

# MARKET BULLETIN

REF: Y4153

<b>Title</b>	Competition Law and the European Commission business insurance sector inquiry
<b>Purpose</b>	To remind managing agents and their underwriters of their obligation to comply with competition law
<b>Type</b>	Event
<b>From</b>	Sean McGovern, Director and General Counsel
<b>Date</b>	29 April 2008
<b>Deadline</b>	Ongoing
<b>Related links</b>	<a href="http://ec.europa.eu/comm/competition/sectors/financial_services/inquiries/business.html">http://ec.europa.eu/comm/competition/sectors/financial_services/inquiries/business.html</a>

Lloyd's wishes managing agents to conduct insurance business at Lloyd's in full compliance with European and UK competition law.

The European Commission published its final report on its inquiry into the business insurance sector on 25 September 2007. The report highlighted some questions regarding premium alignment between lead insurers and followers in the co-insurance market. Lloyd's has carefully considered this issue and has met with the Commission on a number of occasions to discuss that issue.

Lloyd's considers that co-insurance arrangements at Lloyd's currently operate in a highly competitive and efficient manner delivering real benefit to policyholders. However, the arrangements have developed over time and will continue to evolve to meet policyholder demand.

Following the publication of the final report, the European Federation of Insurance Intermediaries (BIPAR) has developed High Level Principles which are intended to be used by brokers as a general guide in relation to placement of risk with multiple insurers. These principles are attached in Appendix 1 to this bulletin. As part of the ongoing development of co-insurance arrangements, and in conjunction with the BIPAR High Level principles, Lloyd's wishes to remind managing agents and their underwriters of their obligation to comply with competition law and, in particular, that –

- a. brokers must seek to place business as they see fit having regard to the interests of their client. That may involve brokers inviting following underwriters to subscribe to a risk on identical contractual terms and conditions as the lead underwriter other than premium.

Where underwriters receive such an invitation, they should give careful, independent consideration to it. Following such independent consideration, the underwriter may decide to quote or subscribe to the risk at a different premium from the lead underwriter or, as with any risk, decline to quote or subscribe to it.

- b. in any co-insurance placement, underwriters may, but are not obliged to, follow the premium charged by the lead underwriter;
- c. underwriters should not use ‘best terms and conditions clauses’ or engage in market practice which has the same effect unless they have first obtained legal advice that the use of such a clause or practice would be lawful and contract certain in the circumstances of a particular case. The Commission’s definition of such clauses is as follows –

*“any stipulation, whether written or oral, introduced at any stage of the negotiation of a reinsurance contract, by means of which a (re)insurer A obtains, seeks to obtain or acquires the right, under certain circumstances, to obtain an alignment of its proposed or agreed terms and conditions, in particular the premium, to the terms and conditions ultimately obtained by any other (re)insurer B participating in (re)insuring the same (re)insured as A, in the event that the latter terms are more favourable to the (re)insurer, than the terms and conditions which A offered or subsequently agreed.”*

If you have any questions on the content of this bulletin, please contact Peter Spires Head of Legal (Tel: 0207 327 6170; Email: [peter.spires@lloyds.com](mailto:peter.spires@lloyds.com)).

# BIPAR

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## *BIPAR high level principles for placement of a risk with multiple insurers*

Brussels, 28 April 2008



*BIPAR, the European Federation of Insurance Intermediaries, is a non-profit European organization grouping professional associations of insurance intermediaries in Europe. It presently has a membership of 47 national associations, established in 30 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people. Founded in Paris in 1937, BIPAR has been established in Brussels since 1989. It is today the recognised voice of insurance intermediaries with the European Institutions.*

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## INTRODUCTORY NOTE

The following high level principles are intended to set the framework for multiple insurance placement options to be considered autonomously on a case by case basis by each party.

All parties are reminded that they may still have additional obligations under relevant EU and national competition legislation.

A representative of the European Commission's DG Competition about these principles:

At a BIPAR meeting in Madrid in March 2008, a representative of the European Commission's DG Competition said the following about these High Level Principles: *"The Commission very much welcomes BIPAR's initiative and these High Level Principles. They are constructive and in the spirit of discussions we have had with market parties. Implementation will now be key but if practices change in accordance with these high level principles it will remove our immediate concerns. We are calling on market parties to develop new and creative ways of completing placements at the most advantageous terms for clients. We will closely monitor the situation going forward."*

The CEA, the European insurance and reinsurance federation, about these principles :

*"The CEA, the European insurance and reinsurance federation, welcomes the following high-level principles for placement of a risk by brokers with multiple insurers. The CEA calls on its member associations and their member firms to give adequate consideration and follow-up to these principles".*

## ***BIPAR high level principles for placement of a risk with multiple insurers***

### **BACKGROUND**

- A. The co-insurance market plays a vital role in facilitating the placement of business risks among multiple insurers.
- B. The 2007 EC DG Competition report on the sectoral inquiry into business insurance recognises the important function of the co-insurance market but expresses concerns about the absence of an opportunity for the following market to compete on the premium.
- C. These principles aim to sustain a vibrant co-insurance market in which the client has choice and premium alignment is not automatically adopted as the mechanism for placing the risk in the co-insurance market.
- D. It is important that the client has a clear understanding of the role of the intermediary, the nature of his/her relationship with insurers (such as contractual obligations to one or more insurers), the basis on which any advice is provided (such as fair analysis or not), the services provided, the nature of the insurance required and the possible approaches to placing that insurance.

### **Principles**

1. The intermediary shall, based on information provided, specify the demands and needs of the client as well as the underlying reasons for any advice.
2. Before placing a risk, an intermediary will review and advise a client on market structures available to meet its needs and, in particular, the relative merits of a single insurer or a multiple insurer placement.
3. If the client, on advice of the intermediary, instructs the latter to place the risk with multiple insurers, the intermediary will review, explain the relative merits and advise the client on a range of options for multiple insurer placement. (1)

Intermediaries will expect insurers to give careful independent consideration to the option requested.

4. In the case of a placement of a risk with a lead insurer and following insurers on the same terms and conditions, the previously agreed premiums of the lead insurer and any following insurers will not be aligned upwards should an additional follower require a higher premium to complete the risk placement. Indeed, the intermediary should not accept any condition whereby an insurer seeks to reserve to itself the right to increase the premium charged in such circumstances.
5. During the placement of the risk, the intermediary will keep the client informed of progress.

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- (1) There are a range of options for multiple insurance placements. Two examples of which are the following:
- i. Selection of a lead insurer through a competitive process and subsequent invitation to potential following insurers to cover part of the risk on the same contract conditions and premium, it being understood that nothing should prevent following insurers quoting a different premium;
  - ii. Selection of lead insurer through a competitive process followed by a series of negotiations between the broker and potential following insurers for the coverage of part of the client's risk not covered by the lead insurer with identical contract conditions and different premiums across all or some of the participating insurers.