

*Case No COMP/M.2131 -
BCP /
INTERAMERICAIN /
NOVABANK / JV*

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/09/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.09.2000
SG(2000)D/106775

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

Subject : Case No COMP/M. 2131 - BCP/Interamerican Nova Bank JV

Date of notification : 17.8.2000

Legal Deadline : 18.9. 2000

1. On 17 August 2000 the Commission received the notification of an operation by which Banco Comercial Portugues ("BCP") and Interamerican Hellenic Life Insurance Company SA ("Interamerican") will acquire control over a newly created joint venture "NovaBank" which will be active in retail banking in Greece.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation 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. BCP is the leading banking and financial services group in Portugal offering a complete range of retail banking, private banking and corporate banking products and services. Through its subsidiaries, BCP also offers insurance services and asset management.
4. Interamerican is one of the largest private insurance groups in Greece heading a group of companies active in life insurance and non-life insurance.

II. THE OPERATION

5. Subsequent to the shareholders agreement entered into on 27th May 2000 by Interamerican, BCP, Intercapital Trust Limited¹, BCP-IF SGPS Sociedade Unipessoal, LDA² and the private individual Mr. Dimitris Contominas BCP Interamerican, Interamerican and BCP acquire joint control over a new start-up joint venture, NovaBank.

III. CONCENTRATION

6. Both BCP and Interamerican will hold 50% of the company's share capital. According to Article 15 of the Statute of NovaBank, the general meeting of shareholders decides with unanimous vote on the strategic business issues of the company, including the election of board members, the approval of the budget and the amendment of the Statute.³ NovaBank will perform on a lasting basis all the functions of an autonomous economic entity. It will have its own personnel and facilities and will operate independently of its parents. The operation therefore constitutes a concentration pursuant to Article 3 (1) b of the Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ (BCP: EUR 5,224 million; Interamerican: EUR 549 million). Each of BCP and Interamerican have a Community-wide turnover in excess of EUR 250 million (BCP: EUR 4,748 million; Interamerican: EUR 546 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. It does not constitute a co-operation case under the EEA Agreement pursuant to Article 57 of that Agreement.

¹ This company is a special purpose vehicle which is not strictly part of the Interamerican group. The Shareholders Agreement, however, defines Intercapital as being part of Interamerican group because it is controlled by Dimitris Contaminas, the same shareholder also controlling Interamerican.

² This company is a subsidiary of BCP, which BCP has appointed as initial shareholder of BCP's interest in NovaBank.

³ In addition to the agreement described above, the parties have entered into an additional agreement pursuant to which they introduce an amendment to the current Statute of NovaBank which will enter into force at the latest in December 2000. Under the new Statute, however, the parties will still have joint control since it also provides veto rights for both parties on strategic decisions.

⁴ 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.

V. COMPATIBILITY WITH THE COMMON MARKET

Relevant product and geographical markets

8. The joint venture will be primarily active in retail banking in Greece. The Commission in previous cases⁵ has defined the market of retail banking as comprising banking services to households which consist, for example, of deposits, lending, credit cards and mutual funds and other forms of asset management. Competition in retail banking still takes place on a national level (see for example the Commission's decisions in case Comp/M. 1029-Merita/Nordbanken or in case Comp/M.1172-Fortis/GB) even if the introduction of a common currency and new technologies such as internet and telephone banking may widen the geographical scope of these services in the future.
9. NovaBank will also be active in asset management: Pursuant to a separate agreement ("the Intertrust Agreement") between Interamerican, Dimitri Contominas and NovaBank, Interamerican will transfer to NovaBank 50% of the issued share capital of Intertrust, a mutual fund management company belonging to the Interamerican group. Asset management services involve the marketing of unit trust and provision of portfolio management services provided for institutions and private individuals (see for example the Commission's decision in the case Comp/M.611-Dresdner Bank/Kleinwort Benson; or Comp/M. 597-Swiss Bank Corporation/S.G. Warburg, etc.). The Commission in previous cases has considered that the market for asset management services is global in scope (see case No. IV/M.1043-B.A.T./Zurich).
10. Within insurance, the Commission has distinguished between three main segments: non-life insurance, life insurance and reinsurance. Within non-life, it has identified as many products markets as there are risks insured (see Commission's decisions in Comp/M. 1043-BAT/Zurich; or Comp/M.812-Allianz/Vereinte, etc.).

VI. ASSESSMENT

11. The concentration hardly produces any overlaps. NovaBank will be active in retail banking in Greece. Neither of the parents is currently active in this market in Greece. Interamerican will transfer its asset management business to NovaBank. The parties' combined market share on an international and even European basis are, however, very limited and there are a number of important multinational groups active on that rather fragmented market (such as Barclays, Schroders, UBS, etc.). NovaBank will to a minor extent be engaged in insurance activities (general insurance and life insurance) in Greece. Interamerican has a market share in life insurance of 22%. The overlap will be minor: BCP has recently acquired Companhia de Seguros Império SA, which through a subsidiary has a minor presence in Greece, almost exclusively active in general (non-life) insurance, where it has market shares of less than 1%.
12. Interamerican will retain its activities in life-insurance and BCP in asset management. However, the concentration is not susceptible to lead to the co-ordination of the parents' activities in these markets. As shown above, these activities will only be

⁵ See for instance case Comp/M. 1714-Föreningssparbanken/FI-Holding/FIH; or Case Comp/M. 1384-Deutsche Bank/Bankers Trust, etc.

incidental to NovaBank's main business which will be the provision of retail banking services.

VII. ANCILLARY RESTRAINTS

13. Pursuant to Article 17.1 of the Shareholders Agreement, BCP and Interamerican undertake that neither it nor its subsidiaries –except for insurance services- shall compete with NovaBank in Greece for the duration of the joint venture. Exceptions (Article 17.2) include investments in quoted companies of less than 5 % or the acquisition of a company not predominantly active in competing business (less than 10% of that company's turnover. This non-compete clause as regards its scope and geographic dimension can be regarded as directly related and necessary for the implementation of the concentration. Considering that the transaction involves the transfer of know-how and customer good-will, the non-compete clause can be considered to be necessary for a maximum duration of three years. The non-compete clause, however, cannot be considered ancillary in as far as it concerns purely financial interests of the sellers in competing businesses, even if these interests exceed 10% (see for example Case Comp/M.301-Tesco/Catteau, par. 14).

VIII. CONCLUSION

14. 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,
(Signed : Mario MONTI
Member of the Commission)