

***Case No COMP/M.3786 -
BPI / EULER HERMES /
COSEC***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 29/03/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.03.2006

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case No COMP/M.3786 – BPI / Euler Hermes / COSEC
Notification of 22/02/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 22 February 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Euler Hermes SFAC (“EH SFAC”, France) and Banco BPI S.A. (“BPI”, Portugal) acquire within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004 joint control over Companhia de Seguro de Créditos S.A. (“COSEC”, Portugal).
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of Council Regulation (EC) No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. EH SFAC is an insurance company within the Euler Hermes Group, which is active in the credit insurance business, offering solutions for the management of trade receivables, in particular credit insurance, trade debt collection services, bonding, evaluating trade receivable portfolios and fidelity insurance. EH SFAC is an indirect subsidiary of Allianz AG, the ultimate parent company of the Allianz Group.

¹ OJ L 24, 29.1.2004, p. 1.

4. BPI is the controlling company of the BPI Group. The BPI Group is a universal financial group, active in investment banking, private equity, corporate finance and asset management and - predominantly - in commercial banking. BPI is also active in the management of unit trust (mutual) funds, pension funds and life-capitalisation insurance.
5. COSEC is a specialised insurance company mainly active in the credit insurance business, the guarantee products business and in the field of political risk insurance in Portugal.

II. THE OPERATION

6. Currently BPI holds 50% of the shares in COSEC, whereas EH SFAC holds 41.43% of COSEC. The notified operation consists of the purchase by EH SFAC of [less than 10]% of the shares of COSEC, which are currently held by [...] [...], [...] [...] and diverse individual subscribers [...] %.

III. CONCENTRATION

7. COSEC is a full function joint venture within the meaning of Article 3(4) of Council Regulation (EC) No 139/2004 as it performs and will continue to perform on a lasting basis, all the functions of an autonomous economic entity. It has a management dedicated to its day-to-day operations and has access to sufficient resources including finance, staff and assets in order to conduct on a lasting basis its business activities independently from its parent companies.
8. COSEC is currently under sole control of BPI. An existing joint venture agreement between the parent companies of COSEC provides BPI with a [...].
9. Following the transaction BPI and EH SFAC will each own 50% of the shares in COSEC, and will each appoint [...] members of the Management Board. The [...]. In view of their voting rights both parties would have joint control over decisions taken both by the Management Board and by the shareholders meeting.
10. Thus, the transaction will lead to a change of sole to joint control over COSEC within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004.

IV. COMMUNITY DIMENSION

11. The combined aggregate worldwide turnover of the undertakings concerned is more than €5 billion [...]. The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than €250 million [...]. Whilst BPI and COSEC achieved more than two-thirds of their Community-wide turnover in Portugal in 2004, EH SFAC's ultimate parent, Allianz, did not achieve more than two-thirds of its Community-wide turnover in one Member State. The operation has therefore a Community dimension in the sense of Article 1(2) of Council Regulation (EC) No 139/2004.

V. RELEVANT MARKETS

Product markets

12. In previous decisions the Commission has considered that the insurance market can be segmented into the life, non-life and re-insurance markets. Life and non-life insurance can be segmented in as many different products markets as there are insurances for specific risks. It was considered that characteristics, premiums and application of the individual insurances can be clearly separated and are hardly substitutable from the consumers' perspective².
13. Within the non-life insurance market the Commission distinguished a separate market for credit insurance. The credit insurance market can be segmented in five segments: i) delcredere insurance, ii) capital goods credit insurance, iii) consumer credit insurance, iv) fidelity insurance and v) guarantee insurance³.
14. The only overlap in the activities of the parties concerns delcredere insurance, guarantee products and reinsurance.

Delcredere insurance

15. In previous decisions the Commission considered that the delcredere insurance market comprises domestic credit insurance and export credit insurance⁴. The purpose of this type of insurance is to cover risks emanating from customers who are unable to pay for goods supplied and services rendered as a result of their insolvency. Domestic credit insurance protects the policyholder against insolvency of its domestic customers. Export credit insurance protects the policyholder against insolvency of its customers abroad. The parties agree with the Commission's delineation of the market.
16. Although some respondents to the third party inquiries suggest that the distinction between the different segments of credit insurance is not so clear cut and that the delcredere insurance should not necessarily be seen as a separate market from the broader credit insurance market, for the purpose of this case it is considered that, in line with earlier Commission decisions, the relevant product market is constituted by delcredere insurance.

Guarantee Products

17. Guarantee insurance is a type of insurance which covers the will to perform certain contractual or statutory obligations. The parties submit that guarantee insurance is part of a broader market for guarantee products. Such a broader market for guarantee products not only includes guarantee insurance, but also bank guarantees covering non-financial risks, which are issued to a third party as a guarantee with regard to the fulfilment of obligations, in order to avoid deposits, allowances, prepayments or retentions.

² Cases M. 183 Schweizer Rück/Elvia, M. 429 Winterthur/DBV, M 518 Winterthur /Schweizer Rück, M. 539 Allianz /Elvia /Lloyd Addriatico and M.759 Sun Alliance/Royal Insurance

³ Case M. 2602 Gerling/NCM

⁴ Case M. 2602 Gerling/NCM

18. The parties consider that both guarantee insurance and non-financial bank guarantees are substitutes, because they both cover the risk concerning the performance of legal and contractual obligations undertaken towards private or public entities. According to the parties the pricing of both types of guarantee is based on the same risk assessment and the same market conditions. The parties add that COSEC and the other insurers specialised in guarantee insurance are most of the time in competition with banks. In a previous decision, the Commission's market investigation confirmed the substitutability of both types of guarantee⁵. The current third party enquiries suggest that these two types of guarantee are indeed substitutes. Banks and insurance companies offer guarantee products on similar terms and the price difference is often of less than [...]%. Therefore we can define the market as guarantee products.

Reinsurance

19. The parties submit that reinsurance is a special form of insurance, the object of which is to redistribute the risk between insurers. According to the parties reinsurance can be distinguished from primary insurance because of the fact that reinsurance is traded between industry specialists and written only with other insurance companies. These views are in line with previous Commission decisions⁶. However, as there are no competition concerns in the reinsurance market the exact delineation of the market can be left open.

Geographic markets

Delcredere insurance

20. The parties submit that the relevant geographic market for credit insurance including any segment thereof (e.g. delcredere insurance) is national in scope. This is confirmed in previous Commission decisions⁷. Local presence, personal contacts and a precise knowledge of the local business community is crucial for the business. Further, conditions of competition in national markets are heterogeneous. The existence of national markets is not contradicted by the fact that multi-national customers often require worldwide policies, as in most cases, their subsidiaries conclude additional sub-policies with subsidiaries or branches of the credit insurer.

Guarantee Products

21. In relation to the guarantee products the parties take the view that the relevant geographic market is at least national. This view is supported by previous Commission decisions⁸. It was found that significant differences in the conditions for competition existed between the individual national markets, considering the prevailing market structures, distribution channels and consumer attitudes. In particular for insurances which are primarily sold to private persons, a national delineation of the geographic market was considered to be appropriate.

Reinsurance

⁵ Case M.813 Allianz/hermes

⁶ Case M.491 General RE/Kölnische RE

⁷ Case M. 2602 Gerling/NCM

⁸ Case M. 813 Allianz/Hermes

22. In relation to the reinsurance market the Commission has considered the relevant geographic market to be world-wide⁹. This view is supported by the parties.

VI. COMPETITIVE ASSESSMENT

23. The horizontally affected market, where the parties have combined market shares of more than 15% is the delcredere insurance market in Portugal. The guarantee products with the parties' combined market share of [10-15]%¹⁰ and the reinsurance market with a market share of less than 5% are not considered to be affected markets.
24. The transaction does not lead to significant changes in the structure of any of the relevant markets as the parties were already two main shareholders of COSEC before the operation and have limited activities in credit insurance and guarantee business outside COSEC.

Delcredere insurance

25. The parties estimate the total value of the Portuguese delcredere insurance market at €[...] million. The combined market share of the parties on such market is estimated by the parties at [45-55]% (COSEC [45-50]%, EH [0-5]%). The size of the market share increment of [0-5]% is negligible and normally does not raise competition concerns. In this respect the parties refer to the fact that the [0-5]% increment represents gross written premiums of €[...] only. Moreover, EH's business in delcredere insurance does not result from active marketing, but stems from credit insurance contracts entered into by EH with companies outside Portugal, which on a group-wide basis also include coverage for Portuguese subsidiaries of these customers.
26. The parties face significant competition in the Portuguese delcredere insurance market. Their main competitors are Spanish competitors with local premises, which according to the parties form a steadily growing constraint on COSEC's market position. CyC, the main competitor of COSEC in the delcredere insurance market, is Spain's leading credit insurer, ranking fourth globally. Its market share in Portugal has been growing steadily and reached [30-35]% in 2004. Mapfre, COSEC's second most important competitor on this market had a market share of [10-15]% in the same year. More importantly, over the last three years Mapfre's market share has been increasing, whereas COSEC's market share has decreased (from [65-70]% in 2002 to [45-50]% in 2004 and [45-50]% in 2005).
27. Finally, an additional competitive constraint on COSEC delcredere insurance business comes from new entrants and potential competition from other insurance companies active in Portugal, which have not yet entered the credit insurance business. Recent entrants into Portuguese delcredere insurance market include Coface and Atradius Seguros de Crédito, which are according to the parties amongst the three world-wide leaders in the credit insurance business.

Considering the above, the transaction is not likely to impede effective competition in the delcredere insurance market in Portugal.

⁹ Case M. 880 Schweizer Re/Uniorias

¹⁰ All references to market shares in this document refer to the year 2004, unless explicitly stated otherwise.

Guarantee products

28. On the guarantee products market in Portugal the parties have a combined market share of [10-15]%, of which COSEC has [0-5]% and BPI [5-10]%. COSEC is only active in guarantee insurance products and BPI mainly in bank guarantees for non-financial risks. EH has no activities in the Portuguese guarantee market outside COSEC.
29. COSEC faces strong competition from both big and small banks and insurance companies. The main banking competitors, which account for 70% of guarantee products in Portugal, include Caixa Geral de Depósitos, Millennium BCP, Banco Totta Santander, Banco Espírito Santo and Montepio Geral. The main competitor among insurance companies is Mapfre. Other competitors among insurance companies include: AXA Portugal, Companhia de Seguros Traquilidade SA, Império Bonança Companhia de Seguros and Companhia des Seguros Fidelidade Mundial, SA.
30. In the light of the low market shares and the presence of strong and numerous competitors, the operation is not likely to impede effective competition in the guarantee products market in Portugal.

Vertical relations

31. Given that neither BPI nor EH have a market share exceeding 25% on any product market which is a neighbouring market or vertically related to a product market in which COSEC is active, it appears that the operation will not provide the parent companies with the possibility of eliminating competition in respect of a substantial part of the services in question.

VI. CONCLUSION

32. 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 (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission