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Response to Interim Report

Business Insurance Sector Inquiry

By EC DG Competition

Submission by BIPAR

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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 30 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.

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1. INTRODUCTION

The present submission by BIPAR responds to a number of questions raised by EC DG Competition in its interim report on the Business insurance sector inquiry of January 2007.

However, before responding to these questions, we make a number of observations on the business insurance intermediary sector because we feel that the questions from EC DG Competition can only be properly addressed in the context of a good understanding of the dynamics of the business insurance intermediary sector, the competition within that sector and the competition between that sector and other business insurance distribution channels.

First, we address the role of intermediaries in business insurance (Section 2). Next, we highlight the critical impact of the Insurance Mediation Directive (IMD) of 2002 (Section 3). Thereafter, we discuss the role of business intermediaries in enhancing competition between carriers (Section 4) and explain the nature of the competition between business insurance intermediaries (Section 5).

We then address the issues of potential conflicts of interest in Section 6, delegated authority in Section 7, and the remuneration of business insurance intermediaries in Section 8.

Finally, we provide a number of observations on insurance market and reinsurance market issues in Section 9 and horizontal cooperation in Section 10.

2. ROLE OF INTERMEDIARIES IN BUSINESS INSURANCE

2.1 A MULTIDIMENSIONAL ACTIVITY AT THE SERVICE OF LARGE AND SMALL BUSINESS

The interim report cogently illustrates that what appears a simple concept “insurance intermediation” is in fact a multidimensional activity that requires a great variety of skills and qualities if it is to be a successful business in a very competitive market.

The market for insurance products, like many other markets, is characterized by imperfect information by each party to the transaction, significant search costs to find the “best” deal, and asymmetric bargaining power. Through their various activities, intermediaries help clients and insurance companies overcome a number of market failures which otherwise would hamper competition and give rise to significant client detriment. These activities are important for all types of insurance buyers but in particular for SMEs who in most cases do not have an in-house risk management or insurance skills.

Some examples:

- Business insurance intermediaries help identify the risks clients face, ensuring that clients take informed decisions about the risks they wish to insure.
- They also help overcome the clients’ imperfect knowledge of the marketplace and reduce the clients’ search costs by helping them to find the most appropriate insurance policy at the time of placement and at each subsequent renewal.
- Moreover, they also help clients obtain better terms on their policies, due to their knowledge of the market and the higher business volume they bring to insurance companies.

The interim report identifies other examples of services intermediaries offer to their clients such as claims related services and policy administration.

Also, business insurance intermediaries help insurance companies overcome their imperfect knowledge of the precise risk profile of potential clients. They facilitate entry into the market by new insurance companies, as the latter can reach a wide client base without having to incur the costs of building a distribution network.

2.2 A DYNAMIC, INNOVATIVE AND ENTREPRENEURIAL SECTOR

Many insurance intermediaries have broadened considerably the scope of their activities beyond the assistance they provide to their clients in obtaining insurance cover. In fact, nowadays, the activities undertaken by many insurance intermediaries encompass a wide range of risk advice and management consultancy services.

Some insurance intermediaries also develop specialized insurance programs and products for very specific risks and, in that capacity, act as wholesale intermediaries, through whom other intermediaries can channel the specific risks being insured.

2.3 MARKET INTEGRATION

BIPAR has been promoting fair regulation for intermediation at European level and a single license for intermediaries over the last years. Since the adoption of the IMD in 2002 BIPAR and its national associations across Europe has been promoting the correct implementation of the IMD at national level. To our regret, and despite our on-going efforts, the IMD is still not yet fully and correctly implemented in every Member State.

The Directive provides that insurance intermediaries, on the basis of their registration in their home Member State, can do business in any other EU Member States by way of freedom to provide services or by establishing a branch, while guaranteeing a high level of protection in the interest of their customers.

This IMD, once fully and properly implemented, will allow intermediaries to ensure the servicing of their clients' insurance when the latter have exposure in other Member States - as they increasingly do. At the same time, insurance intermediaries will be able to help their clients benefit from the wide range of products on offer in the European Single Market for insurance, thus playing their essential role as the catalyst for competition at EU level.

Although it is too early to assess its impact, it is expected that the implementation of the IMD into national regulation will, in future years, contribute to increased cross-border competition between intermediaries.

3. INSURANCE INTERMEDIATION REGULATION

According to the Insurance Mediation Directive (IMD) of 2002, the activities undertaken by an insurance intermediary include the “introducing, proposing or carrying out other preparatory work to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim”.

The IMD does not refer to the traditional distinction between agents and brokers, and adopts an activity-based approach. It relies on transparency at contract level so that the insurance-seeker is aware of the capacity in which the intermediary is acting.

The whereas of the IMD states: *“Various types of persons or institutions, such as agents, brokers and ‘bancassurance’ operators, can distribute insurance products. Equality of treatment between operators and customer protection requires that all these persons or institutions be covered by this Directive”*

The IMD also stipulates that (extract art 12 of IMD) :

“In addition, an insurance intermediary shall inform the customer, concerning the contract that is provided, whether:

(i) he gives advice based on the obligation in paragraph 2 to provide a fair analysis, or he is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, he shall, at the customer's request provide the names of those insurance undertakings, or

(iii) he is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice based on the obligation in paragraph 2 to provide a fair analysis. In that case, he shall, at the customer's request provide the names of the insurance undertakings with which he may and does conduct business.

In those cases where information is to be provided solely at the customer's request, the customer shall be informed that he has the right to request such information.

When the insurance intermediary informs the customer that he gives his advice on the basis of a fair analysis, he is obliged to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable him to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.”

BIPAR regrets that, due to the timing of the surveys undertaken so far in the context of the business insurance inquiry, the effects and the impact of the IMD could not be assessed accurately in most Member States. Indeed, the IMD was only implemented in most Member States in 2006.

BIPAR believes that any conclusions or recommendations from this inquiry would need to be considered in the framework of the IMD and the national new legal frameworks.

The IMD and its national implementation will be evaluated and revised by the European Commission in 2008/2009. BIPAR strongly suggests that the results of this inquiry be taken into consideration in this forthcoming evaluation and revision of the IMD.

In March 2007, CEIOPS published a report (*CEIOPS report on the implementation of the Insurance Mediation Directive's key provisions*) based on a questionnaire which aimed to indicate how some of the key provisions of the IMD were implemented in the different Member States. The survey results show that “the IMD's goal of achieving a high level consumer protection has been achieved in all Member States. Insurance intermediaries are required to provide comprehensive information to the customer before contracts are signed (...)”.

4. INSURANCE INTERMEDIARIES AND COMPETITION BETWEEN CARRIERS

As noted in the interim report, business insurance intermediaries play an important role in fostering competition in the market for business insurance.

- Firstly, the existence of insurance intermediaries allows insurance carriers to extend their geographical and client reach without having to incur the fixed costs of a fully-fledged distribution network. This aspect is well recognized in the interim report. The wider reach of each carrier increases the competition in the business insurance marketplace as it increases the choice of carriers for clients.
- Secondly, insurance intermediaries overcome the information asymmetry faced by clients. This is because intermediaries are constantly in the marketplace and aware of the latest developments in terms of capacity, pricing, quality of carriers. Because of their constant

presence in the market place and deep and up-to-date knowledge of the carriers' offerings, intermediaries need to contact each time only a limited number of carriers when seeking to place a new risk at the best terms for a client. This is to the benefit of the client as it increases the response speed.

- Thirdly, having obtained a number of quotes, an intermediary will typically discuss with the client the pros and cons of the various options and the intermediary and the client decide in dialog which option is chosen.

Intermediaries can thus help clients obtain the best insurance deal, either from the incumbent carrier or by switching the insurance policy to a new insurance provider. The superior information insurance intermediaries bring to the marketplace is a major driver of competition between carriers and helps overcome the clients' search costs, a major inhibitor of switching.

Insurability, or finding insurers who are prepared to accept risks, is in some sectors and some markets a (cyclical) issue (even for intermediaries). In this respect we make the following observations:

1. The insurance market in each Member State is, by nature, a very fragmented market. Moreover, the range and the size of risks to be insured can vary tremendously.
2. It is important to note that, at any point of time, there is a significant difference between the number of insurers in a given market who are licensed to underwrite certain lines of business and those who are actually prepared to accept certain risks. Not all insurance companies accept all risks, and when a carrier accepts a certain type of risks, its "appetite" for that risk may be limited, or circumscribed by the nature of the business seeking insurance cover. Furthermore, there are insurers who "specialize in certain risks or certain segments of the market.
3. As explained in the interim report, the insurance sector is cyclical – this is true both for the industry as a whole and at individual company level. Some insurers withdraw from some risks during some years and come then back in that specific line of business after a certain period. The 5-year period covered by the report survey is in our opinion too short to reflect the full impact of these cycles.
4. Some sophisticated risks, whether SME or large risks, require a precise risk inventory and analysis and also a high level of financial capacity of the insurer. (Indeed, in some cases, clients require that the carrier has a minimum financial ratings). Negotiations can sometimes last several months to place the full program of such a business with the few insurance markets capable to take on the risk (having the know-how and the resources), financially able and safe to underwrite such risks and having an 'appetite' for such risks in a given year (or period of time).
5. On the other hand, there are certain risks which will tend to fit within reasonably defined parameters. For those types of risks there is less interaction with the client in the preparatory and placement phase and there may be a perception by the client that there is less work involved in placing. However, this ignores a great deal of activity that the intermediary needs to undertake to secure the best deal for his client. The skill of an experienced intermediary is to know which insurance companies to approach when seeking to insure safely and efficiently a given risk in a given industry at a given moment in time.

BIPAR notes that for some risks (at certain times) it is very difficult to find insurance coverage in the market. Requirements by regulators, supervisors, shareholders, financial markets, and uncertainty about future consequences of current commitments, often created by new regulation or legal uncertainty may be some of the reasons for this.

5. COMPETITION AMONG DISTRIBUTION CHANNELS FOR BUSINESS INSURANCE

In general, business insurance products for companies tend to be purchased by companies through business insurance intermediaries. In the large company market segment, direct purchase is relatively exceptional. In the case of insurance products purchased by SMEs, business insurance intermediaries are important distribution channels in many EU Member States. Banks, direct writers and mutual insurers in some countries have become increasingly active in this segment.

In the interim report, intermediaries were mainly treated either as a single, homogeneous group or split into the generic categories of agents and brokers or independent intermediaries. While this is appropriate for painting a broad picture of the differences in the relative importance of the different distribution channels, it is inadequate for a more in-depth examination of the business insurance segment as different types of brokers serve different types of customers. BIPAR regrets that there is very little statistical information available on insurance intermediaries and insurance distribution. This was also noted by the interim report. The bulk of the business by insurance intermediaries is generated in the SME segment of clients. The SME clients segment is in itself far from homogeneous and various sub-divisions can be made.

Broadly speaking, in the EU, the business insurance intermediation sector is divided into three major sub-sectors:

- The global and multinational business insurance brokers, which serve major multinational and domestic firms, and provide a wide range of services to these clients in addition to the traditional brokerage services. They also serve a large part of the SME client market.
- The major domestic intermediaries that provide services to larger and medium-sized companies. They also serve some of the national branches or subsidiaries of multinationals and small companies. Such intermediaries are likely to be present throughout the country.
- The small private intermediaries which focus mainly on serving the “small” end of the business spectrum and occasionally larger companies on a relationship basis.

Some of the brokers which fall into the latter two categories belong to international networks. These arrangements allow smaller brokers to offer products to their clients in several countries.

Some other aspects related to competition are:

- Entry into the business insurance intermediary sector is relatively easy. There are generally few regulatory requirements, the required investment is relatively limited and there are few sunk costs which could deter entry. The ease of entry is confirmed by the fact that, typically, the sector is populated by a very large number of small firms. The sheer number of such smaller intermediary firms means that competition for client work from smaller companies is fierce among this tranche of the intermediary population. Competition among larger intermediary firms is also very robust.
- Generally, corporate clients considering switching will organize a more or less formal procurement process (depending upon the size and complexity of the risks) and their decisions will be based on a series of factors such as the premium and coverage, the services offered by the intermediary, etc. Large corporate clients will often focus on their relationship with both the intermediary and the carrier.
- In contrast, in the SME client segment, and in particular in the segment of the smaller clients, the relationship with the intermediary is key. The intermediary’s ability to come up with adapted solutions and availability (geographical proximity/ personalized approach) are important factors besides the total price of the insurance, the terms of product and service offered. It should be noted that in this small business segment there is increased competition

from “alternative forms of distribution” (such as banks or mutual insurers). In this respect, BIPAR wishes to draw attention to the following “Whereas” of the IMD: *“Various types of persons or institutions, such as agents, brokers and ‘bancassurance’ operators, can distribute insurance products. “Equality of treatment” between operators and customer protection requires that all these persons or institutions be covered by this Directive”*. DG Market and Services of the European Commission has announced an evaluation and a revision of the IMD by 2008/ 2009. BIPAR and its national associations will in this respect, invite the Commission to evaluate if this “equality of treatment” principle (for example in terms of information requirements) is indeed a fact in all Member States.

- Because of the time and costs involved in developing a new relationship with a company (whether it is small or large) and because insurance requires a repeated and on-going service by intermediaries throughout the life-time of the insurance contract (and often beyond that) clients, intermediaries and insurers typically seek a relationship that would last more than one year. Of note is the fact that most of the business clients would expect a great deal of costly, risk-related advice and analysis in the run up to the selection of an intermediary (and insurer) from all candidates interested in the mandate. This is due to the scale and complexity of the risk exposure of the client.
- It should also be noted that a client may have to divulge sensitive or secret commercial information to the market during the tender process. Undertakings may be unwilling to do this on a regular basis. Tendering for business is also time-consuming for the intermediaries, and they (and insurers) could be reluctant to make an offer to a client that is unlikely to remain long with the selected intermediary.

6. CONFLICTS OF INTEREST

What can independent insurance intermediaries do to avoid conflicts of interest that may compromise the objectivity of their advice to the client? How can clients be reassured that the intermediary that advises them does indeed act in the client's best interest?

These were the questions asked to the BIPAR Chairman at the Public Hearing.

Conflicts of interest, and potential conflicts, are ubiquitous in the financial services industry and are not unique to the insurance industry. Therefore, the fundamental issue is how to manage such conflicts or potential conflicts in the best interest of the client.

BIPAR believes that it is essential that companies put in place robust systems to identify, manage and mitigate conflicts of interest. This is an essential first step.

In order to mitigate conflicts of interest, BIPAR furthermore supports transparency and believes that insurance intermediaries should provide insurance buyers with sufficient information to make informed decisions about the purchase of insurance products and services and communicate information to them in a way which is clear and fair.

The Insurance Mediation Directive (IMD) is relevant in this respect but due to the timing of the transposition of the IMD in national regulation, the findings of the survey do not, unfortunately, reflect the full effects of the IMD.

The Directive requires that insurance mediators declare on a contract-by-contract basis whether they have a relationship with particular insurance companies or whether they act independently. As a result, customers know where they stand at the outset of the relationship.

The IMD requires intermediaries to tell the customer whether they are giving advice based upon a fair analysis, or whether they have contractual obligations with one or more insurers.

In addition, the intermediary has to state in writing the reasons for any advice on a given insurance product and all this is supervised and controlled by the national supervisory authorities.

The IMD recognises that these details are to be modulated according to the complexity of the insurance contract being proposed. BIPAR believes this also explains to a great extent why clients can be assured, in the future possibly more than in the past, that an intermediary who advises a client does indeed act in the client's best interest. This is significant but does not address the questions in full.

If additional further information is necessary, given the (local) market circumstances, then the IMD is flexible. It also provides that Member States may maintain or adopt stricter provisions regarding the information requirements and we are now beginning to see this happening in some Member States. (see “*CEIOPS report on the implementation of the Insurance Mediation Directive’s key provisions*”- section 3, p.5)

Moreover, one additional and important factor mitigates the effects of conflicts of interest. That is the competitive dynamics of the market place. The greatest competition an intermediary faces is from other intermediaries, there being no barriers to switching from one intermediary to another.

As a result there is a very strong alignment of the self-interest of the intermediary and the best interests of the client. BIPAR regrets that the interim report does not address this point and other market dynamics in detail.

Indeed competition is a critical mitigating factor and needs to be taken into account in assessing the actual scope for exploiting conflicts of interest to the detriment of a client:

- Because of the potential damage to reputation and the high degree of competition, the incentives of the intermediary are aligned with those of his or her clients as well as those of the insurance provider.
- An intermediary would suffer severe damage to its reputation if it were known in the marketplace that he or she recommended placing insurance with an insurance provider that would not be competitive at the time of placement or that has the reputation of being unreliable in, for example, paying claims appropriately. It is generally accepted that intermediaries and insurers look for a relationship with a client which lasts longer than one year.
- The IMD which imposes transparency on the status of the intermediary on a contract by contract basis. And also, according to the IMD, the intermediary has to state in writing the reasons for any advice on a given insurance product and all this is supervised and controlled by national supervisory authorities. The IMD recognises that these details shall be modulated according to the complexity of the insurance contract being proposed.

We believe that the combination of above factors explains why clients can be assured that the intermediary who advises them does indeed act in the client's best interest.

7. DELEGATED AUTHORITIES

As mentioned in the interim report, some insurers delegate authorities to some intermediaries. (examples provided on p.110 of the Interim report include collection of premiums, granting cover on behalf of insurer, issue policies, settle claims).

BIPAR wishes to make the following observations about delegated authorities:

The provision of such services make the insurance process more efficient and contribute to improve the quality of the intermediary's service to many clients. They enable the intermediary to aggregate a number of similar, typically smaller risks, allowing him/her to negotiate better terms and conditions and achieve a better price for the customer.

They also encourage competition by making it easier for insurers to enter new markets or segments of markets, both within a Member State but more particularly across borders. Delegating authorities to intermediaries is done for efficiency reasons. It allows the client to have a quicker service (for example "immediate" -provisional- coverage for a risk or "down payment" in case of a claim). It is generally accepted that delegating authorities can avoid double work and increase reactivity: the intermediary who is closer to the client can respond better and more flexibly to the client needs. Delegated authorities in the insurance market bring innovation, increased competition and efficiencies.

The interim report identifies delegated authorities, under certain circumstances, as a potential source of conflicts of interest.

BIPAR believes that insurance intermediaries should (and do) provide insurance buyers with sufficient information to make informed decisions about the purchase of insurance products and services and communicate information to them in a way which is clear and fair (see also section on the IMD in this submission). The IMD requires, amongst others, that intermediaries inform their customer whether they are giving advice based upon a fair analysis, or whether they have contractual obligations with one or more insurers. If additional information is necessary, given the (local) market circumstances, then the IMD is flexible: it also provides that Member States may maintain or adopt stricter provisions regarding the information requirements.

As a result, in day to day practice and because of the nature of a delegated authority itself, clients are informed about the delegated authority on a contract by contract basis.

Moreover, intermediaries have a duty of care vis-à-vis their clients (independently from other agreements such as delegated authorities). In most Member States there is specific case-law in this respect.

In cases where delegated authorities could lead to a potential conflict of interest, BIPAR believes that it is essential that companies identify and put in place robust systems to manage and mitigate conflicts of interest (see section on conflicts of interest above).

8. REMUNERATION OF INTERMEDIARIES

8.1 COMMISSIONS AND FEES

Generally, there are two primary mechanisms by which insurance intermediaries are compensated for their services:

- a) A fee system under which the client directly pays for the services provided;
- b) A commission system under which the intermediary is paid a percentage of the premium paid by the client for coverage based upon the intermediary's agreement with the carrier.

The remuneration of the intermediary being in principle commission-based with the possibility to agree fees, has been a major contributing factor to the successful and competitive development of insurance markets all over the world.

In the choice between commissions or fees, it is not only the size of the business that is important. Equally important are the nature and/or level of sophistication and the specific levels of service which are agreed. In any case, the decision to work on a fee or commission basis is a decision that should be taken between the parties based upon a transparent dialogue about the various options.

In 2003, in line with free market principles, BIPAR adopted the following principles related to remuneration:

- Principle 1: Every insurance intermediary has the right to be remunerated fairly for his or her services.
- Principle 2: Any remuneration or compensation for services of an intermediary should be considered as an issue between the parties.
- Principle 3: Legislation or concerted market agreements (or behaviour) limiting or imposing the rate or the means of remuneration is considered by BIPAR as a serious infringement of basic free market principles and would be against international market practice.
- Principle 4: Intermediaries may charge fees in addition to, in lieu of, or in combination with, commissions. In such case, the customer should be informed.

Many business insurance intermediaries offer the choice to the client to work either on a commission or a fee basis. When considering the choice between the two, the following factors are generally considered by both the intermediary and the client in their dialogue.

Commission is only payable if a contract ensues. A fee system creates uncertainty about the future cost, both at the time when the insurance is being effected, and when a claim occurs or when other services are rendered by the intermediary. In a fee system, clients should consider if they will be able to afford to pay fees based on time-spent in the event of a claim. The commission system satisfies a need for services in the future. The consumer purchases a "product" that at the time of acquisition is incomplete. In addition to the guarantee, it comprises a whole range of services (issuing of policies, collecting of premiums, treatment of claims, amending the policy and sometimes advancing compensation) which are not quantifiable at the time of the purchase. The commission system offers a form of insurance against the cost of the provision of services by the intermediary following the purchase of the insurance product whereby the intermediary will give service at no extra charge in the event of any service being required other than at the inception or renewal.

Whether a fee or a commission is the best choice should be decided by the parties on a case by case basis and in transparent dialogue about the various possibilities with the intermediary. With reference to BIPAR's principles on remuneration we repeat here "that intermediaries should have the right to charge fees in addition to, in lieu of, or in combination with, commissions, and that in such cases the customer should be informed."

The co-existence of various remuneration systems, and in particular the freedom to decide about the remuneration systems between the parties, is the best guarantee for competitive and dynamic markets.

With regard to netquoting we repeat our principles on remuneration 2 and 3: "Any remuneration or compensation for services of an intermediary should be considered as an issue between the parties" and "Legislation or concerted market agreements (or behaviour) limiting or imposing the rate or the means of remuneration is considered by BIPAR as a serious infringement of basic free market principles and would be against international market practice."

8.2 COMPETITION ON REMUNERATION OF INTERMEDIARIES AND REMUNERATION DISCLOSURE

The interim report identifies a number of factors determining the recommendation that brokers make to their clients when advising them on the choice of a particular insurance.

These factors include, besides the price, inter alia, the breadth of coverage available, the flexibility of the insurer in agreeing coverage, the image and reputation of the insurer especially in respect of claims service (speed, fairness of settlements, additional benefits to claimants), the insurer's financial security, the quality and clarity of documentation provided, the insurer's speed in issuing documentation or in quoting terms, timeliness in inviting renewal, the technical competence of the insurer's staff, the quality and availability of advice provided to policyholders, the quality of the other services provided by the insurer, its locational proximity.

This demonstrates very well that in business insurance, apart from the price quoted for the risk in question, other factors are very important in the choice of carrier. This is reflected in the IMD and, more particularly, in the IMD information requirements. The IMD lays down precise rules on disclosure and the advice to be given by intermediaries enabling customers to make the right choices. These rules were established after years of debate and consultation with all parties in the market.

These rules take into consideration the fact that, in some segments of the business insurance market, intermediaries are in competition with alternative forms of distribution (banks, direct writers...). It would be discriminatory for an intermediary active in segments with strong competition from other distribution channels, and potentially misleading for the client, if this intermediary, very often a SME itself, would have to disclose his remuneration and a direct writer (often large company) would not have to disclose its (acquisition) costs to the client.

If additional further information is necessary, given the national market circumstances, then the IMD is flexible: It also provides that Member States may maintain or adopt stricter provisions regarding the information requirements and we see this happen in many Member States. BIPAR suggests that this issue be evaluated in the framework of the 2008/2009 revision of the IMD.

Clients know that insurance intermediaries are paid for their services and nothing prevents clients and intermediaries from discussing the details of this as well as every other aspect of the services and relationship.

As already stated above, in business insurance, a comparison of price (let alone of the remuneration of intermediaries) alone would not necessarily lead to the best choice by the client. To enable a good comparison, there needs to be a dialogue, an opportunity to explain the product and services in

relation to the price. In this respect, the figure concerning the disclosure of commission upon clients' request in the interim report is relevant. It is high in all but two Member States.

It should also be considered that, as mentioned in the interim report, the large majority of the intermediaries surveyed stated that the amount of the commission or any other form of financial remuneration provided by the insurer was of little or no importance for their recommendation of a particular insurer to the client.

This is logical for a variety of reasons. The main reason being the fact that, if an intermediary would suggest a bad/price quality (overall) solution to the client, there are many other intermediaries who are in competition and who will take over the business. The fact that there is strong competition for any piece of business creates in itself a very high incentive for intermediaries to make competitive recommendations and to negotiate, in the interest of the client, competitive premiums with the insurer. It is indeed the final, total price (in relation to the quality of cover and all the other aspects mentioned above) which is the most relevant.

Although the above are accepted facts, we noted the following at the Public Hearing of 9th February 2007 on the interim report:

- A representative from the risk management community considered that commission disclosure is important.
- A representative of the SMEs expressed the view that the end price (i.e. the premium) in relation with the other factors for choice is important.

Having noted this, BIPAR suggests that this inquiry's results with regard to the terms of remuneration disclosure and the various views expressed on this by stakeholders are taken into consideration when the IMD and its transposition and implementation at national level is being evaluated in the run up to its potential revision. As explained above, the IMD's effects on the market (also in terms of transparency) were not fully taken into account by the interim report.

Depending on the results of this evaluation of the IMD implementation in terms of transparency, and in relation to a possible IMD revision, BIPAR, together with its national associations, will take (and promote), where necessary, initiatives to ensure that business insurance clients of intermediaries be informed by the intermediary about the nature of the remuneration (commission/ fee/ contingency or combination) and the right of the client to ask for any further detailed information about this in relation to their contract.

National associations and BIPAR adopted this policy under conditions such as non-discrimination and depending on (national) market and regulatory circumstances.

8.3 THE PROHIBITION OF COMMISSION REBATING

BIPAR believes that remuneration is an issue for the parties to decide. We are not aware of agreements in which insurers prevent intermediaries from rebating their commission to clients. But, for BIPAR, such clauses are in principle not acceptable.

8.4 CONTINGENT COMMISSION

Contingent commission is defined as follows in the interim report:

“Contingent Commissions

Any kind of payment (excluding client fees and commissions as defined above) paid by insurers to intermediaries that are not exclusive agents of the insurer, where the amount payable is based on the achievement of agreed targets relating to the business placed by the intermediary with that insurer.”

The existence of contingent commission receives major attention in the interim report. Regarding contingent commissions it should be noted that, the data in the report show that they represent about 1 percent of the remuneration of intermediaries. It is therefore important that this particular issue be kept in perspective. Nonetheless, BIPAR is of the opinion that contingent commissions can create a perception of a conflict of interest and we refer to the section in this paper dealing with conflicts of interest in general.

The dynamics of the market are very important in mitigating the effects of conflicts or perceived conflicts of interest. It is the combination of the overall price of the insurance and the other factors which determine the quality of an insurance (including the services) which is the relevant factor for comparison and competition.

We refer to the section on competition on remuneration of intermediaries and remuneration disclosure for more observations about this point.

9. INSURANCE AND REINSURANCE MARKET ISSUES

9.1 DURATION OF CONTRACTS

In principle, in business insurance, every aspect of an agreement should be an issue to be resolved between the parties. In general terms, in the free market, the typical duration of an insurance contract is one year. If, however, a business client prefers a longer duration contract then he should have the choice. Sometimes contracts with a duration of longer than one year may help in finding a solution (coverage) or maybe preferred by a client for budgeting reasons. There are obviously insurance contracts where the duration is in function of the specific nature of the risk (e.g. a major construction project).

9.2 EXCLUSIVE AGENT AGREEMENTS

We believe that, in principle, business people should have the right to conclude fair and balanced agreements of cooperation with one another. As the interim reports suggests, the issue of exclusive agreements should be considered in the framework of the specific national market situation. In general, BIPAR is of the opinion that exclusive agreements, if any, should, at minimum, provide for flexibility.

9.3 BEST TERMS

BIPAR is against best terms and conditions clauses in co- and reinsurance contracts.

The use of such 'clauses' is less widespread than in the past. This, in part, may be due to the cyclical nature of the insurance market. When the market is at its hardest and capacity is limited, (re)insurers may be more inclined to try to introduce such provisions. Brokers do their best to resist the inclusion of such clauses in contracts. The use of "best terms" still persists in the property market. "Best terms" is also applied by some insurers to excess directors and officers' liability and professional indemnity business and on construction risks. The 'clauses' originate from (re)insurers themselves.

They tend to appear within a quote sheet or as a subjectivity on the placing document often next to the (re)insurer's stamp. The number of participants asking for its introduction varies. Brokers try to resist the use of such clauses but this is not always possible. They create ambiguity and may lead to a restriction in cover and/or an increase in price to the customer.

10. HORIZONTAL COOPERATION

Whilst recognizing the need for a minimum level of possibility for agreements between carriers to ensure the smooth functioning of the insurance sector and given that protection of policyholders has always been a major concern of professional insurance intermediaries, BIPAR is of the opinion that it is generally in the consumers' interest to have well-defined limits imposed on collaboration between insurance undertakings, thus ensuring free competition in the insurance sector.

Before addressing in detail the issue of the block exemption, BIPAR wishes to repeat one of its key principles regarding the remuneration of intermediaries which is also relevant for the issue of horizontal cooperation among carriers: "Legislation or concerted market agreements (or behaviour) limiting or imposing the rate or the means of remuneration is considered by BIPAR as a serious infringement of basic free market principles and would be against international market practice."

A block exemption regulation, if any, in the business insurance sector should achieve a balance between the conflicting imperatives of co-operation and competition between insurers, a balance which is necessary for economic and consumer policy reasons.

BIPAR is of the opinion that any change to the block exemption should maintain or improve the high level of legal security already achieved through the EU legislation, as well as the strict safeguards established in the interest of consumer protection.

Whilst reacting positively to the Commission's proposed initiative to evaluate the block exemption, BIPAR will comment specifically on the Commission's evaluation only after the completion of the evaluation exercise.

At this stage, however, we would like to make the following general comments.

10.1 STANDARD POLICY CONDITIONS

Perhaps a distinction should be considered between "standard policy conditions" and "model clauses".

"Model clauses", subject to the proviso that they are indicative and non-binding, should continue to be possible under the condition that they guarantee a sufficient market diversity, which is of particular importance for insurance intermediaries since their duty to their clients includes seeking the policy conditions best suited to their clients requirements.

A too strict limitation on the freedom to use “model clauses” in some areas of insurance could lead to unnecessary increased costs. The use of such clauses can 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. Tailor-made wording 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. It is to be stressed that these models can and often are varied by negotiation on individual risks, thus avoiding any undue standardisation.

10.2 POOLS

Having regard for the need for insurance capacity in specific circumstances, BIPAR accepts the principle of the existence of insurance and reinsurance pools under strict conditions and providing that insurance intermediaries or the clients remain entirely free to place risks outside the pool. Conditions in this respect should efficiently prevent pools from being in a dominant position and allow non-discriminatory access to the pool.