

***Case No IV/M.1419 -  
GROUPE COFINOGA /  
BNP***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION

Date: 19/02/1999

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.02.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying parties**

Dear Sirs,

**Subject: Case No IV/M.1419-COFINOVA/BNP**

Notification of 20.01.1999 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 20.01.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> by which Banque Nationale de Paris S.A (BNP) and Groupe Cofinoga (cofinoga) controlled by Galeries Lafayette acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Creation Financial services Limited by way of purchase of shares from the Sears Group.
2. On 15.01.1999 The Commission granted the parties a derogation from the obligation to suspend the concentration, imposed by Article 7(1) of Council Regulation No. 4064/89 (the Merger Regulation) pursuant to Article 7(4) of the said Regulation.
3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

**THE PARTIES' ACTIVITIES AND THE OPERATION**

4. Cofinoga is the leading issuer of private label credit cards (or store cards) in France and has significant other business activities in the consumer credit sector involving personal loans and other financial products. It operates to a minor scale in Belgium, Italy, Spain, and Portugal. It has no presence or operations in the United Kingdom. BNP is a universal bank

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<sup>1</sup> OJ L 395, 30.12.1989 p.1 ; corrected version OJ L 257 of 21.9.1990, p.13, as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.9.1997, p.1, corrigendum in OJ L 40, 13.2.1998, p.17.

based in France. It has no retail operations in the United Kingdom (apart from private banking for high net worth individuals).

5. Creation's principal business is the provision of consumer credit by means of storecards for customers of its retailer clients. Creation currently provides storecards services to the six Sears' clothing chains, to Selfridges and other retailers. Sears estimates that non-group clients now represents approximately half of Creation's business. Creation also promotes accident, sickness and unemployment insurance (ASU) under arrangement with insurers and unsecured term loans under agreement with a financial institution. It receives commissions under these arrangements.
6. Creation has been jointly and severally acquired by Cofinoga and BNP from Sears Plc. Since the conclusion of the agreement the parties have decided that each of them will acquire 50% of the issued share capital of Creation on completion. A simple majority is required to effect decisions in respect of the operation of Creation and therefore neither party will have sole control of the joint venture. Creation will be jointly controlled by BNP and Cofinoga. Furthermore, the joint venture will perform on a lasting basis all the functions of an autonomous economic entity. Thus, the transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Regulation.

### **COMMUNITY DIMENSION**

7. Undertakings BNP, Cofinoga and Creation have a combined aggregate worldwide turnover in excess of EUR 5,000 million (BNP, EUR 23,053 million; Cofinoga EUR 599 and Creation EUR 46 million). Two of them have a Community-wide turnover in excess of ECU 250 million (BNP, EUR 17,452; and Cofinoga EUR 599 million), 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.

### **COMPETITIVE ASSESSMENT**

#### **Relevant product market**

8. Storecards constitute a segment in the wider consumer credit market. Consumers regard retailer storecards as in competition with credit cards, bank loans and agreed overdrafts as a source of consumer credit. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

#### **Relevant geographic market**

9. The notifying parties state that the relevant geographic market is national. This conclusion is supported by the fact that credit and storecards are heavily regulated by consumer credit and consumer protection legislation in each Member State. Storecards are only accepted in the outlets of client retailers. However, it is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

## **Assessment**

10. Neither Cofinoga nor BNP have any operations in the UK consumer credit segment. Creation's market share based on outstanding credit and storecards amounts to [less than 5] %. Based on the total number of cards Creation's market share amounts to [less than 5] %. Turning to storecards alone, Creation's share of the number of cards would be [less than 5] % and [less than 5] % of total storecard debt. The leading storecard operators in the UK include Marks & Spencer, Kingfisher (B1Q, Woolworth, Comet, and Superdrug) House of Fraser, etc.
11. In view of the market position of the parties to the concentration, it appears that the notified operation will have no impact on competition in the EEA. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

## **ANCILLARY RESTRICTIONS**

12. The non-compete restrictions accepted by the vendor are set out in clause 10.3 to 10.9 of the Sale and Purchase Agreement. They provide for 3-year non-compete restriction limited to the business of Creation and its geographic area of operations, anti-avoidance provisions, extension of application to all members of the Sears group. Rights of first refusal in the case of disposals following a larger acquisition are granted. Further, Clause 10.7 leaves out Freemans but if Freemans (a chain owned by Sears) disposes its credit facility business it will give Creation a reasonable an exclusive right of first refusal to acquire that business or provide such services to Freemans. Sears established Creation and has owned it for nearly 25 years. Sears has detailed knowledge of all know-how procured by Creation as to the operation of retailer linked financial services. In these circumstances the present non-compete restrictions could be considered as ancillary.
13. Sears Clothing entered into the Sears Clothing Agreement with Creation. The restrictions relating the Sears Clothing Agreement are on exclusivity and on scope. The exclusivity obligations are set out in Clauses 2.1, 7.2 and 7.3 whereby Creation is the exclusive provider of the defined facilities to Sears Clothing. The anti-avoidance provisions of Clause 10.5 and 10.9 of the Sale and Purchase agreement are of application. The Sears Clothing Agreement is terminable by either party by twelve months notice on or after the fifth anniversary of the agreement, i.e.[...]. It could be renewed into a further five-year period.
14. This apparent exclusivity is no more than a reflection of commercial reality. The relationship between retailers and storecard issuers is such that it is only commercially practicable for retailers to endorse a storecard issued by one storecard issuer. It is however standard in such agreements to provide that the retailer is free to accept MasterCard and Visa branded debit and payment cards and in some cases charge cards.
15. The fashion chains of Sears Clothing are at present the core retail business of Sears and Creations' business with those chains represents approximately half of its business. The Commission considers the above mentioned period of the first five years sufficient to protect the interests of the joint venture in the present circumstances and, therefore declares the agreement ancilliary for the said period.

## **CONCLUSION**

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

For the Commission,