



**European Commission/DG Competition**

**To the attention of Mrs Neelie Kroes  
European Commissioner for Competition Policy**

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Datum	: 14 May 2007	Contactpersoon	: Dr N.A. Mourits
Onderwerp	: Preliminary findings of the business insurance sector inquiry	Doorkiesnummer	: 033 - 464 3 464
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Dear Mrs Kroes,

DG Competition has invited the public to send its written comments on her preliminary findings of the business insurance sector inquiry. As a stakeholder in the Dutch insurance Market, the Dutch association of insurance intermediaries and financial services providers, NVA accepts this invitation. Please find hereafter some general remarks and our thoughts on the issues related to the intermediary sector in the Netherlands.

**General remarks**

At first we would like to point out that the Dutch insurance market is a highly competitive market.

In the Netherlands there are hundreds of insurance companies and several thousands of insurance brokers companies for a relative small population (16.306.000 in 2005, number of households 7.091.000, number of firms 717.035). The level of the premium is known to be low.

This fierce competition is intensified every day because of the creation of new distribution channels and new methods of selling. Add to this, due to the media and many internet-comparison sites, well informed consumers than one can only conclude that the market players must deliver all the time good quality to keep their clients.

After reading the interim report we have the impression that this fierce competition in our market - and in several other EU markets - is underestimated or not taking well enough into account. We believe however that this high level of competition is an important factor that mitigates possible effects of conflicts of interests and the commission system.

## **Comments regarding the issues related to the intermediary sector.**

### *Conflict of interests*

How can the client be reassured that the intermediary that advises him does act in the client's best interest?

In the Dutch insurance market a well worked-out mechanism is implemented (first on a basis of self regulation, later as legislation) to secure clients against conflicts of interests.

The Dutch insurance intermediaries are obliged to be transparent about their service to the client. The market itself introduced in 2002 a code of conduct, known as the GIDI. This code obliges the intermediary to indicate clearly to the client the services that he can expect from him. He has to be transparent about his relation with the insurer and he must tell his client how he is remunerated. This code of conduct obliges the intermediary to look for an insurance that is appropriate for the client.

All these GIDI requirements have been implemented since the 1<sup>st</sup> January 2006 in the Dutch legislation. Due to the IMD, the intermediary is now legally obliged to make a profile of his clients (of private clients as well as business clients) who are in search of a complex product (life, investment, mortgage). The intermediary must collect information on the financial position of the client, his knowledge, his experience, his objectives and his willingness to accept risks. Having collected this information, the intermediary is then obliged to give an advice that corresponds with the clients profile. Finally he has to explain his advice to the client. These rules are referred to as the advice rules.

The Dutch law obliges the intermediary also to inform the client whether he gives advice based on a fair analysis. In that case his advice is based on a sufficiently large number of similar financial products.

If the intermediary does not advice on a the basis of a fairly analysis he has to inform his client - whether he has a contractual obligation to conduct business exclusively with one or more insurance undertakings. At the request of the consumer he provides the names of those insurers.

- whether he is not under the contractual obligation to conduct business with one or more insurers but has made the choice to conduct business with a limited number of insurers. Again, if requested by the client, he provides him with the names of these insurers.

Due to the information requirements the intermediary informs his client not only about his service but also about the way he is remunerated and his relation with the insurer (is the insurer a shareholder in the broker's company?). This is also a form of management of conflict of interests.

A very severe supervisory authority, the AFM, supervises the compliance with the (advice) rules. Add to this a well informed and emancipated consumer, hundreds of insurers offering similar financial product and thousands of intermediaries competing all of them for a relative small number of clients, then it is clear that in the Netherlands a lot has been regulated and services have been made transparent, all that to avoid conflict of interest as much as possible

### *Contingency commissions*

We quote the interim report in this respect:

'Another source of conflicts of interest could be the form of remuneration and in particular, contingent commissions could create incentives for intermediaries to steer high volume or profitable business to selected insurance companies.'

Again, the Dutch legislation secures the clients against the negative influence contingent commission might have on the advice of the intermediary.



The intermediary is legally obliged to make a profile of his client. His advice must be all the time appropriate to the client, he has the duty to take care. A very severe supervisory authority supervises the compliance with this obligation. All this makes a 'coloured, wrong' advice by a contingent commission impossible.

In addition to the above obligation, for complex products (life insurances, investment products, mortgages) the Dutch intermediary is obliged by law from the 1st October 2009 to make his remuneration transparent. Contingent commissions also fall under this legal obligation. Intermediaries are obliged to inform their clients whether they receive for this particular product a contingent commission and what is the maximum level of this bonus.

#### Transparency/disclosure of commission

We quote the interim report in this respect:

'Transparency would appear to be an important pre-requisite of any possible competition on the price of the mediation services'.

The Netherlands has already in a certain way transparency of commission. The intermediary must inform his client about the way he is remunerated (fee or commission). From 1<sup>st</sup> October 2009 the intermediary, when he advises complex product, has to give his client in the pre-contractual phase, an indication of the level of the remuneration on the basis of a standard case. Later on, at the moment of the conclusion of the contract, he has to give on the request of the client the exact remuneration. He is also obliged to inform the client about any bonuses scheme. All this is a legal obligation.

For non life (as well as for life products) there are severe legal requirements to be fulfilled by the intermediary such as requirements about knowledge and integrity, there is a legal duty to care (to give good advice) and a severe supervisor who controls the compliance with these legal rules. Here again there is no room for a wrongful/coloured advice.

The transparency as laid down in the Dutch law is sufficient for the client. As stated correctly by the European representative of the SME during the hearing, the SME are mainly interested in the final price of the product. If the client wants to know the level of the commission then the intermediary should not hesitate to tell him what exactly he receives for his mediation activities.

#### Duration of the contract.

We quote the report:

'Where the duration of contract is not relevant to the product, long term agreements can raise competition concerns particular as a barrier to new entrants'.

There is in the Netherlands no danger that the duration of the contract would reduce the competition. Since 1<sup>st</sup> January 2006, Dutch private insurance contracts can only have a maximum duration of 5 years. The possibility for the client to obtain a shorter term is always possible but will result in a higher premium. The insured is therefore reluctant to ask for shorter terms.

In principle there is no maximum duration for contracts in the business insurance market, but most of the contracts are concluded for 1 year. In certain areas like responsibility, entrepreneurs benefit from a longer duration of the contract (own choice) because of the fact that some risks are difficult to insure.

In the private and the business insurance market the client has always the possibility to change of intermediary.



In the Netherlands we have the 'en bloc clause'. If an insurer changes a special group of insurances, the client has the right to end the contract. This clause is implemented in the policy conditions of every non life insurance contract.

In the new insurance contract law, in force since 1<sup>st</sup> January 2006, the insured and the insurer have the same rights to end the contract.

Cross subsidy by SME

According to the report the profitability for SME's business is higher in some Member States than for large commercial clients, indicating a possible element of cross subsididy.

The Dutch market is a very competitive market. The offer of domestic and foreign insurance products is enormous. Firms are assisted by intermediaries in their choice of insurance products. The intermediary compares final price and quality of several products. This enables the client to make a well balanced choice. Again, because of the stringent legal rules, the high number of intermediaries and a relatively small number of firms, there is no room for deals who are not competitive in price or in quality.

Insight in the remuneration is not the only component that can improve competition. We refer in this respect to the reaction of the SME-representative (the final price is what counts) at the public hearing on the 9<sup>th</sup> February 2007.

Best terms and conditions

We quote the interim report:

This 'best terms and conditions' clause harmonises terms and conditions at the highest level for the reinsurers concerned, irrespectieve of their own characteristics, to the detriment of the reinsurance client'.

At this moment this practice of best terms and conditions does not appear in the Dutch market. This practice only appears in a hard market, this is a market where the premiums are high and it is not easy to find 100% coverage. At this moment the market in Holland is soft, this means that the premiums are low and that there is enough capacity of cover.

The use of 'best terms and conditions' in reinsurance and co-insurance can have an increasing effect on the level of premium and is therefore not in the interest of the client.

The Dutch Association of Insurance Bourse (VNAB) has brought in 2005 the attention to the best terms and conditions practice. The VNAB sees in this practice a distortion of the competition to the detriment of the client. She proposes not to use anymore the 'best terms and condition' clause.

So far our reactions on the interim report on the business insurance sector inquiry. We do hope you will take our comments into considerations and bear them in mind when you finalize your report.

If you need further clarifications on the above-mentioned, please do not hesitate to contact us.

Finally we would like to bring to your attention the submission by Bipar regarding the interim report which we subscribe entirely.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'N.A. Mourits', is written over a large, stylized flourish that extends across the signature line and slightly below it.

Dr N.A.Mourits, Director NVA