

*Case No IV/M.1627 -
CU ITALIA / BANCA
DELLE MARCHE / JV*

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/09/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.09.1999

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1627 - CU ITALIA/BANCA DELLE MARCHE/JV

Notification of 12 August 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 12 August 1999, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Commercial Union Italia S.p.A. ("CU Italia"), the Italian subsidiary of the insurance group CGU plc, and Banca delle Marche S.p.A. ("BDM"), an Italian commercial bank, intend to acquire joint control within the meaning of Article 3(1)(b) of the Regulation of Commercial Union Life S.p.A. and Commercial Union Assicurazioni S.p.A. (together "joint venture companies"), which are wholly-owned subsidiaries of CU Italia.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. CU Italia is active in all fields of the Italian insurance market and is a wholly-owned subsidiary of the insurance group GCU¹. The principal activities of the group are the transaction of all classes of general insurance and life-insurance in the United Kingdom, continental Europe, North America, Australia and other parts of the world. CGU also provides financial services related to its insurance business. According to the parties, CU Italia is estimated to be the 5th largest life-insurer and 25th largest general insurance group in Italy. Commercial Union Life S.p.A. (“CU Life”) and Commercial Union Assicurazioni S.p.A. (“CU Assicurazioni”) are wholly-owned subsidiaries of CU Italia and active on the insurance underwriting market in Italy in the field of life insurance and general insurance respectively.
4. BDM is a commercial bank in Italy and the holding company of the BDM Group of companies, which are active in the Italian banking sector and operate mainly as savings banks primarily in the Italian region of Marche. According to the parties, the BDM ranks as the 36th largest commercial bank in Italy in its own right the BDM Group as the 20th largest banking group in Italy.

II. THE OPERATION

5. The notified operation includes several transactions. CGU Europe Division will make an investment through CU Italia in the share capital of BDM amounting to a shareholding of 9.25% in BDM. BDM will on its part acquire 0.06% of the shares in CGU and 50% of the related share capital of each of CU Life and CU Assicurazioni.

III. CONCENTRATION

Joint control

6. Following the implementation of the notified transaction, CU Italia and BDM will each hold an equal share of 50% of the share capital of CU Life and CU Assicurazioni respectively. The structure of the two joint venture companies will be identical and they will share the same Managing Director. The members of the Board of Directors of the two joint venture companies will also be substantially the same.
7. CU Italia and BDM intend to exercise influence in the *Shareholders' meeting* of the joint venture and through their representation in the Board of Directors. According to Section 3.1 of the respective Shareholders Agreement (hereafter “Shareholders Agreements”) CU Italia and BDM intend to confer before each shareholders’ meeting in order to assume as far as possible a uniform approach.
8. The *Board of Directors* of both joint venture companies will, pursuant to Section 4.1 of the Shareholders Agreements, be composed of an odd number of members, from a minimum of five to a maximum of eleven, as resolved by the shareholders’ meeting. In accordance with Section 4.2 of the Shareholders Agreements, the Chairman of both joint venture companies will be appointed by CU Italia with BDM’s agreement and the remaining Directors will be appointed in equal number of CU Italia and BDM. Following Sections 5.1 and 5.2 of the Shareholders Agreement, the Board of Directors will appoint a Managing Director and/or a General Manager in charge of the ordinary management of the company from among one of the Directors of CU Italia. Similarly,

¹ Case No.IV/M.1142, Commission decision of 6 May 1998.

if a General Manager is appointed, the General Manager shall be one of the Directors of CU Italia or another person appointed by CU Italia.

9. Section 4.4 of the Shareholders Agreements provides that the strategic rules for the joint venture companies and the related long-term planning as well as the general approach for staff management, issued in line with the strategic projects of the Commercial Union Group, will be submitted to the Board of Directors by the Managing Director. The Board takes decisions on these issues with the favourable vote of 2/3 of the Directors.
10. The Shareholders Agreements between CU Italia and BDM thus provide that the agreement of both CU Italia and BDM will be required for the approval of the most important strategic decisions concerning the joint ventures. Therefore, the joint venture companies will be jointly controlled by CU Italia and BDM.

Full functionality

11. CU Life and CU Assicurazioni are pre-existing companies operating on the insurance market in Italy possessing the necessary authorisations and offering their policies under the CU trademark to their customers and providing their own underwriting. CU Assicurazioni distributes its policies through its own network of agents and brokers. Distribution of the policies of CU Life takes for most part place through other networks than its own network of agents. In 1998, the total premiums collected by the joint venture companies amounted to some 5% of the overall activities of CU Italia.
12. The Agreement for the Distribution of Insurance Products and for Cooperation (“Distribution Agreement”) between the parties provides that BDM grants the joint venture companies exclusive access to its distribution channels including banks, branches and financial promoters but the joint venture companies will remain free to use also other modes of distribution.²
13. The joint venture companies are pre-existing companies having sufficient financial and other resources to operate their activities on a lasting basis. CU Italia and BDM expect the joint venture to operate for a minimum period of ten years. On the basis of the foregoing, it can be concluded that the joint venture will operate on a lasting basis and will perform all the functions of an autonomous economic entity.
14. Thus, the notified operation is a concentration within the meaning of Article 3(1) (b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

15. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (gross premium income for CGU EUR 24,812 million in 1998; turnover for BDM EUR 724 million in 1998)³. Each of CGU and BDM have a Community-wide turnover in excess of EUR 250 million (gross premium income for

² Case IV/M.707 – Toro Assicurazioni/Banca di Roma, Commission decision of 5 March 1996.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

CGU EUR 17,047 million in 1998; turnover for BDM EUR 724 million in 1998), 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. It does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

16. In the insurance sector a distinction is made between both life insurance and general insurance and reinsurance. Reinsurance constitutes 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.1172 Fortis AG/Generale Bank, case IV/M.1142 – Commercial Union/General Accident, case IV/M.812 – Allianz/Vereinte, case IV/M.862 – Axa/UAP).
17. For the purpose of the present case it is not, however, necessary to define a separate market for distribution of life and non-life insurance through banks as, even on the narrowest market definition, the concentration will not create or strengthen a dominant position in the EEA or any substantial part of it.

B. Relevant geographic market

18. The Commission has in its previous decisions found that insurance markets are becoming more open to intra-community competition, particularly for industrial and commercial policies, as a result of measures to facilitate cross-border selling. As far as life and non-life insurance are concerned the relevant geographical markets are national as a result of national distribution channels, the established market structures, fiscal constraints and differing regulatory systems (see case IV/M.1172 – Fortis AG/Generale Bank, case IV/M.759 – Sun Alliance/Royal Insurance). The markets for reinsurance are world wide in view of the need to pool risks on an international basis and the conduct of reinsurance business (see case IV/M.862 - Axa/UAP).
19. The present operation concerns joint venture companies active in the field of life and non-life insurance in Italy and in particular in the Marche region. It could therefore be argued that the relevant geographic market in the present case be defined more narrowly as the Marche region. The exact definition of the relevant geographic market can, however, be left open in the present case, since irrespective of the market definition chosen the concentration will not create or strengthen a dominant position in the EEA or any substantial part of it.

C. Competitive assessment

20. The economic sectors involved in the notified transaction include life and non-life insurance sectors. According to the notifying parties, there are no horizontal overlaps between the activities of CGU through its subsidiary CU Italy and BDM. BDM has terminated its previous bancassurance agreements with Eurovita and Carivita earlier this year.

21. Insurance providers have a wide range of means available for the distribution of insurance products to the end customers. These include insurers' writing direct, brokers and other types of insurance agents. Coverage by direct writers is being increasingly facilitated by new computer and electronic communication technology. In general, distribution networks of insurance policies are undergoing a significant degree of change as various banks and other financial institutions are also distributing different lines of insurance to personal and commercial customers.
22. The purpose of the joint venture is to strengthen the growth of the joint venture companies and to develop mutual synergies by combining the experience of the CU Italia in the provision of insurance products and the strength of the distribution network of BDM and of the companies of BDM group mainly located in the Marche region in Italy. Therefore, the impact of the present operation concentrates foremost in the Marche region in Italy.
23. BDM operates 235 banking outlets in Italy representing approximately 0.89% of the total number of 26,255 banking outlets in Italy. At the regional level BDM has 198 banking outlets in the Marche region amounting to 24%⁴ of the total number of banking outlets in that region. In the Lazio, Umbria and Emilia Romagna region it has relatively minor presence. CU Italia has a small-scale presence in the Marche region representing 0.47% of the overall insurance underwriting in the region and 0.98% of the life insurance and 0.16% of the non-life insurance in the region.⁵

Life insurance

24. According to the notifying parties, the market share of CGU through CU Italia of the Italian life insurance market amounts to approximately 4.41%. Within CU Italia, the market share of CU Life on the same market amounts to approximately 0.22%. CGU is active in the Italian market also through CU Vita having 4.14% and CU Previdenza⁶ having a 0.05% market share. The market shares of CU Italia and CU Life in the different life insurance markets are described in the table below.

Type of insurance	CU Italia	CU Life
Unit linked policies	13.8%	0.44%
Other life policies	3.5%	0.35%
Pension products	Not applicable	Not applicable

Source: notification

Non-life insurance

25. According to the notifying parties, the market share of CGU through CU Italia of the Italian total general insurance (non-life) market amounts to approximately 0.97%. CU Italia itself has a market share of 0.57% and CU Assicurazioni 0.38% of the Italian

⁴ Source: Bank of Italy.

⁵ The above figures represent the situation in 1996, whereby the present market shares of CU Italia are lower due to the termination of a bancassurance agreement with Credito Italiano in June 1999.

⁶ CGU acquired 66.67% holding of the former Systema Vita S.p.A. on 24 July 1998.

non-life insurance market. The market shares of CU Italia and CU Assicurazioni in the different non-life insurance markets are described in the table below.

Type of insurance	CU Italia	CU Assicurazioni
Motor	3.73%	0% ⁷
Fire	1.16%	0.03%
Accident/health	1.22%	0.14%
General Liability	0.68%	0.04%
Pecuniary loss	0.21%	0.01%
Other accident	1.87%	0.38%
Marine	3.39%	0%

Source: notification

26. When considering the more narrow market of distribution of insurance products through banks in the Marche region, BDMA faces a number of actual and potential competitors in the Marche region including Banca Popolare de Ancona, which the parties estimate to have 10% of bank branches in the Marche region, Banca Popolare dell' Adriatico 5.4%, Cassa di Risparmio di Ascoli Piceno 5.4%, Cassa di Risparmio di Verona e Vicenza 5.2% and Cassa di Risparmio di Fermo 4.9% of the branches respectively.
27. In view of the above mentioned market shares and the number of competitors in the Marche region, the current operation will not create or strengthen a dominant position in the EEA or any substantial part of it.

VI. CONCLUSION

28. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

⁷ At present, CU Assicurazioni is not authorised to offer motor insurance. Pursuant to the Distribution Agreement, however, the parties intend evaluate the opportunity for such business.