

*Case No IV/M.141 -
U A P /
TRANSATLANTIC /
SUN LIFE*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 11.11.1991

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PUBLIC VERSION

MERGER PROCEDURE -
Article 6(1)b decision

Registered with advice of delivery

To : Notifying parties

Subject : Case No. IV/M.141 - UAP/TRANSATLANTIC/SUN LIFE
Your notification of 07.10.91 pursuant to Article 4 of
Council Regulation 4064/89

1. The above-mentioned operation concerns the combination of shareholdings held by Société Centrale Union des Assurances de Paris ("UAP") and Transatlantic Holding Plc ("Transatlantic") in Sun Life Plc ("Sun Life").
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.

THE PARTIES

3. UAP is a major composite French insurance group, engaged principally in life and non-life insurance and re-insurance. It is also engaged in banking, in particular through its wholly owned subsidiary, Banque Worms.
4. Transatlantic is a UK holding company engaged in strategic investments in the insurance, real estate and financial service sectors. It is controlled by the Liberty Life Group which is a South African based insurance and investment financial services group.
5. Sun Life is the U.K. holding company of the Sun Life Group of companies whose principal activity is the undertaking of long-term insurance business, namely life insurance.

THE AGREEMENT

6. Agreements made on 20 September 1991 provide for the three main following transactions:

- a) UAP and Transatlantic will each transfer their existing 27.7% shareholding stakes in Sun Life to Rockleigh Corporation Plc ("Rockleigh"), a new holding company. In return, and to ensure that Rockleigh will be jointly controlled, UAP and Transatlantic will be allotted an equal number of voting right shares in Rockleigh ("A" shares to UAP and "B" shares to Transatlantic).
- b) Rockleigh has acquired from a third party (Sun Alliance Group Plc) shares representing 4.5% of the equity of Sun Life. To finance this acquisition, UAP and Transatlantic will both subscribe for new shares in Rockleigh (either A or B).
- c) As a separate but linked transaction, UAP will acquire a 16.8% effective shareholding in Transatlantic which will, however, continue to be controlled by Liberty Life.

JOINT CONTROL

7. Rockleigh is a holding company formed with the purpose of owning and managing the joint investment of both parent companies. Each of the parent companies will have the same number of shares with voting rights and will appoint the same number of directors to the board; thus all decisions will require the consent of both parent companies.
8. Rockleigh is, therefore, the vehicle through which UAP and Transatlantic will jointly control Sun Life. It will allow them to develop a common policy towards Sun Life. It introduces a complete departure from the previous situation in which UAP and Transatlantic, although each holding 27.7% of the equity of Sun Life, had no intention of exercising joint control, nor did they organise any mechanism designed to achieve this end. Transatlantic bought itself into Sun Life in the early 1980s. Its stake was considered as hostile by the Sun Life board at that time. The acquisition of a shareholding in Sun Life by UAP can be seen as a direct result of the rejection of a proposed share swap with UAP, which Transatlantic and other shareholders successfully opposed.
9. Rockleigh will own a majority stake in Sun Life. At the date of the agreement, it amounts 59.9%, representing the existing 27.7% stake in Sun Life held by each parent company and transferred to Rockleigh, plus 4.5% acquired from Sun Alliance. Furthermore, according to the agreement, Transatlantic and UAP shall each appoint three directors of Sun Life out of a total of 14 members and they will be entitled to appoint Sun Life's chairman, who is responsible for the operational management of the company.
10. It follows that, through Rockleigh, Sun Life will be jointly controlled by UAP and Transatlantic and will be a joint venture within the meaning of Article 3 of the Merger Regulation.

CONCENTRATIVE JOINT VENTURE

11. Sun Life will continue to be a full-function autonomous economic entity. It will continue to act independently on the insurance markets, where it is already active.
12. A geographical overlap between the activities of both parents (Transatlantic and UAP) as well as Sun Life, could theoretically occur. Nevertheless, on the basis of several factual elements it is reasonable to assume that there will not be coordination of competitive behaviour between the three undertakings.
13. As far as re-insurance is concerned, business is carried out at a worldwide level. An overlap may therefore occur, since the three undertakings, like almost every insurance company, are present on this market. Nevertheless, the level of activities of Sun Life and of Liberty Life are negligible. Sun Life represents 0.007% and Liberty Life about 0.016% of the worldwide market (1990 re-insurance premium income was about 5.5 MECU and 13 MECU respectively). The activities of Liberty Life were conducted almost exclusively in South Africa. UAP has a slightly larger market share, but this is still only 2.4.% of the worldwide market.
14. As far as the life insurance sector is concerned, at present the relevant geographical markets in this sector seem to be national (see paragraph 21). Until now, the geographical scope of activity of the undertakings concerned is the following:
 - Sun Life is only active in the UK, where its market share is 3%;
 - Transatlantic as well as the Liberty Life Group have no activity in the insurance sector in the Community;
 - UAP is not active in the UK at all in the life sector, and only on a very limited scale in the non-life sector.
15. Despite this present pattern of activities, taking into account that the markets concerned might become more open to intra-Community competition in the foreseeable future, the possible entrance of each undertaking concerned into the markets on which the others are active has to be considered:
 - Liberty Life (parent company of Transatlantic) is active in the life insurance sector in South Africa, which is a market widely separated from that of the Community. Transatlantic is a holding company for all Liberty Life investment activities outside South Africa. Sun Life represents its sole investment inside the Community. In view of these factual elements, Transatlantic cannot be considered as a potential entrant to Community markets.
 - UAP is developing a strategy to become a strong player at Community level. It has undertaken a number of acquisitions of insurance companies in Member States other than France. In particular the joint control taken of Sun Life is to be seen in this context. These acquisitions underline the

difficulties encountered by any insurance company when entering a market on their own. Structural barriers to entry are high; in particular the setting up of complete distribution channels in the U.K. could take a long time and would be costly. Therefore it does not seem reasonable to expect the entry of UAP on the British market other than by virtue of its investment in Sun Life.

- Sun Life would encounter the same difficulties in attempting to enter Community markets outside the U.K. Therefore the same conclusion applies to it.
- 16. In view of the agreement between the two parent companies, the risk of a coordination of the competitive behaviour between UAP and Sun Life is also excluded in consideration of the role UAP is in a position to play in the operational management of Sun Life.

Although, through Rockleigh, UAP and Transatlantic will have joint control over Sun Life, each of them may initiate further purchases of shares in Sun Life. The shares thus purchased will be represented by the issue of Rockleigh "C" shares which will give no voting rights in Rockleigh. Nevertheless, the holder of the greater number of "C" shares (and in the case of an equality of "C" shareholdings, UAP) will be entitled to determine the appointment of the chairman of Sun life.

UAP's declared intention is to make use of its possibilities to purchase "C" shares. It is therefore reasonable to expect that UAP will designate the chairman of Sun Life and, therefore, play a leading role in the operational management of Sun Life.

- 17. This expected role of UAP in the operational management of Sun Life is corroborated by UAP's acquisition of a 16.8% effective shareholding in Transatlantic. According to the parties, the reason for such a participation is precisely to give a guarantee to Transatlantic that the operational management of Sun Life by UAP will be conducted in a way which will not be to the detriment of Transatlantic's own interests.
- 18. For the above reasons, the joint venture is considered to be of a concentrative nature.

COMMUNITY DIMENSION

- 19. For the 1990 financial year, the combined aggregate worldwide turnover of UAP, Transatlantic and Sun Life, (taking into account Article 5 paragraph 3(b) of the Regulation concerning the calculation of turnover for insurance undertakings), exceeded 5,000 MECU (UAP : 14,072 MECU; Transatlantic /Liberty Life : 3,500 MECU: Sun Life 1,465 MECU).

The Community-wide turnover for UAP and Sun Life exceeded 250 MECU. Each of the Sun Life and Transatlantic had more than two-thirds of Community-wide turnover in the UK. UAP does not have two-thirds of its aggregate Community-wide turnover within the UK. Therefore the operation has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

COMPATIBILITY WITH THE COMMON MARKET

20. Product markets

The only product market overlap between the parties concerned is in the fields of life insurance and re-insurance. It is suggested that there exist as many product markets as there are insurances for different kinds of risk. Thus life-insurance, each type of non-life insurance (fire, accident etc.) and re-insurance, constitute distinct product markets, since their characteristics, premiums and purposes are quite distinct from the consumer's view point:

a) Life insurance

This is essentially long-term, in that usually it involves payment of regular premiums over a period of years; in most cases a policy is written in the certainty that a claim will subsequently be made (on death or other maturity), and often involves a substantial investment element. By contrast, non-life insurance is primarily short-term, policies being written on an annual basis against payment of a single premium to cover risk which may or may not materialize. The main non-life categories are automobile, fire, general liability, and accidents.

b) Re-insurance

Re-insurance involves the acceptance by the re-insurer of part of the risk insured by another insurer; the re-insurer agrees to reimburse the primary insurer against part of any sums paid out under a policy to the insured party. Re-insurance thus constitutes a mechanism for the spreading of risk between insurers.

21. Geographic markets

a) Life insurance

There is no present overlap in terms of geographic market as far life insurance is concerned.

While it is possible, as mentioned above, that the markets concerned may become more open to intra-Community competition in the foreseeable future, for a number of reasons, the geographic markets for life-insurance seem at present to be the national markets of each Member State:

- Distribution channels vary between Member States. For example the main distribution channel in the UK is via brokers (44%) whereas in France it is via banks (32%); in the UK only 3% is channelled through banks, and in France only 26% through brokers.
- Consumer attitudes to life insurance vary between Member States. For example in the UK life insurance is regularly utilised to supplement pension arrangements and in conjunction with mortgages, whereas this is not the case in France, and this is reflected in the fact that life premiums, in the UK, as expressed as a percentage of GDP, are more than double those in France (6.53% as against 3.2%).

- Public supervision and regulation of markets differ. Freedom to establish and provide cross-border services has only been established in the non-life sector with regard to large risks, and that only since November, 1990.

The fact that for the reasons cited, life insurance markets at the moment retain many national characteristics means not only that it is difficult to supply services transnationally, but equally that organic growth through the establishment of local branches or subsidiaries is likely to be slow, particularly given the need to establish a reputation and to develop a portfolio of products tailored to the requirements of the local marketplace, and to develop an infrastructure for retail distribution.

b) Re-insurance

Since no policies are sold to the public, re-insurance being traded between industry specialists, regulatory controls by national authorities tend to be much less extensive, and business is carried out at a worldwide level.

Assessment

22. In view of the above, there is no overlap between the activities of the companies concerned in the life insurance sector since Sun Life is active only in the UK, a market in which UAP is not present; Transatlantic as well as the Liberty Life Group has no activity at all in the insurance sector in the Community. In the field of re-insurance the parties' shares of the worldwide market are minimal (a fraction of one per cent for each of Sun Life and the parent company of Transatlantic (Liberty Life Group) and about 2.4% for UAP). Therefore concerns about horizontal overlap do not arise; and even if UAP's re-insurance business were used to diversify risk and enable further direct insurance to be written, the market shares involved are so small as to preclude concern about "vertical" links.
23. Furthermore, the strengthening of Sun Life by virtue of the large resources of UAP and Transatlantic gives no cause for concern in view of the low market shares of Sun Life, and the presence of other strong competitors such as Prudential Corporation, Commercial Union, and so on.
24. For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)b of Council Regulation No. 4064/89.

For the Commission,