

# European Antitrust “Block Exemption” For Insurance Under Review



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In the United States, the **McCarran Ferguson Act** (15 USC 1011-1015), enacted by Congress in 1945, provides the insurance industry with a limited exemption from the federal antitrust laws. The Act applies to all conduct that constitutes “the business of insurance,” provided that the conduct is “regulated by state law” and is not an act of “boycott, coercion or intimidation.” While the Act has been the subject of controversy over the years, and calls for its repeal have been frequent, including most recently during the debate that ultimately led to the enactment of the Affordable Care Act, the Act remains in place and provides a significant defense to potential antitrust liability for a whole range of insurer activity.

In Europe, the insurance industry also enjoys a limited exemption from the E.U. competition laws (specifically Article 101), by virtue of the “**Insurance Block Exemption.**” This exemption currently shields insurers from liability when they engage in (1) an exchange of information considered reasonably necessary for calculating insurance risk, including the exchange of joint compilations, joint tables

and studies; and (2) the creation of co-insurance and co-reinsurance pools, provided that the market share of the pool does not exceed a certain level.

However, unlike in the U.S., the Block Exemption must be renewed every seven years for it to remain in place. Last renewed in 2010, the European Commission is now beginning its review of the exemption to assess whether it should be renewed in 2017. And, as the process in 2010 confirms, renewal is not guaranteed, as the Commission, over insurer objections, chose at that time to eliminate a provision in an earlier version of the Block Exemption that permitted insurers to implement “standard policy conditions” in their policies, finding that an exemption for this activity was not necessary to the proper functioning of insurance markets.

In connection with its review of the Block Exemption, in early August the Commission issued a notice inviting insurers to offer their comments on the continuing need for the exemption. Submissions can be made until November 4, and the Commission will ultimately submit a report to the European Parliament with its recommendation concerning the exemption in early 2016. Stay tuned.

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