

Insurance industry needs to act fast on competition concerns: E.C.

Commission may take action against companies not observing the law

By Rick Mitchell

[BRUSSELS, Belgium]—European insurers and brokers have months, not years, to respond to competition concerns raised by the European Commission's recently published sector inquiry report, according to Commission officials speaking at a recent seminar.

"The simple fact is that if [insurers' or brokers'] behavior is not compliant with [E.U. competition law], that behavior has to cease. If it does not there is a potential for enforcement action and possible damages," said Sean Greenaway, an official for the European Commission directorate general for competition's financial services unit.

In detail

Mr. Greenaway, who coordinated the report published in late September, and his colleague Christoph Emsbach, provided more details during the Web seminar hosted last week by the Brussels, Belgium-based arm of Washington-based law firm Steptoe & Johnson LLP.

More than 100 industry representatives took part.

Companies need to "rapidly" ensure that they are compliant with competition law, Mr. Greenaway said.

The Commission, in its report, expressed concerns about several insurance industry practices, including best terms and conditions clauses used in some reinsurance contracts, and practices in the co-insurance and reinsurance markets.

Mr. Greenaway said that while the Commission has not ruled out the fact that best terms and conditions clauses may bring certain

efficiencies, it is "very skeptical."

"[For example] it appears that [these] clauses rarely appear in contracts, [but] could be used during the negotiation process, after which there is no audit trail, but nonetheless had its effect," he said.

He added that premium harmonization, which may occur when co-insurance and reinsurance is written on a subscription basis, "does not appear to be indispensable. In the vast majority of cases, it is linked to price only and not terms."

Angus Rodger, a partner at the London-based arm of Steptoe & Johnson, said that part of the London insurance market's success, in particular, depends on the ability of non-specialist insurers to rely on expertise of lead insurer specialists in subscribing to coverage.

"They often subscribe in very small amounts, as little as 1%." He said to ban the practice of leaders and followers could cause capacity to contract and paradoxically cause an increase in prices.

"Participants in the following market should be free to discount the price if they choose. I do not see how that could cause capacity to contract," replied Mr. Greenaway.

On the issue of distribution channels, conflicts of interest, and broker commissions, Mr. Emsbach said some current practices may be to the detriment of insurance clients. "Conflict of interest can go beyond the issue of remuneration," he added.

Guy Soussan, a Brussels-based Steptoe & Johnson partner asked for the commission's view of what he called "the emerging 2.5% issue," referring to brokers leveraging charges for services (see page 1).

"We did not examine this question in the inquiry," Mr. Emsbach replied. "In any case, it is not something that you could really verify, [whether] it is a 2.5% commission or a service charge." He warned that "some market participants seem not to have understood broker/client transparency. Practices that could be [deemed] collusion should be followed with great caution."

"It is the responsibility of individual companies to ensure compliance with competition law," he said. National authorities could clamp down, too he said.

"If the client says he is happy with the arrangement, does that answer your concerns?" asked Mr. Rodger.

Discussion

"If it is an arrangement with an individual client, and does not involve a dominant position, it would be much less of a problem," said Mr. Emsbach. "But reality points to industry-wide discussion."

Another issue discussed during the seminar was the insurance industry's block exemption to certain E.U. competition rules. That exemption, in place since 1992, has effectively allowed insurers to cooperate in certain areas, for example by allowing the use of standard policy wordings.

Mr. Greenaway poured another bucket of cold water on industry hopes that the exemption will be maintained when it is set to expire in 2010.

"We believe that sectoral block exemption regulations have an undesirable effect of fragmenting competition law. It makes interpretation difficult. And it is not even clear that it benefits industry," he said.

vehicles and debris piled up in a parking lot at Patong Beach in western Thailand, on Dec. 28, 2004 following the tsunami on Dec. 26, 2004.



PROSECUTOR TO INVESTIGATE TSUNAMI DEATHS AT ACCOR-MANAGED HOTEL

[PARIS]—The Paris prosecutor's office in early October announced an investigation against persons yet to be named on possible charges of involuntary manslaughter in the deaths of 42 French guests at the Sofitel Magic Lagoon Resort in Khao Lak, Thailand, when the devastating Dec. 26, 2004 tsunami struck.

"The [Investigation] is based on a complaint filed by the victims association, Association de soutien aux victimes résident au Sofitel Magic Lagoon Resort," a spokeswoman for the prosecutor said.

The tsunami, generated by a 9.3 Richter-magnitude earthquake off the Indian Ocean coast of Indonesia, killed some 200,000 in Sri Lanka, Indonesia and Thailand, including 438 customers at the Magic Lagoon Resort, managed by the Evry, France-based Accor Hotels chain, according to the association.

"We want the court to acknowledge Accor's responsibility," the association's lawyer, Gérard Chemla, who

alleged that Accor failed to heed well-publicized warnings that the hotel was located in a tsunami risk zone.

"We have proof that the hotel manager had a warning 15 minutes before the tsunami arrived, but he did not alert the residents," Mr. Chemla said. "It does not mean that intervention would have saved everyone, but it would have given them a chance. It is a fact that in a tsunami, even a little thing can save someone's life."

Mr. Chemla said the hotel had inadequate security and disaster management, although Accor's marketing at the time played up safety as a strong point. He said the association, which seeks no monetary compensation, was spurred to file a complaint because Accor refused to deal with it. "We want Accor to improve its safety management so that this never happens again." He said the case could last years.

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