



European Commission Directorate-General for Competition
by e-mail Comp-Ins-Inquiry-Feedback@ec.europa.eu

Our reference
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The Hague
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Re
Feedback on Interim report on the business insurance sector inquiry 24 January 2007

Dear Sirs, Madams,

The insurance industry is both financially and socially of great importance. Your interest in and commitment to the sector is evident from the inquiry you have conducted. The Dutch Association of Insurers is pleased that you have submitted the preliminary findings to us for comment thereon, as this will broaden the scope of support and open up the dialogue at an early stage.

In view of the final report by your Commission which is scheduled for publication in September, we would like to make a few comments. As these relate to your subjects of consultation in particular, they have been incorporated in the answers to your consultation questions Q.1 to Q.13 inclusive, mentioned on pages 159 and 160 of your report.

Discrepancy of combined ratios

Q.1 Are there compelling justifications for the apparent discrepancy in the level of combined ratios of SMEs and LCCs observed in some parts of the EU-25?

With respect to combined ratios as applied methodology, we would like to bring to your attention that in the insurance sector this is used as a technical indicator and not as an indicator of profitability. The fact is that key components such as the investment income and the level of risk which are qualifying factors in the determination of the final premium, are not included therein.

Even though our Centre for Insurance Statistics does not have all of the data that served as a basis for your conclusions, on the whole, the picture of the Dutch situation is recognised. The conclusions have been drawn from data over the period 2000-2005 and over the year 2005. The timeframe of the analysis may be one of the underlying reasons of (the discrepancy in) the level of combined ratios. The business insurance market in the Netherlands is subject to sharp cyclical movements; reportedly, it even ranks as one of the most cyclical markets. That would explain that some years or a series of years have a relatively high combined ratio which could compensate for other years with a low combined ratio. Therefore, well-founded

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conclusions cannot be drawn until the combined ratios have been compared over a longer period. In our view, a period of 10 years would lead to more justified conclusions.

By way of illustration of the ramifications of the cyclical nature of the Dutch market, we would like to point out that a number of large insurance companies withdrew from the co-insurance market (Insurance Bourse) around the year 2000 on account of disappointing results. Consequently, the combined ratios over the period preceding the year 2000, were high.

Perhaps other Member States have less cyclical markets and their combined ratios are stable in relation to foreign cyclical markets. On the other hand, discrepancies in combined ratios may also be accounted for by the fact that markets are mutually anticyclical. After all, your inquiry also reports anticycles in some Member States in respect of discrepancies between SMEs and LCCs (page 68 under 4. SMEs versus large clients), among which the Netherlands. Another and longer observation period will result in a different picture.

"Best terms and conditions" clause

Q.2 How widespread is the use of the so-called "best terms and conditions" clause in the reinsurance and in the co-insurance markets? Where does this type of clause originate?

With respect to this issue we will confine ourselves to the co-insurance markets. Contrary to what is implied by the European Commission's report (page 88 under 9. Best Terms and Conditions Clause), this clause is not applied (any longer) in the Dutch co-insurance market. Nevertheless, it cannot be ruled out that an insurer will make a reservation to that effect under certain circumstances on the basis of their own company policy. As such, this is not deemed to be competitively objectionable.

Q.3 At what stage in negotiation does this type of clause appear and which/how many participants ask for its introduction?

See Q.2.

Q.4 How is the clause enforced?

See Q.2.

Q.5 What is the effect of this type of clause on the market?

See Q.2.

Long-term agreements

Q.6 Have you experienced that the duration of insurance contracts represented a barrier to entry for insurers wishing to penetrate new markets and/or acquire new customers? Please explain your answer also taking into account the existence of termination and of automatic renewal/extension clauses.

In the Netherlands long-term insurance contracts have not presented a problematic barrier to entry for insurers wishing to penetrate new markets and acquire new customers. In 2005, for instance, there were 323 insurers active on the Dutch non-life insurance market and 18 insurers entered the market.

As regards (comparatively) long-term contracts, there are other occasions within the policy period which give the policyholder the opportunity to cancel his insurance(s), for example upon a notification from the insurer of a mid-term change in premium rates or conditions. Furthermore, it is provided for by Netherlands legislation that a policyholder has at least the same possibilities to cancel the contract as his insurer. Therefore, the official period of an insurance contract is not absolute.



With respect to private insurance, the statutory maximum period in the Netherlands has been set at 5 years. Unless otherwise agreed, said 5 years' period also applies to business insurance. Apart from this, we have observed that an increasing number of insurers offer their corporate clients (comparatively) short-term contracts. In the last few years the most common period on the Dutch co-insurance market is one year even.

As part of or especially for the protection of the policyholder so as not to run the risk of being uninsured, insurance contracts are usually tacitly renewed at the renewal date for the agreed period. However the client can decide not to renew.

In conclusion it should be noted that the interest groups of SMEs and LCCs do not pay special attention to the period of insurance contracts.

Q.7 Have you experienced that the duration of insurance contracts was a serious obstacle for switching to a different insurer? Please explain your answer also taking into account the existence of termination and of automatic renewal/extension clauses.

Of relevance to this subject is the fact that most policyholders consider a longer policy period an extra security when taking out insurance. Otherwise, our answer to this question reads the same as the one to Q.6.

Intermediaries' remuneration

Q.8 To what extent do independent insurance intermediaries (brokers and multiple agents) disclose remuneration paid by insurers (i.e. commissions, contingent commissions including profit commissions, fees for services provided and other payments) to their insurance broking clients?

Until seven years ago it was laid down in Netherlands legislation that remuneration other than acquisition and continuous commission were not permitted, exceptions omitted. Currently, the remuneration structure is completely unrestricted. More and more frequently intermediaries disclose – by request and otherwise – the type and amount of their remuneration to the clients. This is especially true of intermediaries who are active in the co-insurance market. In addition, an increasing number of LCCs enlist the services of an intermediary on a fee basis only; this results in complete transparency in the remuneration.

In the Netherlands the Insurance Mediation Directive has been implemented with effect from 1 January 2006 and is now incorporated in the Financial Services Supervision Act [Wet op het financieel toezicht]. This has made a positive contribution. For example, the method of remuneration has to be communicated upon conclusion of an insurance contract. In addition, the government has issued new commission rules for complex life insurances (from acquisition to continuous commission, and transparency in the amounts thereof). Finally, a further transparency of costs and commission is currently a topic of discussion in the Netherlands between the government, the supervisory authorities and the insurers.

Commission rebating

Q.9 In your Member State, do independent insurance intermediaries rebate commissions to their clients? How common is this practice for SME clients? How common is it for LCCs?

In the past rebating commission was prohibited by law, with some permitted exceptions. The current Netherlands legislation does offer intermediaries the possibility to give (part of) their remuneration to their clients in the form of a rebate. Giving such a rebate is not uncommon. We do not have the exact data available, but certainly towards LCCs allowing such a rebate is common practice. In this respect we would like to mention once again that commission remuneration is increasingly substituted for remuneration on a fee basis (see also Q.8).



Q.10 Are there any agreements between insurers and independent intermediaries not to rebate commissions to insurance broking clients? Are there any other practices that would discourage independent insurance intermediaries from rebating commissions to insurance broking clients?

To our knowledge none of the above exists in the Netherlands.

Horizontal cooperation

Q.11 The inquiry's data concerning the various forms of cooperation among insurers shows substantial differences among Member States. How can these differences be explained?

There are significant differences between Member States, such as:

- number, nature, size and social commitment of the insurance companies;
- the consumer's needs;
- the extent of regulation the industry has been subject to since its early days;
- the extent of privatisation of the industry;
- the organisational level of the sector;
- the role of the industrial organisation;
- the contacts with and demands of the authorities;
- the stages of development in which the economy, the insurance market and the industry are.
- In our view these differences account for the actual extent of cooperation.

Remarkable in this respect is that your Commission only mentions (frequent) cooperation as an indicator for competitive objections. The absence of or rare cooperation can in our opinion also be an indicator. The refusal to share knowledge and information (including financial data), for instance, can present a barrier for new entrants, especially in Member States with a high concentration of insurers. The competition may thus either be restricted or obstructed.

Q.12 Which sorts of benefits have you experienced, as a business insurance customer, from the forms of cooperation among insurers described in the present Report?

As we are not a business insurance customer, we are not in a position to answer this question.

Q.13 As a business insurance customer, have you ever experienced that the forms of cooperation among insurers described in the present Report were hindering competition?

As we are not a business insurance customer, we are not in a position to answer this question.

On horizontal cooperation in general, and the Block Exemption Regulation in particular, we would like to state that we are of the opinion that these are conducive to the competitive conditions. Cooperation leads to an increase in efficiency and transparency, the advantages whereof will eventually be of benefit to the customers. This has also contributed towards the open character of the Dutch insurance market, which promotes competition and new entry. This is one of the reasons why a relatively large number of foreign insurers are active in the Netherlands (also or particularly on the co-insurance market).

Now that the Block Exemption Regulation (BER) is brought up for discussion, we would like to submit the following. The BER is all the more useful, because it does not only promote competition but it is also conducive to the legal certainty with respect to questions pertaining to competition law. After all the BER contains more specific limits than the common competition law. It would be a setback if in the event of abolition of the BER insurers were to cease cooperating at the present level for reasons of prudence. That would be at the expense of the efficiency among insurers and the transparency or comparability for the client. Furthermore, the administrative expenses on the part of the insurers (and supervisory authorities) would in



that case also increase. After all, there would be an increasing number of compliance issues and discussions, with supervisory authorities as well. In addition, new entrants would be faced with more barriers due to the differences in rules and legislation (including taxes), as is already the case in Member States where parties do not cooperate or only cooperate occasionally. Through our European organisation of insurers, Comité Européen des Assurances (CEA), you will receive a detailed statement of all our arguments for maintaining the BER. We assume that we will be given the opportunity to continue the discussion about the BER with you as of 2008, the year in which your Commission plans to evaluate the BER officially.

With kind regards,

A handwritten signature in black ink, appearing to read 'H.L. De Boer'.

H.L. De Boer