

## ***European Commission Review***

### ***International Group: Frequently Asked Questions and Answers***

- 1. The ten year exemption for the International Group Agreement ("IGA") expired in February 2009. What is the current status of the Group's arrangements under the IGA and in relation to pooling?**

The Commission granted individual exemptions to the IGA in 1985 and, again, in 1999. On both occasions the exemption applied for 10 years.

Following its detailed investigation in the 1990s, the Commission found in its 1999 decision that the Group's claims-sharing arrangements set out in the Pooling Agreement did not restrict competition and thus did not require exemption.

With effect from 1 May 2004, a new EU competition law regime has been in force. The new regime changed the procedures by which Article 101 of the Treaty on the Functioning of the European Union (previously Article 81 (and before that Article 85) of the EC Treaty) is applied and enforced, but did not change the substance of Article 101. The main features of the new regime are that the procedures for notifying agreements to the European Commission in order to obtain an exemption have been abolished and that an exemption now applies "automatically" to any agreement that meets the criteria of Article 101(3) without the need for notification to, or decision by, the European Commission.

It was therefore not possible for the Group to seek a (third) individual exemption for the IGA. Under the new regime, businesses are required to make their own assessment as to whether their arrangements are compatible with Article 101.

From the perspective of the International Group, the effect of the new regime means that, in practice, following the expiry of the ten year exemption in February 2009, the IGA continues to benefit "automatically" from exemption under Article 101 as long as there are no material changes in the way in which the International Group is structured and operates and there are no major changes in the basic structure of the P&I market.

- 2. Do the aspects of the Group's arrangements which the Commission has stated it is investigating raise new issues which were not previously considered by the Commission in its earlier reviews of the Group's arrangements leading up to the 1985 and 1999 decisions?**

No. The aspects of the Group's arrangements which the Commission is currently looking into, the claims-sharing and reinsurance arrangements, are areas which were looked into in considerable detail and subsequently approved in the reviews leading up to the 1985 and/or 1999 decisions.

- 3. In relation to the aspects of the Group's arrangements which the Commission is currently looking into, have there been any relevant or material changes in the arrangements since the 1999 decision?**

No. There have been no relevant or material changes to the IGA or in relation to the Group's claims-sharing and reinsurance arrangements.

**4. Have there been any material or other developments in the market for P&I insurance and reinsurance since the 1999 decision?**

No, the market remains broadly the same now as it was then.

**5. What on-going liaison does the Group maintain with the Commission?**

In accordance with the 1999 decision, the Group has provided an annual report to the Commission, which it has continued to do following expiry of the decision granting an exemption to the IGA. The Group has been required to update the Commission each year on, amongst other matters, whether there have been any amendments or additions to the IGA and the Group's claims-sharing arrangements, the continuing necessity for the pool to provide the levels of cover offered, whether there have been any developments on the market for P&I insurance and reinsurance, as well as providing details of annual tonnage movements between Group Clubs.

The Group has extended an open offer to meet with the Commission (which is repeated on submission of each of the annual reports) to discuss any issues or questions which the Commission may have relating to the Group's arrangements. Prior to and since the expiry of the ten year exemption in February 2009, and against the backdrop of the Commission's general review of the insurance sector, the Group has provided information and clarification on its arrangements to the Commission.

**6. Has the Commission indicated that it is making inquiries in relation to any specific complaints in relation to the Group arrangements?**

No. The Commission has confirmed that it has not received a complaint about the Group's arrangements; rather it is carrying out this review on its own initiative in the wake of the expiry of the individual exemption for the IGA and against the backdrop of a general review of the insurance industry, including the adoption of a revised "block exemption" for the insurance sector.

**7. What is the relevance of the general insurance "block exemption" to the Group's arrangements?**

The Commission's press release states that the Group's agreements are not automatically covered by the revised antitrust block exemption for the insurance sector that came into force in April 2010, because the Group's market share is well above the 20-25% ceilings provided in the block exemption.

The insurance block exemption regulation is of general application to certain specified types of insurance co-operation and collaboration arrangements, providing them with a "safe harbour" from the competition rules.

The European Commission's report on the functioning of the block exemption published in March 2009 noted that "certain pools do not need a BER to provide a safe harbour because

they do not give rise to a restriction of competition in the first place. Pools may be considered not to be anti-competitive, no matter how high their market share, as long as pooling is necessary to allow their members to provide a type of insurance that could not be provided by one insurance company alone" (para 20).

The accompanying Staff Working Document refers explicitly to the International Group's Pooling Agreement in this context and states: "Certain catastrophic risks may be such that no individual insurer is capable of insuring them alone. In the *P&I Clubs* case it was considered that members of the pool were not actual or potential competitors, given the fact that they were unable to insure alone the risks covered by the pool. The so-called P&I Clubs doctrine currently applies in relation to pools on markets where no coverage outside the pool is possible. In accordance with this doctrine, pools, no matter how high the market share, may be considered not to be anti-competitive as long as pooling is necessary to allow their members to provide a type of insurance that they could not provide alone" (para 124).

Thus the Group's Pooling (or claims sharing) Agreement does not need the "safe harbour" provided by the revised insurance block exemption regulation since the Commission concluded that it did not give rise to a restriction of competition in the first place.

**8. Do the current Commission inquiries have any immediate impact on the Group's arrangements?**

No. The opening of formal proceedings by the Commission does not imply that the Commission has decided that the Group's arrangements infringe competition law, nor does it mean that the Commission has prejudged the outcome of its inquiries. This step merely indicates that the Commission has identified certain preliminary issues that it wishes to investigate further and that it plans to devote some of its resources to doing so. The opening of a formal investigation is different from the sending of a "Statement of Objections" which the Commission adopts if it comes to the preliminary view that the competition rules may have been breached.

The Commission's press release states that the Group will have ample opportunity to give its views and comment on the Commission's proceedings.

Pending the conclusion of the investigation, the Group continues to operate its arrangements on the basis of the 1999 decision and the ongoing self-assessment of its arrangements under the competition law rules.

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