European Commission publishes preliminary views on renewal of Insurance Block Exemption Regulation

On 24 March 2009, the European Commission adopted a report on the Insurance Block Exemption Regulation which is due to expire in a year’s time, on 31 March 2010. This follows a public consultation which was launched by the Commission in April 2008.

Background
The Block Exemption (Regulation 358/2003) entered into force on 1 April 2003, and was last renewed in 2003. Regulation 1534/91 (the Implementing Regulation) requires that the Commission sends a report to the European Parliament and Council on the functioning of the Block Exemption and proposals for amendments by 31 March 2009. The Block Exemption currently provides a safe harbour for companies and an automatic exemption from Article 81 EC (subject to specified conditions) for certain types of agreements in the insurance sector, such as:

> the joint calculations of the average cost of covering a specified risk (i.e. pure premiums); the joint establishment and distribution of mortality tables, and of tables showing the frequency of illness accident and invalidity; and the carrying out of joint studies of the frequency or scale of future claims for given risks;

> the joint establishment and distribution of nonbinding standard policy conditions for direct insurance;

> the joint establishment and management of insurance pools; and

> the joint testing and acceptance of security devices and safety equipment.

The Consultation
The Commission published a detailed consultation paper in April 2008 which considered each of the activities covered by the Block Exemption and requested views on whether to renew it, whether it has possible anti-competitive effects which could harm consumers, and whether there would be a heavier burden on supervisory and competition enforcement authorities if the Block Exemption was not to be renewed. This was followed by questionnaires which were sent to a range of stakeholders and meetings were held to consider different views, including discussions within the European Competition Network.

The Report: Preliminary Views
In its Report, the Commission addresses, for each of the categories of exempted agreements, three key questions in its analysis of whether or not to renew the Block Exemption Regulation:

> whether the business risks or other issues in the insurance sector make it “special” and different to other sectors such that this leads to an enhanced need for cooperation amongst insurers;
if so, whether this enhanced need for cooperation requires a legal instrument such as the Block Exemption to protect or facilitate it; and

if so, what is the most appropriate legal instrument (i.e. whether it is the current Block Exemption or whether its partial renewal, amended renewal, or guidance would be more appropriate).

### Joint calculations, tables and studies

The Block Exemption currently exempts agreements which relate to the joint establishment and distribution of calculations of the average cost of covering a specified risk in the past, as the costs of insurance products are unknown at the time the price is agreed and the risk is covered. Increasing the number of insurers who can cover risks increases market access and competition in the insurance sector.

The Block Exemption requires that when insurance companies enter into these forms of cooperation, they have to provide access to the information compiled to other insurance companies, on a non-discriminatory basis. During the review, some small and medium sized firms responded to the consultation that not to renew would put them at a competitive disadvantage. Some alternatives were reviewed during the consultation, such as increasing research and development staff to analyse the market and data; however, this was considered unsatisfactory by the Commission who concluded in the Report that cooperation between insurers needed to be protected, and that the Block Exemption is an effective way of doing so.

### Standard policy conditions

The Block Exemption exempts the joint establishment and distribution of non-binding standard policy conditions ("SPCs") for direct insurance, and non-binding models on profits.

During the consultation, some respondents argued that without the Block Exemption there would be increased legal uncertainty and an increase in insurers’ costs and corresponding premiums. Also assessment on a case to case basis would become time consuming and expensive, especially for small insurers.

However, the Commission considered that standard conditions would still be agreed, even without the Block Exemption, and that in many cases SPCs would not breach Article 81(1) EC or would fulfil the criteria for exemption under Article 81(3) EC. The Commission also argued that SPCs are used in some sectors without being covered by block exemption regulations (such as in the banking sector) and that in some Member States, national regulators have fixed SPCs that have resulted in a reduced need for cooperation.

Therefore, the Commission concludes that SPCs do not necessarily require a sector-specific Block Exemption Regulation.

### Insurance Pools

The Block Exemption exempts the setting up and operation of co- and re-insurance pools. Such pools can create restrictions of competition.

The Commission accepts in its Report that risk sharing for some types of agreements are crucial in order to ensure that these risks, which individual companies would be reluctant to cover, could be covered. This in itself marks a difference between the insurance sectors and others. The Commission found that, firstly, applying different rules (in relation to the calculation of market shares) would create a preferential treatment for the insurance sector, and there appears to be no clear reason to do so. Secondly, the Commission also found that many insurance pools are not covered by the Block Exemption, while certain pools do not need a ‘safe harbour’ because they do not give rise to restriction of competition. Also, other pools can fall outside the scope of the Block Exemption for other
reasons, such as exceeding market share thresholds. Finally, the Commission noted that many respondents to the Consultation were using the exemption of insurance pools as a ‘blanket’ exemption, without carrying out a full legal assessment of a pool’s compliance with the Block Exemption.

The Commission states in its Report that insurance pools are specific to the insurance sector, and if the Block Exemption was not renewed there would be a risk that insurers would not cooperate in this area. Therefore, the Commission suggests that it would be appropriate to keep the Block Exemption in relation to pool agreements; however, the insurance pool chapter would have to be redrafted to ensure its consistency with other general and sector specific measures.

Security devices

The Block Exemption covers technical specifications for security devices and procedures for assessing and approving their compliance with such specifications. It provides a legal framework for these types of agreements as long as they fulfil the specific conditions set out in the Block Exemption.

The Commission considers in its Report that agreements in relation to security devices are not specific to the insurance sector, and that the Block Exemption should not be renewed with regards to these agreements due to competition and internal market concerns.

The Report: Conclusion

The Commission Report concludes that agreements relating to joint calculations, tables and studies and insurance pools should continue to be covered by the Block Exemption. However, it has not decided how it should be amended to reflect this and whether it should be partially or fully renewed.

Next Steps

Before taking a final decision on the future of the Block Exemption, the Commission will hold a public hearing on 2 June 2009 to allow stakeholders to submit their views orally. Different panels will consider for each of the four categories of exempted agreements.

The Commission will then have to decide whether to fully or partially renew the Block Exemption; if it decides to renew some parts of it, the Commission will have to propose a draft regulation. If, however, the Commission decides not to renew any part of the Block Exemption, it will have to publish a communication to that effect before the end of 2009.

Sources


Commission Staff Working Document (accompanying the Report).


Commission review of Insurance Block Exemption Regulation – frequently asked questions (MEMO/09/128, 24.03.2009).

DC Competition Consultation Paper on the Block Exemption Regulation.
Merger Control

Notifications
1. **Simplified procedure cases**
   > RBSK/DZ Bank/RZB/RBL JV *(OJ C 68/42, 21.03.2009).*

Phase I Clearances
2. **Unconditional clearances**
   > TPV Technology Limited/Koninklijke Philips Electronics N.V. *(IP/09/486, 26.03.2009).*
3. **Unconditional clearance: simplified procedure**
   > E.ON Italia/MPE Energia *(MEX/09/0325, 25.03.2009).*
   > GDF Suez/GEK/Heron Thermoelectric *(MEX/09/0320, 20.03.2009).*

Antitrust
4. **European Court of Justice judgment in SELEX Sistemi Integrati SpA v Commission** – On 26 March 2009, the European Court of Justice dismissed an appeal by Selex Sistemi Integrati SpA against a judgment of the Court of First Instance, which dismissed an appeal against a European Commission decision to reject Selex’s complaint about an alleged abuse of a dominant position by Eurocontrol *(Case C-113/07, judgment of 26.03.2009).*

5. **New regulation on liner shipping consortia block exemption published** – On 25 March 2009, Regulation 246/2009 on the application of Article 81(3) of the EC Treaty to liner shipping consortia was published in the Official Journal. This repeals and replaces Regulation 479/92, which empowered the European Commission to create a block exemption in respect of the application of Article 81(1) of the EC Treaty in respect of liner shipping consortia. Regulation 246/2009 continues to give the Commission the power to adopt a five year block exemption for liner shipping consortia *(OJ L 79/1, 25.03.2009).*

6. **The European Commission issues statement on SEPA Debit Scheme** – On 24 March 2009, the European Commission published a statement, jointly with the European Central Bank, in relation to the SEPA Direct Debit scheme. The Commission advises that a general per transaction multilateral interchange fee (paid by a creditor bank to a debtor bank) for direct debit transactions may be assumed to breach Article 81(1) of the EC Treaty and is unlikely to meet the conditions for exemption under Article 81(3) *(IP/09/468 and Joint Statement).*

7. **The European Commission issues statement of objections in heat stabilisers cartel** – On 23 March 2009, the European Commission announced that it has recently sent a statement of objections (SO) to alleged participants in a cartel in relation to heat stabilisers, in violation of Article 81 of the EC Treaty. The SO concerns anti-competitive activities in relation to two categories of heat stabilisers: tin stabilisers and epoxidised soybean oil esters, which are used in a range of products such as packaging, credit cards, bottles, coatings, flooring, artificial leather and other every-day plastic products. The alleged cartel participants now have the opportunity to respond in writing to the Commission’s objections and may also request an oral hearing *(MEMO/09/125, 23.03.2009).*

rules. The resolution adopts a parliamentary committee report of 2 March 2009, which contains a number of recommendations for further consideration by the Commission (European Parliament Resolution of 26.03.2009 on the White Paper on damages actions for breach of EC antitrust rules).

**State Aid**

9. **The European Commission approves UK scheme to support bank lending** – On 24 March 2009, the European Commission announced that it has decided, under Article 87(3)(b) of the EC Treaty, to approve a UK scheme to encourage banks to provide new lending to businesses in the UK. Under the scheme, the UK will offer banks guarantees for portfolios of working capital loans to sound, credit-worthy companies. The Commission has concluded that the scheme (which is non-discriminatory and time limited) is an appropriate, necessary and proportionate means ofremedying a serious disturbance in the UK economy. It is, therefore, compatible with the Commission’s Communication on the application of the State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (IP/09/471, 24.03.2009).