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European Commission Issues Final Report on Competition in the Insurance Sector

The need for the insurance industry to comply with competition law is highlighted by the Final Report of the European Commission ("EC") on competition in the European business insurance sector of 25 September 2007.

It identifies two practices in the business insurance sector which raise potential competition law concerns. The first relates to the use of so-called "best terms and conditions" clauses and the manner in which large risks are covered by co-insurance and re-insurance arrangements, and in particular, the fact that participants in the so-called "follow market" are prevented from undercutting the premiums offered by the lead insurer. The EC concluded that this may lead to:

"aligning terms, conditions of cover and premiums at levels which are, to a varying degree, detrimental to the (re)insured and which are correspondingly more favourable to the (re)insurers."

However, the EC did not determine that these practices constitute an infringement of the prohibition on restrictive business practices set out in Article 81 of the EU Treaty. The EC merely invited the insurance industry to overhaul these practices themselves, or to justify their continuance on the basis that they result in efficiency gains.

The second practice highlighted in Final Report relates to insurance intermediaries. Conflicts of interest and the lack of transparency in broker's remuneration may inflate prices and reduce choice, in particular for small and medium enterprises. Once again, the EC did not determine that these practices contravene the Treaty, since it recognises that its concerns might be addressed by disclosure of relevant information to customers. However, the EC indicated that it will explore this issue in more detail during a review of the Insurance Mediation Directive.

Enforcement action in Europe in relation to these practices thus seems unlikely at this stage. However, the Report concludes that the Commission has yet to be persuaded that the block exemption which presently exempts certain practices in the insurance industry from the competition law provisions of the EU Treaty, is still necessary. This issue will be considered by the EC in more detail in March 2009, before the exemption lapses in 2010. If it is not renewed, this could have a significant impact on the way in which insurance is offered in Europe and would affect a wide range of industries which are heavily dependent on insurance, such as real estate, aviation and shipping.

The full report can be downloaded at:
http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/financial_services/business.html

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