

## FERMA COMMENTS

25 July 2007

### **European Commission's Business Insurance Inquiry - Consultation phase**

By the present FERMA takes the opportunity to forward to you its views and comments on the Preliminary findings of the Interim Report on the Business Insurance sector inquiry.

#### **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?

**FERMA considers that this variation reflects the fact that the business insurance structure varies between countries. The difference between SMEs and LCCs reflects the fact that LCCs has professional buyers using various sophisticated techniques allowing reducing the net price (Self retention, captives etc...).**

#### **"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?

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

**Q.4** How is the clause enforced?

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

**Due to different opinions on this issue within FERMA, FERMA refrains to express any position on the present issue.**

### 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.

**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.

**FERMA considers that the specific examples given by the commission (long-term insurance contracts and certain distribution structures such as networks of exclusive agents) may reduce the scope for competition by foreclosing the market to new entrants. Nevertheless regarding long term contracts, it must be noted that a large number of LCCs are seeking for some types of long term contracts (usually 3 years) to overcome the market volatility. It is in fact usually the insurance companies who are reluctant to provide these long term agreements for LCCs.**

### 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?

### 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?

**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?

**FERMA considers that the level of transparency is not entirely satisfactory.**

**FERMA notes that local agreements in some countries in Europe include some disclosure “at insured request”. This disclosure is included for the “big risks” only. FERMA considers that the “at insured request” concept is subject to discussion. The “at insured request” concept means that the insured is mature enough to make a judgement on the level of remuneration of the intermediaries. In FERMA’s view, the “Big Companies” concept is too**

restrictive. FERMA argues that this goes against equity where exclusively Large Corporations are entitled to receive some disclosure.

FERMA notes that the description of the content of the disclosure is quite often vague and unclear with regard to the nature of the remuneration (direct) of the intermediaries. Usually, Contingent commissions are not disclosed. The way the market operates is quite complex and is on a worldwide basis. Local agreements cannot allow a good transparency on a European basis. It is obvious to FERMA that the level of remuneration paid by the insurance companies to the brokers does not drive the choice of the very professional firms but may have a strong influence about the way the advices are given to the clients.

In addition FERMA sees on one side, a significant effort made by the major firms, driven by their US headquarters after the so called “Spitzer enquiry”, to make some kind of disclosure and, on the other side, a strong opposition to the disclosure concept from a large majority of the rest of the market. FERMA is concerned that this introduces a distortion of competition. It is obvious that the first objective of transparency is to bring confidence between brokers and clients but also to certain extent it should allow improving the efficiency of the market. The industrial risk market and the broker firms have a long way to go to improve their efficiency. A true transparency, allowing the customer to make like to like benchmarks would oblige the actors to make significant efforts on processes and quality.

FERMA recommends that a distinction between intermediation costs and servicing costs is applied. This would allow the client to work with key performance indicators and to benchmark the quality of services versus remuneration. FERMA is convinced that this is the only way to permit a fair competition on the market

FERMA proposes to apply some principles for the sake of clarity.

- Any transaction (billing) should show the level of remuneration paid by the company to the intermediary for that transaction
- Brokers should be allowed to have two caps:
  - Brokers, meaning that they provide consulting services, intermediation, back office services as well as other specific services paid by their client, through fees or through commissions paid by the insurance companies after formal agreement of the client
  - Agent, meaning that when they get any other remuneration than the one mentioned above, for any kind of service provided to an insurance company, their status would be different. This would not mean that the direct remuneration will not be transparent, but would mean that the client will clearly know that his broker is not

acting in full independence when he works with some specific companies.

- **Reinsurance commissions are an issue because it is a significant business for some brokers and could create some conflict of interest. If a European regulation was issued it would define some strict rules to segregate reinsurance intermediation from traditional brokerage services.**
- **In addition to the above, incentives given in kind to the brokers by some insurance companies, which is a common practice, should be strictly restricted**

### **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?

**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?

**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?

**Due to different opinions on the BER at the present stage within FERMA, FERMA refrains to express any position on the present issue.**

**FERMA is concerned with the National pools for some large risks where one can find always the same players. FERMA understands the need for such pools in some circumstances but notice that they are barriers for potential new entrants and oblige the LCCs having various locations throughout Europe to buy several time capacities that they could buy once only if the market was free or if there was European pools instead of National pools.**

**FERMA stresses that it is of great importance for insurance customers to maintain their options for the adequate coverage of their risks such as coinsurance and long term contracts also in the future.**