

BIPAR

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European Commission
DG Competition
Review of Insurance BER
Antitrust Registry
Jozef II Street, 70
B-1049 Brussels

14 July 2008

Subject: "Review of Insurance BER – COMP/D1 HT 1221"

Dear Madam,

Dear Sir,

We thank the Commission for the consultation on this important issue.

We answer on behalf of the BIPAR national associations. It is possible that some of our national associations answer individually with specific information related to their national market.

Protection of policyholders' interests and competitive markets have 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. BIPAR recognizes that there is a need for a minimum level of possibility for collaboration and agreements between insurance carriers to ensure the efficient functioning of the insurance sector.

A block exemption regulation, if any, in the 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 current EU legislation, as well as the strict safeguards established in the interest of consumer protection and competition.

We understand from the Commission's consultation paper that the Commission already received a considerable number of comments on the BER. We have read all these comments with much interest and have little to add. We noted that "*Based upon that [these comments] the Commission concluded that the evidence received suggested that the practices covered by the BER are in most cases unproblematic or even desirable in the market*". However, we also noted that "*this was not by itself a compelling reason to renew the BER.*"

We understand that the Commission expects respondents to this consultation paper to focus more on the necessity of the legal instrument of the BER itself than on the necessity of the specific forms of cooperation covered by the BER. We believe, however, that even though there may, according to the Commission, be no compelling reason to renew the BER, there seems not to be a compelling reason either, not to renew it.

Although we have no hard facts which could underpin it, we believe that the existence of the BER itself contributes highly to the fact that currently the practices are "*in most cases unproblematic or even desirable in the market*".

From an efficiency perspective it should be recognized that the less legal certainty there is in a market the higher the cost will be on market parties (and in the end on consumers) to deal with the legal uncertainty. Without a BER, most of the practices which are now covered by the BER, would continue and exist... because they *would be unproblematic and even desirable*. However, these practices would possibly take place in a much less coherent, less transparent and much more sophisticated (read expensive) legal framework.

We have the impression that thanks to the BER, insurers tend to limit their collaborations to practices allowed within the BER. The BER is relatively understandable. Practices falling within the BER are probably easier to evaluate and supervise or control also for (national and EU) competition authorities than practices falling outside the BER (but still potentially acceptable). Both for the parties involved in collaborations covered by the BER and for the controlling authorities, but also in the interest of the economy and society in general, the BER creates a framework that facilitates discipline, supervision and control in a transparent way.

Discipline seems to us easier when there is the BER (or comparable guidance) as a reference than when there is no reference at all. This being said, there may be other mechanisms than the BER by which competition authorities can create legal certainty but these mechanisms may be less efficient than a BER.

We hope that the results of the consultation will provide information to the Commission about potential indirect effects on the market of abolishing a reference point for both practices within the framework of the BER and practices outside the framework of the BER. Indeed, the BER should not only be considered as a reference for the activities within the BER but, as said before, we believe that, indirectly, the BER creates also a reference (and a limiting effect) on the practices which fall outside the BER (but which would potentially be acceptable). This we believe is logic because market operators look for a maximum of legal certainty. The clearer the legal framework, the less costs necessary to look for legal certainty. We also hope that this consultation will provide information about direct and indirect costs for the market and for the authorities (and in the end for the consumer) resulting from a world without BER. It may be that from the market and competition authorities perspective, rather than from a purely legal perspective, having a BER may be more efficient than not having a BER.

On more specific points we would like to make the following general comments:

Standard policy conditions

The existence of the BER creates for this a framework which clearly indicates the limits and possibilities and creates thus legal certainty. This also helps in creating contract certainty which is important from a point of view of the consumer.

As mentioned above, there may be other mechanisms than the BER which help create legal certainty and if the BER would be abolished we respectfully call upon the Commission, in the interest of the market and the consumers to develop mechanisms which give guidance. The question here would be what is the most efficient mechanism ? Unnecessary legal costs serve nobody.

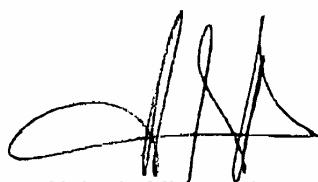
A too strict limitation on the freedom to use "model clauses" in some areas of insurance could lead to unnecessary increased costs. The use of such clauses can increase efficiency. It can facilitate reaching agreement on the policy wording and, hence, the subsequent processing of the business. Without 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.

Pools

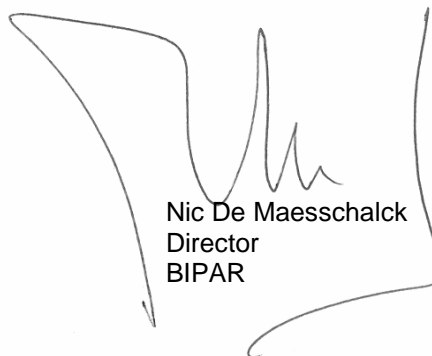
Having regard for the need for insurance capacity in specific circumstances, BIPAR accepts the principle of the existence of insurance and reinsurance pools under strict conditions and providing that insurance intermediaries or the clients remain entirely free to place risks outside the pool. Conditions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

We thank you for your attention and remain at your disposal.

Yours sincerely,



Alain de Midmandre
Chairman
BIPAR



Nic De Maesschalck
Director
BIPAR