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John Cooke

International Financial Services London

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One of the arresting features of the European insurance markets is the diversity of its origins across, and within, the different Member States, and the varying role it has played—and continues to play—in the economic and social life of different European countries. To take only a few examples, this diversity ranges from developments in the United Kingdom (where early marine insurance was matched by the development of mortality tables and life insurance in the seventeenth and eighteenth centuries) to social insurance in Germany (where Bismarck brought in state-run social insurance) and to health insurance in a number of EU Member States (where mutual insurers provide a service to which policyholders must subscribe). Mapped across this diversity are differing traditions in the extent of compulsory insurance classes, and variations in such insurance fundamentals as contract law (which remains unharmonized). All of these are reasons why the European insurance market, although moving towards greater integration, still has far to travel.

At the same time, insurers in the European Union are subject to a range of new economic developments and pressures. The enlargement of the Union to 27 Member States has brought together very different insurance markets within the EU single market.

[*] The author is Chairman of the Liberalisation of Trade in Services (LOTIS) Committee at International Financial Services London (IFSL). The views expressed are his own and do not necessarily reflect those of IFSL.

There are major differences of scale (the U.K. insurance market alone is a little under one-third of the entire EU market[1]). Interestingly, the EU's enlargement from 15 to 27 members makes little difference to the total size of its insurance sector (in 2006, total premium volume in the EU (15) was US$1,357,328 million, while that of the EU (27) was only some 2.2 percent larger, at US$1,387,523 million). This underlines the fact that the European insurance market now comprises a spectrum of national markets with hugely differing degrees of insurance density (premium expenditure per capita) and of insurance penetration (total premiums as a percentage of GDP).

All of this reinforces the fact that there is far greater recourse to insurance in some Member States than in others, whether as a means of managing business risks, or providing life cover and pensions, or for dealing with other risks such as environmental hazards, extreme weather, or terrorism.[2] And, in those new Member States where insurance still has to develop to the level of the more advanced, there are pressures for it to do so in ways that are efficient and economical. This is especially important for retail insurance consumers and small businesses (a key source of growth in newly acceding member-states): these groups stand in need of available and affordable domestically supplied retail insurance services which would be difficult for them to source on a cross-border basis.

Why set out these economic factors? Because they form the bedrock on which any approach to prudential and economic regulation of the EU insurance market needs to

[1] Swiss Re, *World Insurance in 2006*, SIGMA 4 (2007).

[2] *See, e.g.*, John Cooke, *The Coverage of Terrorism Risks at National Level*, *in* TERRORISM RISK INSURANCE IN OECD COUNTRIES (OECD Policy Issues in Insurance, No. 9, 2005).

be built. This short article will not deal with prudential regulation (i.e., regulation of the soundness of insurance providers), but will address economic regulation, and in particular competition law, which has an equally important role in the future development and growth of the EU insurance market. There needs to be an appropriate "fit" between economic regulation of the insurance sector and the direction of travel which, as a matter of public policy, the sector is expected to take as a key component of the financial services infrastructure on which EU businesses and consumers depend.

As with other countries and regions, EU policymakers have a long record of aiming to ensure that the degree of economic regulation of any sector or activity is adapted to provide such a "fit". In competition policy, it is of course fundamental that Article 81 of the EC Treaty prohibits anticompetitive practices within the European Union by forbidding agreements affecting trade between Member States which have as their object or effect the prevention, restriction, or distortion of competition. But it has long been recognized that the precise application this fundamental principle needs to depend on the circumstances of the sector or activity concerned. The key questions are:

- What is the degree of competition in the sector?
- Does the sector need to develop in a particular direction?
- Are there countervailing "public interest" arguments in favor of certain types of agreement or practice?

It is for these reasons that the European Commission has exempted whole categories of agreements from the effects of Article 81 using "block exemptions". A block exemption means that any agreement falling within its terms is deemed compatible with competition law. Sectors and activities covered have included liner shipping conferences, technology transfer, vertical agreements, certain state aids, motor vehicle distribution, and of course insurance (most recently in Commission Regulation 358/2003). In the beginning (the 1960s), such block exemptions served the dual purpose of:

1. providing guidance to particular sectors and activities on the application of competition law; and
2. preventing the Commission from being deluged with applications for clearance of insignificant agreements.

With the radical overhaul of European competition law in Regulation 1/2003 (in effect from May 1, 2004) the second of those purposes has largely gone. In its Consultation Paper on Regulation 358/2003 (2008), the Commission implicitly questions the validity of the first.

Is there still value in an Insurance Block Exemption? Taking the economic circumstances of the EU insurance industry, the answer must be "yes". On the one hand, the sector is highly competitive[3]: across the 27 Member States there are some 5,000 providers (insurance and reinsurance undertakings, e.g., pan-European companies, monoliners, mutuals and SMEs)[4], with a marked showing of smaller providers. On the other, there are fields in which smaller providers in newer Member States face difficulty in competing efficiently and economically: while larger providers can use their own claims experience as a proxy for the market as a whole, smaller providers face greater

[3] *See, e.g.*, Gill Montia, *Competition keeps home insurance profit low*, BANKING TIMES, Feb. 22, 2008.

[4] CEA INSURERS OF EUROPE: EUROPEAN INSURANCE IN FIGURES (2006 Data) (Aug. 2007).

difficulty in doing so, and benefit from access to the business practices and claims experience of bigger players. Nowhere is this dilemma better expressed than in the 29 "Whereas" clauses forming the Preamble to Regulation 358/2003, which set out amply the reasons why there are benefits in including:

- joint studies/calculations on the cost of risk cover for a specified risk, its frequency and the impact of external factors;
- standard policy conditions, on a non-binding basis;
- common coverage for a specific category of risk (pools); and
- security devices/safety equipment: agreements establishing technical specifications and the like.

All these are classic "public interest" areas in which insurance providers and their associations need to work together to provide cover that is efficient and economical with reasonable reassurance that their arrangements will not fall foul of competition law.

It may be said, of course, that removal of the Block Exemption would not outlaw such beneficial agreements and practices. But in its absence, there would be rising administrative burdens and costs for insurance providers, who would have to assess for themselves whether forms of cooperation complied with competition law. They would have to audit every form of cooperation. Product prices, particularly those from smaller players, would need to reflect those additional costs, becoming more expensive and less competitive compared with those of bigger providers. This would tend to shift market power to large players with well-resourced compliance expertise, to the detriment of small- and medium-sized undertakings and new entrants. In the same way, divergent interpretations by national competition authorities could also lead to discrimination between EU providers. The result would very likely be a diminution in cooperation between insurers. As regards joint calculations, tables, and studies, for instance, big insurers could prefer to rely on their own portfolio underwriting and claims experience: they could afford to do so as their business volume is large and varied. But smaller players, with more restricted and less representative portfolio data, would have fresh difficulty in competing. Customers would suffer reduced choice in terms of providers and thus of products.

All of these points matter. They might matter less if the European insurance sector were more homogenous in its degree of development across all member states. They might also matter less if the sector concerned were a less critical component of the financial infrastructure essential to Europe's future economic wellbeing. But policymakers need to construct economic regulation on the bedrock as they find it. Europe's insurance market is not yet integrated. Its strength, development, and services to consumers vary sharply from one Member State to another. Taking the insurance sector as it currently exists, there is a clear case—particularly among smaller providers and in newer EU Member States—for the clarity provided by the Block Exemption. Indeed, it could be asked whether the Block Exemption should be extended to encourage insurance providers to pool resources in other areas where Europe desperately needs to make progress. What about pensions, for instance?