

***Case No COMP/M.4808 -
CVC / CHARTERHOUSE
/ PHL / AA / SAGA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/09/2007

***In electronic form on the EUR-Lex website under document
number 32007M4808***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07-IX-2007

SG-Greffe(2007) D/205386

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party:

Dear Sir/Madam,

**Subject: Case No COMP/M.4808 – CVC/ Charterhouse/ PHL/ AA/ Saga
Notification of 3 August 2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 3 August 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² (the Merger Regulation) by which CVC Funds ("CVC", Jersey) belonging to the CVC group, Charterhouse Capital Limited ("Charterhouse", United Kingdom) and Permira Europe III Fund ("Permira", Guernsey) belonging to the Permira group, acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Saga Holdings Limited ("Saga", United Kingdom) and AA Limited ("AA", United Kingdom) by way of purchase of shares.

I. THE PARTIES

2. The CVC Funds are private equity funds with interests in a wide range of different businesses to which CVC and its affiliates provide investment advice and management services.
3. Permira is a private equity fund ultimately controlled by Permira Holdings Limited (PHL).

¹ OJ L 24, 29.1.2004 p. 1.

4. Charterhouse is a private equity fund providing equity capital and fund management services to a number of investment funds.
5. The AA is currently jointly controlled by CVC and Permira. The AA's main activity is the provision of breakdown services in the United Kingdom and Ireland. In addition, the AA provides insurance distribution services, insurance underwriting services and certain financial services products. The AA also offers other motoring services such as the operation of a driving school and the publication of travel guides and maps.
6. Saga is a UK based company which provides a variety of services targeting the over 50s, including travel, financial services, insurances and some break down services. Saga is currently solely controlled by Charterhouse.

II. THE OPERATION

7. Currently, the AA is jointly controlled by CVC and Permira (on a 50:50 basis). Saga is wholly controlled by Charterhouse. The acquisition of AA and Saga will be effected through a number of special purpose vehicles which are wholly owned by Topco, i.e. a newly created company which is jointly controlled by CVC, Permira and Charterhouse. Topco is the holding company of SPC Co and Midco, which in turn is the holding company of Bidco. Bidco will acquire all the shares of the AA and simultaneously acquire all the shares of Saga.
8. It is a condition of the AA offer that all conditions under the Saga offer have been satisfied to enable the acquisition of the AA and Saga to take place simultaneously. Similarly, the Saga offer is conditional upon the satisfaction of all conditions under the AA offer. The AA and Saga offers are therefore interdependent such that they qualify as a single concentration under Article 3 of the Merger Regulation.
9. In addition to the shareholdings of CVC, Permira and Charterhouse, the current managers of the AA and Saga and a large number of small co-investors will also acquire stakes in Topco: CVC will hold [...]% of the shares, Permira [...]%, Charterhouse [...]%, the managers [...]% and the Co-investors [...]%.

III. CONCENTRATION

10. According to the Investment Agreement concluded between the notifying parties any shareholders decision of Topco must be approved by CVC, Permira and Charterhouse. In addition, no board resolution of Topco may be passed without the consent of a director appointed by each of CVC, Charterhouse, and Permira. The Board decides on issues such as the budget, appointment and removal of the management and the business plan. In view of the veto rights described above, it can be concluded that the transaction will lead to the acquisition of joint control over the AA and Saga by CVC, Permira and Charterhouse and therefore constitutes a concentration within the meaning of Art. 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

11. The transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation: The parties have a combined aggregate worldwide turnover in excess of € 5,000 million (Charterhouse: € 9,976 million, CVC: € 22,394 million, PHL: € 14,234 million, the AA €1,176 million and Saga € 1,026 million), and each has a Community-wide turnover in excess of € 250 million (Charterhouse: € [...], CVC: € [...], PHL: € [...], the

AA €[...] and Saga € 1[...]). Only the AA and Saga achieve more than two thirds of their Community-wide turnover in one and the same Member State (i.e. the United Kingdom).

V. COMPETITIVE ASSESSMENT

12. The transaction concerns the following product markets in the United Kingdom: the provision of breakdown services, the provision of non-life insurance, insurance distribution, insurance underwriting, financial services and the provision of car rental services.

A. Relevant product and geographic markets

Breakdown Services

13. The provision of breakdown services consists of the provision of roadside assistance to policy holders as well as to uninsured users on an ad hoc basis (pay for use). There are three elements of the breakdown services: (i) providing the insurance element of the breakdown cover, (ii) retailing by selling the policies, and (iii) providing breakdown assistance at the roadside to vehicles.
14. Sales of the policies can be done directly to individuals by operators that have their own fleet or which use third party assistance vehicles, or indirectly through intermediaries which sell policies on behalf of a third party provider or through intermediary schemes³. In addition, there are sales of stand alone roadside assistance services, and services bundled as an add-on with motor insurance policies or other products.
15. The notifying parties submit that there is a single market for the provision of breakdown services. In previous decisions the Commission has however considered several market segmentations.
16. It considered whether this product market can be further sub-divided on the basis of direct and indirect sales⁴. The Commission considered direct sales to be "sales to individuals by operators that have their own fleet or which use an independent network of affiliated but independently owned and operated assistance vehicles, and indirect sales to be " sales through intermediaries which purchase in bulk from a supplier with a fleet or network and sell it on to end-user customers".
17. The Commission also examined whether "ad hoc" breakdown services provided to non-insured motorists should be distinguished from regular breakdown services and whether the market should be further sub-divided on the basis of a number of segments, i.e. i) stand alone breakdown services, ii) breakdown assistance services bundled with motor insurance policies, iii) services provided to consumers who purchase contracts on an individual basis and iv) corporate customers who purchase breakdown assistance services to cover their own fleet or to resell such services to their own customers⁵.

³ Examples of sales through intermediary schemes are sales by car manufacturers, fleet operations, affinity schemes, financial intermediaries, etc.

⁴ Case No COMP/M. 3517 - CVC/Permira/AA, Decision 27/08/2004.

⁵ Case No COMP/M. 3772 - AVIVA/RAC, Decision 03/05/2005.

18. The notifying parties argue that such segmentations can be viewed as essentially forming part of the direct and indirect segments. Stand alone breakdown services can be viewed as direct sales to end customers, whereas breakdown services bundled with motor insurance policies can be viewed as either direct sales (when the breakdown services provider also provides the motor insurance) or indirect sales (when the breakdown services are sold to an insurance company which then bundles these services with its own motor insurance product).
19. The market investigation supports the notifying parties' contention that there is a single market for the provision of breakdown services. Most providers use a range of different distribution channels to access customers and recent mergers in the sector between motoring organisations and insurers have further blurred the distinction between direct/indirect channels.
20. For the purpose of this case the Commission can leave the exact product market definitions open as the transaction does not lead to serious doubts as to its compatibility with the Common Market.
21. Geographically, the notifying parties argue that the market can be defined as the United Kingdom. This view has been supported by the market investigation. For the purpose of the present case, and given the geographic coverage of the AA's and Saga's activities, the geographic scope of the market is considered as national.

Non-life insurance

22. In a number of previous decisions, the Commission has stated that there are three distinct markets within the provision of insurance services; life insurance, non life insurance and reinsurance⁶.
23. The Commission has stated that 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 insured⁷.
24. The Commission has noted that from the consumer's perspective, the different kinds of risk covered by life insurance and non-life insurance have different characteristics and are therefore not substitutable. The notifying parties argue however, that from a supply side perspective, all non-life insurance products belong to the same product market due to the very similar conditions for insuring different types of risks and the use of the same distribution channels.
25. For the purpose of this case the Commission can leave the exact product market definitions open as the transaction does not lead to serious doubts as to its compatibility with the Common Market irrespective of how narrowly the product market is defined.

⁶ See, e.g., Case IV/M.2676 – Sampo/Varma/If Holdings/JV, Decision 18/12/2001; Case No COMP//M.2400 Dexia/Artesia, Decision 29/05/2001.

⁷ See, e.g., Case No COMP/M.4284 – AXA/Winterthur, Decision 28/08/2006; Case No COMP/M. 4047 – Aviva/Ark Life, Decision 20/01/06.

26. In line with previous Commission decisions the notifying parties consider that the geographic market is national⁸.

Insurance distribution

27. In previous decisions the Commission has considered whether there is a market for the distribution of life and non-life insurances, comprising all outward (i.e. third party or non-owned) distribution channels such as brokers, agents and other intermediaries⁹. For the purpose of this case the Commission can leave the exact product market definitions open as the transaction does not lead to serious doubts as to its compatibility with the Common Market irrespective of how narrowly the product market is defined.

28. The notifying parties consider that the market can be regarded as at least national in scope. The Commission has also recognised the national nature of insurance distribution channels in previous decisions¹⁰. For the purpose of this case the Commission can leave the exact geographic market definitions open as the transaction does not lead to serious doubts as to its compatibility with the Common Market irrespective of how narrowly the geographic market is defined.

Insurance underwriting

29. In a previous case the Commission found that i) the underwriting of insurance/reinsurance risks and ii) the management of policies on behalf of insurers/re-insurers constituted one single product market (distinct from the provision of insurance/reinsurance itself)¹¹. The Commission also considered whether this market should be further sub-divided on the basis of the risks for which the services are covered. Ultimately, the Commission left open the question of whether the market for the underwriting and management services to insurers and re-insurers should be further sub-divided.

30. For the purpose of this case the Commission can leave the exact product market definitions open as the transaction does not lead to serious doubts as to its compatibility with the Common Market irrespective of how narrowly the product market is defined.

31. Geographically, the Commission considered that the market is at least EEA wide, although it left the exact geographic market definition open.¹² For the purpose of this case the Commission can leave the exact geographic market definitions open as the transaction does not lead to serious doubts as to its compatibility with the Common Market irrespective of how narrowly the geographic market is defined.

⁸ Cases No COMP/M. - 2676 Sampo/Varma and M.2676Sampo/Varma Sampo/IF Holding/ JV.

⁹ Case No COMP/M 4284 Axa / Winterthur.

¹⁰ See Case No. COMP/M.1307 – Marsh & McLennan/Sedgwick, Decision 23/10/1999; Case No. COMP/M.2225 . Fortis/ASR, Decision 13/12/2000.

¹¹ Case No COMP/M.3035 Berkshire Hathaway/ Converium/ Gaum/ JV, Decision 28/02/2003

¹² Case No COMP/M.3035 Berkshire Hathaway/ Converium/ Gaum/ JV.

Financial services

32. The Commission has consistently held that banking services typically supplied by a universal bank are to be divided for merger control purposes into three areas: retail banking; corporate banking and money markets and securities business¹³. The AA and Saga both have financial services arms which provide a limited number of retail banking products to non-corporate customers.
33. As to the geographic market definition, the notifying parties submit, in line with earlier Commission decisions, that the relevant geographic market for retail banking is national¹⁴. For the purpose of this case the Commission can leave the exact geographic market definitions open as the transaction does not lead to serious doubts as to its compatibility with the Common Market irrespective of how narrowly the geographic market is defined.

Provision of car rental services

34. The Commission has previously considered whether, within the market for the provision of car rental services, a distinction could be drawn between short and long term car rental services, and whether there is a separate market for replacement rentals whereby rental companies settle their accounts with car insurance companies¹⁵.
35. In previous cases the Commission considered whether the market was national in scope but left it open¹⁶. For the purpose of this case the Commission can leave the exact geographic market definitions open as the transaction does not lead to serious doubts as to its compatibility with the Common Market irrespective of how narrowly the geographic market is defined.

B. Assessment

36. The only horizontally affected market in this case is the UK market for breakdown services. In the remaining relevant markets, the AA's and Saga's market shares would not exceed [5-10]% in any of the narrowest possible market definitions. Accordingly, only the breakdown services market will be further discussed in the present decision.

Breakdown services

37. The UK market for breakdown services is characterised by different modes of supply and of distribution channels. There are operators who sell, distribute and operate the services themselves. Others do not operate the service because they do not have their own fleet, and use established networks of independently owned assistance vehicles. Some companies provide the services bundled with other products, in particular, motor insurance, others provide it as a stand alone product, some offer both alternatives. Some

¹³ Cases No COMP/M.342 Fortis CGER Decision 15/11/1993 and M.621 BLG/BAWAG Decision 21/12/1995.

¹⁴ Case No COMP/M.3894 - Unicredito/HVB, Decision 18/10/2005.

¹⁵ Case No COMP/M.4613 - EuroZeo SA/ APCOA Parking Holdings GmbH, Decision 20/04/2007.

¹⁶ Cases No COMP/M.1810 - VW/ Europcar and M.4613 EuroZeo SA/ APCOA Parking Holdings GmbH.

operators sell directly to individual customers, others sell it through intermediaries, some do both. The main players in the market are AA, RAC, Green Flag, Britannia Rescue and Mondial. There has been some consolidation over the last years with a trend towards acquisition of membership organisations by insurance providers; RAV with Aviva and Britannia with LV Insurance Services Ltd.

38. The AA and Saga are two different types of provider of contracted breakdown assistance services in the United Kingdom: the AA is an assistance operator and Saga is an organisation merely re-selling roadside assistance packages but which does not itself provide roadside assistance. Nevertheless, from a demand side perspective the products offered by the AA and Saga are competing products.
39. The AA is a vertically integrated breakdown services provider, offering customers a packaged service consisting of (i) providing the insurance element of the breakdown cover; (ii) retailing insured breakdown products and uninsured "Pay for Use" products¹⁷, and (iii) providing breakdown assistance at the roadside to both light vehicles (up to 3.5tn) and heavy vehicles. AA provides these services through its own network of mobile patrols.
40. The AA sells breakdown services in both the direct/voluntary segment and the indirect segment (through the channels of car manufacturers, affinity schemes¹⁸ and fleet schemes).
41. Saga provides (i) the insurance element of the breakdown cover; and (ii) the retail element of selling breakdown cover. Saga sells breakdown services only in the direct segment.
42. The notifying parties estimate the breakdown services market to UK customers has a total value of EUR 2,243 million. According to the parties' estimates, on the overall market for these services the AA and Saga would have a combined market share of around [30-40]% (AA with around [30-40]% and Saga with around [0-5]%). If ad hoc breakdown services were to be excluded, the AA and Saga would have a combined market share of around [40-50]% (AA with around [40-50]% and Saga with less than [0-5]%). The market investigation confirmed the AA's and Saga's market shares and very modest activities of Saga in the market for breakdown services.
43. If the market were to be segmented between direct and indirect sales, the merging parties would have a combined market share of around [40-50]% (AA with around [40-50]% and Saga with around [0-5]%) on the direct sales segment excluding ad hoc services, and around [30-40]% (AA with [20-30]% and Saga with [0-5]%) on the market for direct sales including ad hoc services. On the market for indirect sales (which necessarily excludes ad hoc sales provided to individual end users), the AA's and Saga's activities do not overlap because Saga only provides breakdown services to individual end users.

¹⁷ Pay for Use products are, for example, in cases where a manufacturer or fleet operator provides a breakdown assistance scheme to its customers and requires supplementary breakdown services, the manufacturer or fleet operator will often buy an organised Pay for Use breakdown scheme from the AA to support the product it offers. They are only sold to B2B customers and not to end-users.

¹⁸ Such as staff associations and enthusiast's clubs for particular car makes.

44. The notifying parties contend that AA's and Saga's market shares would not differ from the market shares provided above if the segmentation were to be based on a split between i) services provided to consumers who purchase contracts on an individual basis and ii) corporate customers who purchase breakdown assistance services to cover their own fleet or to resell such services to their own customers. Saga only provides breakdown services to consumers who purchase the contracts on an individual basis. AA sales to corporate customers comprise sales through channels such as car manufacturers, fleet operations, affinity schemes, financial intermediaries, etc. and they have been reflected in their sales in the indirect segment, in which there is no overlap between the two companies' activities.
45. Although AA has a strong presence in the market, Saga's activities are minimal and whichever the market segment that may be considered, the increment would not be higher than [0-5]%, which *a priori* indicates that the proposed transaction would not significantly change the market conditions existing in the United Kingdom prior to the transaction.
46. There are other important competitors in the UK market offering the same services. The most important being RAC, which according to the notifying parties' submission has an overall market share of [15-25]% and Green Flag with a market share of [5-15]%. Other competitors include Mondial with an estimated market share of around [0-5]% and a number of contracted service providers accounting for [10-20]% and ad hoc service providers accounting for around [30-40]% of the market.
47. In addition, switching costs for individual customers would be low: breakdown services policies are generally renewable on an annual basis. Corporate customer put up their tenders every three/four years and they even have separate providers for the different type of vehicles. There is an increasing use by customers of price comparison sites or aggregators such as Confused.com and Moneysupermarket.com to compare the breakdown prices offered by the various providers. There would be, therefore, an incentive to offer competitive prices or better services of those other providers.
48. The market investigation confirmed that the market is competitive with a good number of providers, operating via different business models but the end product is perceived as comparable, as long as the standard of assistance is guaranteed. The investigation also indicated that customers are not concerned by the possible effects of the proposed transaction on competition because they consider Saga to be a minor player that offers breakdown services in a niche market.
49. Consequently, it can be concluded that the proposed transaction does not raise serious doubts as to its compatibility with the Common Market.

VI. CONCLUSION

50. 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]
Meglena Kuneva,
Member of the Commission