more difficult in case of non-renewal of the IBER. Also, compliance costs could increase.

- A representative of an insurance pool stated that there would always be new risks and new sectors, and that insurers would need to cooperate in order to create a market for these new risks. He alleged that an assessment might be more difficult under the Horizontal Guidelines.

- Another representative of an insurance pool inquired about alternative co(re)insurance models, and about how these forms of cooperation work more efficiently than pools.

- A representative of an insurance association remarked that the association he represents recently published a study that shows the efficiencies of co(re)insurance pools, and that they offer greater efficiencies than broker-led pools.

- A representative of a law firm asked when the Commission will decide whether there will be any additional guidance complementing the Horizontal Guidelines.

Main observations by Commission officials:
• Stakeholders have so far not sufficiently substantiated why the application of the Horizontal Guidelines to the insurance sector would be substantially more challenging compared to industries which do not enjoy a sector-specific legal instrument. Concrete evidence that the costs for the industry would increase in case of a non-renewal of the IBER is lacking.

• Cooperation takes place in many fields that were never covered by a block exemption Regulation. Also, many pools active in sensitive sectors have claimed to fall outside the IBER.

• Despite the fact that the Commission removed two block exemptions for cooperation agreements (standard policy conditions and security devices) in the last IBER review, the Commission has not received any indication that necessary cooperation in these fields has ceased.

• Dynamics of pooling arrangements and competition indicate that over time alternative schemes take root in the market. Also, the Commission's study on co(re)insurance pools and on ad-hoc co(re)insurance agreements on the subscription market indicates the existence of alternative forms of co(re)insurance2. The purpose of the currently ongoing studies is to gain a better understanding of those alternative forms.

• The Commission is exploring whether additional guidance would be necessary.

CLOSING REMARKS

Joaquín FERNANDEZ MARTIN (COMP.D.2) thanked the attendees for their participation and active involvement in the debate. He invited the participants to submit the comments made orally in writing, and to engage in bilateral discussions with the Commission on these topics, should they wish to do so, and to submit any relevant evidence in support of their position. The Commission will continue an open discussion with all stakeholders and the respective authorities of the Member States, following which the Commission will decide on the future of the IBER in the first quarter of 2017.

The views expressed by Commission officials may not in any circumstances be regarded as stating an official position of the European Commission.

2 http://ec.europa.eu/competition/sectors/financial_services/KD0414707ENN.pdf