



The Insurance Block Exemption

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Does the European Commission's Report signal the beginning of the end?

Introduction

With just over a year to go before the current Insurance Block Exemption is due to expire (its expiry date is 31 March 2017), the European Commission has just published its Report on the Block Exemption's application. Its preliminary view is that specific rules for the insurance sector are no longer appropriate.

This news will be met with dismay by many in the insurance industry and possibly panic by some, who have argued during the consultation process that the removal of the Block Exemption would create legal uncertainty, increase compliance costs, adversely affect cooperation within the industry and lead to higher premiums for customers. However, in the absence of evidence to support these concerns, the European Commission is not convinced by these arguments.

Is this the end of the Insurance Block Exemption?

The European Commission has stressed that this is its preliminary view. Further studies are being commissioned and a stakeholder meeting is scheduled for 26 April. At the end of the consultation process, its final proposals will be put forward in early 2017.

However, it does now seem likely that the Insurance Block Exemption will not be renewed, whether in its current guise or with amendments. For some time now, the European Commission has been moving away from sector-specific rules in favour of a more general principles-based approach. The current Insurance Block Exemption is a shadow of its former self as it only covers two of four previously exempted categories of agreements.

If so, what does this really mean?

Arrangements in place on 31 March 2017 will not suddenly become illegal the next day due to the Block Exemption's demise. The current Block Exemption covers certain agreements between insurers to exchange information in the form of joint compilations, tables and studies and the common coverage of certain types of risk by means of co-(re)insurance pools. These arrangements are not going to be banned.

Indeed, in its report, the European Commission acknowledged that the exchange of historical data is "conducive to the efficient functioning of the insurance sector" and also that the requirements of Solvency II potentially increase the need for more precise and accurate risk information to calculate sufficient balance

Any comments or queries?

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sheet reserves. However, it referred to the fact that joint studies on the profitability of different forms of investment do not fall within this category as they do not help in improving knowledge about an insured risk or the formulation of risk premiums.

In addition, the European Commission has recognised the evidence that cooperation between insurers is often required in order to cover certain large unconventional risks. It has also noted that alternatives to institutionalised co-(re)insurance pools have developed over time these risks. These variations, as well as market definitions and other considerations, can give rise to difficulties over the Block Exemption's application.

A block exemption is a useful tool, provided that a proper assessment is undertaken to establish that a particular arrangement falls squarely within its parameters. However, often there is not such a neat fit to provide certainty.

The European Commission has waived a potential olive branch to the insurance sector with the possibility of specific guidance. In many cases, guidance is likely to be of much wider and clearer benefit when assessing arrangements from a competition law perspective.

From a practical perspective, a proper competition law review should be undertaken of all new arrangements to establish whether there is potentially a competition law issue and whether the arrangement meets the general exemption criteria. As there is some evidence to suggest that there has been undue general reliance on the Block Exemption within the insurance industry, now is also a good time to start a review process of existing arrangements.

Conclusion

Although we cannot go as far as advocating "keep calm and carry on", there is certainly no need for alarm. There is a potential opportunity to engage with the European Commission to influence the creation of specific guidance which would be of benefit to the insurance industry. It should be noted however that, irrespective of the outcome, there is no change to the underlying law. Hence, where arrangements raise potential issues, legal advice should continue to be sought.

