COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.02.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1043 - BAT / ZÜRICH
Notification of 13 January 1998 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 13 January 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation No 4064/89 by which the Zürich Insurance Company (Zürich) and the B.A.T. Industries plc (B.A.T.) enter into a full merger within the meaning of Article 3 (1) (a) of the Council Regulation.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. The Parties

3. Zurich is a Swiss based company active in life and non-life insurance, reinsurance and asset management. The most important part of its premiums is obtained in Switzerland and in the US.

4. B.A.T. is a multinational company registered in the UK. It is active in the tobacco industry and in life and non-life insurance, reinsurance and asset management through its financial services businesses (BAFS) mainly in the UK and in the US.

II. The Operation

5. The business of Zurich and the financial services business of B.A.T. (BAFS) will be transferred to a new Swiss company called Zürich Financial Services Group (ZFS). ZFS will be owned through a dual holding structure. Zürich shareholders will own

shares in ZFS through Zürich Allied AG (ZA). B.A.T. will separate its financial services business (BAFS) from its tobacco activities through a court scheme of reorganisation. Current shareholdings in BAT will be replaced by shareholdings in two new companies, British American Tobacco plc which will assume B.A.T.'s tobacco activities and Allied Zürich plc (AZ), which will own the shareholding in ZFS group. ZA will own 57 % of ZFS and AZ will own 43 % of ZFS. The relation between ZA and AZ will be regulated through a Governing Agreement.

III. The concentration

6. The operation is a merger in the meaning of Article 3 (1) (a) of Council Regulation No. 4064/89. Zürich and B.A.T., two previously independent companies, merge their businesses into a new company created for this purpose. and cease to be active in the relevant markets. All remaining rights and liabilities of the parties are transferred to the ZFS Group. Notwithstanding the fact that AZ and ZA do not legally cease to exist the combination of their activities results in the creation of a single economic unit. The Governing Agreement concluded between the parties provides that the respective memberships of board of directors of AZ, ZA and ZFS are converged in order to become and remain identical. Furthermore, the ZFS Group Articles of Incorporation and Organisational Rules also lead to a de facto amalgamation into a genuine common economic unit (see also case IV/M.660 - RTZ/CRA).

IV. Community dimension

7. The combined aggregate world-wide turnover of Zürich and B.A.T., calculated in accordance with Article 5 (3) lit. b) of Regulation No. 4064/89, exceeds 5 000 million ECU. Zurich and BAFS's combined world-wide gross premiums are 27,31 billion ECU (Zurich: 20.3 billion;, BAFS 7.01 billion ECU).

8. Both Zurich and BAFS have a Community-wide turnover in excess of 250 million ECU, but they do not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

V. Compatibility with the Common Market

A. <u>Relevant product markets</u>

9. The parties are active in the following businesses: life and non-life insurance, reinsurance, asset management and regard these as separate markets. In the insurance sector a distinction is made between both life and non-life insurance and reinsurance. Reinsurance is a separate market because of its purpose of spreading risks between insurers. Life and non-life insurance can be divided into as many product markets as there are different kinds of risks covered. Their characteristics, premiums and purposes are distinct and there is typically no substitutability for the consumer between the different risks insured (see case IV/M. 812 - Allianz/Vereinte or case IV/M.862 - Axa/UAP). For the purpose of the present case it is, however, not necessary to define conclusively the relevant product markets as, even on the narrowest market definition, the concentration does not create or strengthen a dominant position.

B. <u>Relevant geographical markets</u>

10. The markets for life and non-life insurance are national as a result of national distribution channels, the established market structures, fiscal constraints and differing regulatory systems (see case M. 759 - Sun Alliance/Royal Insurance). The markets for reinsurance and asset management are world wide in view of the need to pool risks on an international basis and the conduct of reinsurance business (see case M. 862 - Axa/UAP).

C. Competitive Assessment

11. The geographical overlap between the activities of the parties is minimal and even where there is an overlap the increment in post merger market share is rather small. Concerning the different sectors where the new company will be active the situation is the following: the only overlaps in life insurance are in France, Portugal, Spain and UK (where both Zürich and BAFS are active). However, the combined market share of ZFS will be no more than 6.3% in none of the EEA countries.

12. Regarding non-life insurance the situation is similar: As regards individual product markets or risks insured in the non-life insurance sector, the combined share of the parties does not exceed 15% with the exception of three individual products: Those are private and commercial motors in Liechtenstein (15-25%; 25-35%) and marine navigation in Norway (15-25%). This does not lead to the creation of a dominant position. Moreover, the increase in market share lies only between 1% and 3 %. In travel insurance (personal accident, baggage, cancellation, medical expanses) BAFS has a market share of (33,5%) in the UK. However, as Zürich is not active in travel insurance in the UK there is no addition of market share.

13. The international reinsurance market is highly competitive. A comparison with the market leaders on the list of the 20 largest consolidated reinsurance groups world-wide, Munich Re (first ranked, net written premiums in 1995 amounted to 8835 million ECU) and Swiss Re (second ranked, net written premiums in 1995 amounted to 8046 million ECU), shows that Zurich (net written premiums in 1995 amounted to 1849 million ECU) is ranked 8th and BAFS is not even on the list (ranking 24th). As concerns asset management the combined funds under management for 1996 totalled 269 billion ECU. The combined ZFS Group will rank 7th in the list of top 10 North American and European fund managers.

14. As a result, it is not expected that the proposed concentration will create or strengthen a dominant position in any insurance and asset management markets.

VI. Ancillary restraints

15. The parties have requested that certain agreements concluded between them ought to be regarded as ancillary restraints:

16. In clause 11 of the Merger Agreement the parties have agreed that until closing they will carry out their business in ordinary course. In clause 13 of the Merger Agreement the parties the parties have agreed not solicit to sell or transfer any of the financial services activities of BAT and Zürich. In so far as these agreements can be considered to be restrictive these obligations are directly related and necessary for the implementation of the merger and can therefore be considered to be an ancillary restraint in the meaning of article 8 (2) of the Merger Regulation.

17. In clause 10 of the Governing Agreement the parties have agreed that neither ZA nor AZ will engage in other activities than investing in ZFS and will not compete with ZFS. This agreement is an essential element of the merger and therefore an integral part of it.

18. In clause 8 of the Deed of Indemnity and in clause 15 of the Governing Agreement the parties have agreed not to disclose confidential information which the parties hold in relation to the other party or in relation to ZFS group. According to clause 8.1 of the Deed of Indemnity the part of the B.A.T. group not forming part of BAFS is obliged not to solicit within a period of two years any person which is employed in skilled or managerial work in ZFS. In so far as these agreements can be considered to be restrictive these provisions serve to protect the transfer the full value of the assets transferred to ZFS and can therefore be considered to be an ancillary restraint in the meaning of article 8 (2) of the Merger Regulation.

VII. Conclusion

19. For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the EEA Agreement. This decision is adopted in application of Article 6 (1) (b) of Council Regulation (EEC) No. 4064/89.

For the Commission,