

# Warning shot to insurers from Brussels

Questionnaires issued as part of the EC sector inquiry into business insurance assess firms' compliance with competition rules, write **Jennifer Donohue** and **Matthew Giles**

NEARLY a year ago, the European Commission launched a sector inquiry into companies and intermediaries offering business insurance (defined as "the provision of insurance products and services to businesses") owing to concerns that European customers were not benefiting from integrated and competitive financial markets.

The commission is using this sector inquiry rather than its normal competition enforcement powers because it suspects that the market is not functioning correctly but needs more information fully to understand the reasons why this might be the case.

Recognising that the industry is often marked by close (and, some would argue, necessary) co-operation, the commission is nevertheless interested in understanding more about certain industry arrangements that it believes may be excessive and unjustified and might lead to distortions within the market.

For example, in certain areas of insurance, insurers' associations and committees often jointly agree standard policy conditions which allegedly leave customers little room in terms of negotiation or alternative options.

The commission also be-

lieves that other horizontal and vertical agreements between insurers, reinsurers and intermediaries often work to the detriment of consumers by stifling incentives to compete.

The inquiry is therefore a fact-finding exercise that may lead to the imposition of structural, regulatory and competition law-based remedies.

The inquiry extends to a vast range of insurance undertakings and products and includes, as well, all insurance and reinsurance intermediation activities.

In particular, the commission aims to highlight potential barriers to entry and obstacles to the provision of services cross-border within the EU, including any problems regarding access to risk data and distribution channels.

To that end, the inquiry will focus on issues such as the joint setting of standard policy conditions, co-insurance arrangements between insurers, the extent of co-operation within insurers' associations, and agreements between insurers and intermediaries.

It is also clear that the commission has not ruled out broadening the inquiry's scope to look at other areas of the insurance market where it believes there are concerns.

Several questionnaires have now been circulated which have requested detailed information from companies within the sector under investigation. Where a company does not co-operate, the commission has the power to make a formal demand or carry out inspections at the company's EU-based offices.

Responses to the questionnaires can be used by the commission as a basis for subsequent individual investigations against companies suspected of anti-competitive conduct.

As such, they should also act as a kind of "warning shot" to companies to assess their compliance with competition rules and to take action to remedy any breaches in advance of individual investigations by the commission or national authorities.

Though not specifically focused on the behaviour of individual insurance players, the commission will likely use any evidence that it gathers during this exercise to proceed against companies it suspects of violating EC competition laws.

Regulatory review of the business insurance industry has now stretched to our side of the Atlantic and industry par-

ticipants are on notice that their business arrangements will be scrutinised more closely than ever before.

Nevertheless, as much as the inquiry represents a challenge (and a potential threat) to some, it also offers opportunities for those who would like to see practical and constructive change within the industry.

Indeed, information received and generated as a result of this inquiry may lead to a better and more sophisticated understanding of how the insurance market actually works, thus allowing regulators and stakeholders to identify issues or areas that could benefit from additional legal clarification (for example, the insurance block exemption).

In contrast to the parallel inquiry into the energy sector, there has been very little public information as to the progress of the insurance review.

Matters should, however, soon come into greater focus when the interim inquiry report is published in early autumn and a final report shortly thereafter.

*Jennifer Donohue is a partner and Matthew Giles an associate in the London office of Hogan & Hartson.*



Flags outside the EU Commission's offices in Brussels: the commission is likely to use any evidence it gathers during its exercise to proceed against companies it suspects of violating competition laws. **Bloomberg**