

*Case No IV/M.319 -
B H F / C C F /
CHARTERHOUSE*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30.08.1993

*Also available in the CELEX database
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Brussels, 30.08.1993

PUBLIC VERSION

*MERGER REGULATION
6(1) (b) DECISION*

Registered with advice of delivery

To the notifying parties

Dear Sirs,

*Subject : Case No IV/M.319 - BHF/CCF/Charterhouse
Your notification of 27.07.1993 pursuant to Article 4 of Council Regulation
No 4064/89 (Merger Regulation)*

- 1. On 27th July 1993 Berliner Handels- und Frankfurter Bank (BHF) and Crédit Commercial de France S.A. ("CCF") notified an operation whereby they will acquire joint control of Charterhouse plc ("Charterhouse") a wholly owned subsidiary of the Royal Bank of Scotland plc ("RBS") by way of purchase of shares.*
- 2. After examination of the notification, the Commission has concluded that the proposed operation falls within the scope of the Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.*

1. THE PARTIES

- 3. BHF is a German bank whose main activities are commercial banking and financial services. CCF is a French bank whose main activities are commercial and retail banking. Charterhouse is a U.K. investment or "merchant" bank.*

II. CONCENTRATION

4. *BHF and CCF will have equal shareholdings in, and an equal number of directors on the board of, a holding company ECF Holding, which will in turn wholly own a further holding company Charterhouse European Holding Ltd, ("CEHL") set up to acquire 90.1% of the share capital of Charterhouse. The balance of 9.9% of Charterhouse's share capital will be held by RBS, which will in effect remain a passive minority shareholder; moreover the remaining stake of RBS is subject to a put and call option entered into with CEHL, and exercisable two years after completion. RBS will retain the Capital Markets Division and private client and investment management business of Charterhouse. Consequently, apart from these latter activities of Charterhouse which are being transferred to RBS, BHF and CCF will have joint control of Charterhouse within the meaning of the Merger Regulation.*
5. *Charterhouse is an existing undertaking engaged in investment banking. It currently operates as an autonomous subsidiary of RBS, with independent offices and facilities and after the current operation will continue to perform on a lasting basis all the functions of an autonomous economic entity.*
6. *The activities of Charterhouse are predominately carried out in the UK. As an investment bank Charterhouse is active to a varying extent in most financial services required by UK corporate customers. The main activities performed include general corporate advice, mergers and acquisitions advice, equity capital raising/underwriting, development capital investment and institutional stockbroking. Although a certain degree of harmonisation has already been reached and further improvements can be expected, these activities will tend for the foreseeable future to be national in geographic scope as they usually require a detailed knowledge of local corporate law and business structures, accounting conventions, regulatory regimes and market practices. The necessity to comply with and work within the framework of these local constraints (stock exchange rules, for example), the need to work in close relationship with the customer, as well as the latter's preference for local banks to supply the required services make it extremely difficult for a financial institution to perform the above mentioned services without being physically established in the national market concerned.*
7. *BHF and CCF perform similar investment banking activities in Germany and France respectively but do not provide these services in the UK. BHF has a subsidiary based in London, Frankfurt Consult UK Ltd, but this company employs only two executives and works only as a marketing outlet for advising UK companies wishing to make acquisitions in Germany. Similarly, CCF employs only six people in this area in the UK to advise UK companies on making acquisitions in France and Italy. These activities can not be viewed as competing with those carried out by Charterhouse. Anyway, BHF and CCF have agreed to close their UK activities in this area following the acquisition of Charterhouse.*
8. *In addition to its primary investment bank activities listed in paragraph 6, Charterhouse, like BHF and CCF, is also active in money markets trading, foreign exchange trading and derivative trading. These activities whose geographical scope is international are part of the normal business of any bank. They are predominantly conducted in highly competitive inter-bank markets where there are a large number of players including most of the internationally active industrial companies. Most*

of these operations are carried out on a day to day basis or even in real time through sophisticated electronic data transmission means linking the various operators in these markets. These activities are generally organised within each subsidiary of a bank on a profit center basis with a large autonomy in order to be able to react immediately to changing conditions of the market caused by any sort of events of a political, social, economical or even climatic nature. Any attempt to coordinate the behaviour of the players in these markets would undermine their speed of reaction and thus their ability to act efficiently. Therefore, the conditions of operation in these markets are such that any possible advantage of coordination of the competitive behaviour would be largely offset by its potential inconveniences.

9. *It follows from the above that Charterhouse is not an actual competitor of its parents, either as regards its core investment banking business where the undertakings concerned have activities in different national geographic markets or in relation to activities which are international in scope such as money markets operations, foreign exchange and derivatives.*

Furthermore, for the reasons mentioned in paragraphs 6 and 8, the joint venture cannot realistically be viewed as a potential competitor of its parents.

10. *Therefore, the joint acquisition of Charterhouse by BHF and CCF is a concentration as the JV is an autonomous economic entity performing on a lasting basis and there is no coordination of the competitive behaviour of the undertakings concerned.*

III. COMMUNITY DIMENSION

11. *The enterprises concerned have a combined aggregate worldwide turnover, calculated in accordance with Article 5(3)(a) of the Merger Regulation, in excess of 5,000 million ECU (one-tenth of total assets of CCF 5,138 million ECU, of BHF 2,470 million ECU and of Charterhouse 324 million ECU). Both BHF and CCF have a Community-wide turnover in excess of 250 million ECU but do not achieve more than two-thirds of their aggregate Community-wide turnover in one and the same Member State. The operation therefore has a Community dimension.*

IV. COMPATIBILITY WITH THE COMMON MARKET

12. *Charterhouse's main activities are provision of advice on mergers and acquisitions, financial strategy, capital raising, and stockbroking in the UK (over the past five years []⁽¹⁾ of Charterhouse's profits have been derived from these activities).*
13. *Just as Charterhouse is mainly active in U.K. corporate finance markets, BHF is mainly active in Germany and CCF in France. In 1992 [](1) of BHF's total EC turnover was achieved in Germany and BHF's principal activity in the UK is corporate lending mainly to the UK subsidiaries of German companies. In 1992, [](1) of CCF's total EC turnover was achieved in France, where it carries out its retail banking operations (180 branches throughout France) and most of its investment bank activities, such as mergers and acquisitions advice, and placement*

⁽¹⁾ *Business secrets - over 60 %.*

of new equity issues. Accordingly, there is no significant competitive overlap in these activities.

14. *As already stated, a small proportion of Charterhouse's activities involves trading operations which are international in scope. However, these activities are predominantly for Charterhouse's own account. Moreover, although global estimates are difficult to calculate, Charterhouse, BHF and CCF together account for []⁽²⁾ of the global daily turnover in London foreign exchange and derivatives trading. Therefore concerns about horizontal overlap do not arise.*
15. *Furthermore, the strengthening of Charterhouse by virtue of the large financial resources of BHF and CCF gives no cause for concern, in view of the presence of strong competitors in the UK corporate finance sector.*

V. ANCILLARY PROVISIONS

16. *The RBS group agrees not to solicit for a period of []⁽³⁾ from completion any person employed by Charterhouse in its treasury division at the date of the agreement. The purchasers and their subsidiaries also agree not to solicit for the same period any person employed in Charterhouse's former capital market division at the date of the agreement. The capital market division is being retained by RBS. Following the division of the stockbroking business of Charterhouse, the parties, the RBS group on the one hand and the Charterhouse group on the other hand, also agree not to solicit former employees of the institutional and private client stockbroking businesses respectively for a period of []⁽³⁾ following completion of the sale of the private client business to RBS. These restrictions are necessary in order to allow the above-mentioned businesses to establish themselves on the market independently.*
17. *RBS agrees for the period between the date of the agreement and completion that the Charterhouse group business will be carried on in the ordinary course and that it will not take certain major decisions or make certain changes without the purchaser's consent. Charterhouse agrees that the stockbroking business will be carried on in the ordinary course prior to completion of the sale of the private client stockbroking business to RBS.*
18. *Charterhouse grants a non-exclusive licence of software, and provides certain services, to a subsidiary of RBS which currently manages certain pension funds on behalf of Charterhouse (and which will continue to do so). The agreement contains certain provisions as to the confidentiality of the software and data. The agreement is concluded for an initial period of 6 months and shall continue thereafter unless and until it is terminated by either party upon six month's notice. The Commission acknowledges that in order to make possible the transfer of the assets under reasonable conditions it is often necessary to maintain at least for a transitory period such service links between the vendor and the JV. However, in this case, as the parties have not put forward convincing arguments justifying the objective need for an agreement of a potentially indefinite duration, it is considered that these*

⁽²⁾ *Business secrets - less than 5 %.*

⁽³⁾ *Business secrets - less than 3 years.*

agreements are only covered by the present decision for a period of three years following completion.

19. *Certain permissions and prohibitions concerning the use of the corporate/business names "Charterhouse" and "Tilney" have been agreed between RBS and Charterhouse. These clauses are designed to ensure the full transfer to the purchasers of the assets (including goodwill) of the businesses being acquired.*
20. *Charterhouse agrees to grant a perpetual royalty-free non-exclusive licence to RBS of certain existing software and certain software which is currently being developed to replace the existing software aimed to assist dealers and to record dealing transactions. Charterhouse agrees only to use the existing software for its own purposes. The agreement contains certain provisions as to the confidentiality of the software and related data. The existing software is currently being used by both Charterhouse's treasury division and the capital markets division, the latter being retained by RBS and therefore not part of the operation. These provisions are directly related and necessary to the division of the two businesses.*
21. *Finally, a non-competition covenant is to be entered into by the notifying parties not to compete with the joint venture in relation to corporate finance business in the UK as long as they jointly control Charterhouse. This restriction expresses the parties' intention to concentrate their future UK activities in this area in Charterhouse.*
22. *These agreements are directly related and necessary to the implementation of the concentration and are therefore ancillary within the meaning of the Regulation.*

VI. CONCLUSION

23. *It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.*

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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 the Merger Regulation.

For the Commission,

TEXTE RECONSTITUÉ ÉLECTRONIQUEMENT / ELECTRONICALLY RE-CREATED TEXT / ELEKTRONISCH NACHGEBILDETER TEXT