

Clubs embrace sound of silence

Antitrust investigators were keen to talk but the P&I clubs decided to stay out of the Marine Risk Forum limelight.

Jim Mulrenan

London

Some silences are more deafening than others.

There was plenty of discussion about the European Commission (EC)'s antitrust investigation into the International Group protection-and-indemnity (P&I) cartel at the TradeWinds Marine Risk Forum last week but one key voice was strikingly absent.

The International Group decided it would not argue its case that the restrictive practices of the clubs are necessary and a worthwhile price to pay for the wider benefits of the mutual P&I system.

The clubs seem to have decided that provoking debate about the future of the cartel might prove disadvantageous and saying as little as possible was the best strategy.

It suggests a less than convincing confidence in the defensibility of the International Group's position.

So it was left to brokers and owners — who are often critical of particular aspects of the way the clubs do business — to defend them.

A number of those attending found the clubs' decision to stand aside puzzling. Martin Hubbard — a former club underwriter who now heads the Tyser broking group's P&I operation and who chaired the session — described the decision as strange and one that was clearly noted.

But at the end of the session, International Group secretary Andrew Bardot appeared to have relented and made what he called a few points of clarification.

The star of the forum's P&I session was undoubtedly Silke Obst, the acting head of the EC antitrust unit that is investigating the clubs.

She describes herself as a "recent newcomer to the secret P&I world" but appears to have learnt rather a lot since the investigation was launched in August and offered some interesting insights into the direction it was taking.

Obst stresses that the investigation is ongoing and it will be toward the end of this year at the earliest before even an internal view is reached.

Nor is she giving much away about how the investigation is proceeding but warns the clubs not to

draw too much comfort from previous clearances — the procedures of the commission have moved on significantly.

"What we do today is much more fact-based. Our investigations are heavier. We engage more with the industry and our approach is based on economic analysis. I think our analysis is much more thorough than it used to be in the past," she explained.

Obst adds that if the outcome of the investigation is different, because facts change or new arguments or better evidence are brought forward, there is an obligation to explain what has happened.

"But I would say there are no legitimate expectations," she cautioned.

Changing times and expectations are one reason exemptions from the usual competition rules are always limited in time, says Obst, and not given for very long periods, such as 50 or 100 years.

Obst adds that the investigators are particularly interested in the quotation procedure, the agreement between the International Group clubs that bans one club undercutting another's premium quotation at renewal.

She did not elaborate to any extent about the quotation procedure but price fixing is rarely legal and must be a particularly challenging issue for a competition regulator.

A further key focus of the investigation is release calls, the payment shipowners are charged for leaving a P&I club.

Obst says the basis principle that departing shipowners pay their outstanding liabilities is not an issue.

The question is whether the release-call system is functioning as it should — with charges being proportionate — or whether it is preventing or hampering owners switching between clubs or moving to commercial insurers.

She also points out that there is no possibility of the clubs benefiting from the "block exemption" granted to the wider insurance industry as this only applies to organisations with market shares below 20%.

Obst says there had been no complaint about the International Group P&I clubs, such as the one from Greek shipowners that trig-

MARINE RISK FORUM



LIVELY DEBATE: Silke Obst, acting head of the European Commission antitrust investigation into the International Group P&I clubs, and broker Federico Deodato of PL Ferrari on the stage at the TradeWinds Marine Risk Forum. Obst says there are 'no expectations' regarding the investigation.

Photo: NHST Events

gered the last investigation.

So why was the antitrust probe launched? It appears it was just a rumbling of dissatisfaction against a background of price fixing and huge market dominance that made the clubs a natural subject of interest to competition regulators.

"We have not received a complaint, not official, not unofficial, nothing as such. But, of course, we heard noises from the market and all this taken together prompted us to embark on this investiga-

tion," explained Obst.

A further issue was whether the \$3bn collective reinsurance programme bought by the International Group clubs distorts competition by setting such a high figure that commercial rivals cannot match it, soaks up the available reinsurance capacity or brings so much premium to reinsurance underwriters that they are fearful of rocking the boat.

"Why is it that commercial insurers are somehow stuck at

\$500m or \$1bn? Is it that it is difficult to have access and, if so, what are the reasons for that? Is it the joint purchasing [of reinsurance]? Is it that somewhere there is an outright refusal to grant access to such reinsurance facilities? I am afraid I can say little about this as we have not come to a conclusion but we would like to understand it," said Obst.

Obst may have caused some disquiet by citing a EUR 648m (\$925m) penalty imposed on LCD-

screen manufacturers from South Korea and Taiwan for price fixing, one of the "hardcore" offences of competition law, and a EUR 467m penalty on Microsoft for tying the Windows media player to its operating system (with the EC subsequently demanding that consumers have a free choice of browser rather than just Internet Explorer).

She was asked if there was any possibility of shipowners being fined by the EC if market abuse by the P&I clubs was found.

Obst notes that the fines were on the companies rather than their shareholders, although she concedes the penalties might affect stock prices.

She indicates that if there were any penalties they would be against the clubs, not shipowners, sidestepping the fact that the clubs' funds are the collective property of the member shipowners. There is little difference between fining member shipowners and the club itself.

Silke Obst: "We have not received a complaint, not official, not unofficial, nothing as such. But, of course, we heard noises from the market and all this taken together prompted us to embark on this investigation."