

A new competition law framework for the Insurance sector: the Commission's new block exemption

On 24 March 2010, the European Commission (the "Commission") published a new Insurance Block Exemption Regulation ("IBER"), to replace existing Regulation 358/2003/EC, which expires on 31 March 2010.

The revised IBER will significantly restrict the types of co-operation among insurers and reinsurers which are automatically exempt from EU and national competition rules. Insurers will have a six month grace period until 1 October 2010 to assess whether existing arrangements qualify under the new IBER.

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Continued exemptions

IBER will continue to exempt only two categories of co-operation arrangements:

- the establishment and distribution of joint calculations, tables and studies; and
- the establishment and operation of co-insurance and re-insurance pools.

Information sharing and joint studies

Key changes

Type of information that can be exchanged cut back

Companies can now only jointly compile and distribute the information that is necessary to make average cost calculations. In addition, only the joint compilation and distribution of information necessary for the construction of mortality and other life tables will fall within the block exemption.

Conditions applying to the compilations, tables or study results amended and expanded

These materials must be made available on affordable, reasonable and non-discriminatory terms to any insurance undertaking and, unless non-disclosure is justified on grounds of public security, to any interested third party requesting a copy. The tables must also not contain any indication of the level of commercial premiums.

Insurance and reinsurance pools

Subject to certain conditions, the revised IBER covers agreements entered into between two or more insurance undertakings with respect to the setting-up and operation of pools of insurance and/or

reinsurance undertakings for common coverage of a specific category of risks in the form of coinsurance or co-reinsurance.

Key changes

Types of co-insurance and co-reinsurance pools covered

Reflecting previous concerns of the Commission,[\[1\]](#) IBER will not apply to ad-hoc co-insurance or co-reinsurance arrangements on the subscription market, where a certain part of a given risk is covered by a lead insurer and the remainder is covered by follow insurers.

Method of calculating market share

Market share figures have been amended to include market shares held by the participating undertakings outside a pool. This is likely to mean that a number of pools previously exempt under the existing IBER may no longer be exempt and will need to be assessed individually for their compatibility with applicable competition rules.

Increased market share thresholds

The revised IBER sees a 3% rise in the flexibility percentage for market share thresholds below which the exemption will apply, rising from 22% to 25% for co-insurance pools and from 27% to 30% for co-reinsurance pools.

Wider definition of new risks

The Commission has revised the definition of new risks, reflecting industry concern that the uncertainty surrounding the existing definition hinders pools with innovative policies.

Withdrawal of certain exemptions

IBER does not renew the exemptions for standard policy conditions for direct insurance ("SPCs") and security devices on the basis that they are not insurance-specific, although these may be covered in revised Horizontal Guidelines.[\[2\]](#)

Accordingly, from 1 April 2010, companies will need to make a competition assessment regarding any contemplated agreement or co-operation in relation to SPCs or security device standards.

The future

The New IBER comes at a time of similar change in the United States. This could see insurers' and reinsurers' antitrust risks increasing significantly in both the EU and US, creating pressure for companies to assess the extent to which their current agreements and practices comply with competition law.

Mayer Brown has a wealth of experience representing clients in all types of competition law and regulatory proceedings. If you have any questions about the above news item, or would like to discuss any aspect of your own business conduct in confidence, please contact Gillian Sproul:

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[1] Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0556:FIN:EN:PDF>

[2] http://ec.europa.eu/competition/consultations/2009_insurance/index.html

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