



The European Federation of Insurance Intermediaries

La Fédération européenne des intermédiaires d'assurances

BIPAR CONSULTATION RESPONSE

On the Communication from the Commission on the draft Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements

Brussels, June 2010

BIPAR Register ID number : 58041461167-22

BIPAR, the European Federation of Insurance Intermediaries

is a non-profit European organisation grouping professional associations of insurance intermediaries in Europe. It presently has a membership of 47 national associations, established in 31 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people.

Founded in Paris in 1937, BIPAR has been established in Brussels since 1989. It is today the official and recognised voice of insurance intermediaries with the European Institutions.

BIPAR welcomes the opportunity provided by the European Commission to comment on its public consultation on the revised rules for the assessment of horizontal cooperation agreements under EU competition law.

1. In this contribution, we will focus on standard policy conditions/standard terms from the perspective of the insurance (intermediaries) industry.
2. BIPAR regrets that the new insurance BER removed the exemption for standard policy conditions, which the Commission does not see as specific to the insurance sector, but "common to many others, such as the banking sector, which do not benefit from a BER." The draft guidelines, point 254, state that examples of industries in which standard terms play an important role are the banking (e.g., contracts for the issuance of cards, use of ATMs and account terms) and insurance sectors.

As already expressed during the public hearing and reiterated in our letter d.d. 16 June 2009, we wish to recall that an insurance contract is to some extent specific and different from any other contract because the performance and the timing of it is by definition uncertain and unknown to both parties of the contract.

This was also recognised in the Commission's report of March 2009, which properly stated that "the costs of insurance products are unknown at the time the price is agreed and the risk covered" and that "Calculation of risk is a key issue in pricing all insurance products which appears to be a differentiating factor from other sectors including the banking sector."

We add to this that full and accurate description of the risks and the events which are covered or not covered is necessary. This is why standard clauses are used. And this seems to us specific and unique to the insurance sector.

Some level of cooperation in this area is both specific to the insurance industry and necessary in order to evaluate risks. The BER created a framework which clearly indicated the limits and possibilities and created both legal certainty and efficiency, thus keeping costs down.

Therefore, BIPAR believes that the new situation, with horizontal guidelines instead of a BER, should maintain or improve this high level of legal security, as well as the strict safeguards established in the interest of consumer protection and competition.

3. It is our opinion that the use of "model clauses" brings indeed many benefits for consumers.

The use of such clauses can and does increase efficiency. It can facilitate reaching agreement on the policy wording and, hence, the subsequent processing of the business. Without them, each clause would have to be individually agreed, which would be very time-consuming and expensive.

They also help in creating contract certainty which is important from the point of view of the consumer.

It is to be stressed that these models can and often are varied by negotiation on individual risks, thus avoiding any undue standardisation. Tailor-made wordings may be built up using a series of "model clauses" which have been drafted by experts on the basis of wide experience and whose meaning is clear and legally sound. This is an evident benefit for the policyholders. Moreover, the use of such "model clauses" reduces disputes as parties to the contract can rely on precedents of interpretation.

Access and use of standard clauses allow for better evaluating the risk based upon past experience and is crucial to price risks technically and legally correctly.

4. The draft guidelines include only 1 example related to standard terms in the insurance sector. Coming from a situation where there was the BER applicable and given the specificities of the insurance sector, BIPAR would highly appreciate if the Commission would consider to include two or more other insurance related examples in the new text. In preference examples where consumer organisations are not involved in the process. In our previous contributions, we called for the content of the new mechanism, replacing the BER, to be in line with the current BER. We would therefore suggest to make a reference in the new horizontal guidance to the old BER and to explain whether or not and in how far SPC's developed in line with the requirements of the old BER, continue to be in line with the new guidelines.

BIPAR remains at the Commission's disposal for further information or clarifications regarding this contribution.