EN

Case No COMP/M.6217 - BALOISE HOLDING / NATEUS / NATEUS LIFE

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 03/08/2011

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

Subject: Case No COMP/M. 6217 - BÂLOISE HOLDING / NATEUS / NATEUS LIFE
Notification of 28 June 2011 pursuant to Article 4 of Council Regulation No 139/2004[1]

Publication in the Official Journal of the European Union No C 198, 06.07.2011, p. 19

1. On 28 June 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Bâloise Holding AG ("Bâloise", Switzerland) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, control of Nateus SA and Nateus Life SA ("Nateus", Belgium) by way of a purchase of shares.

I. THE PARTIES

2. Bâloise is a publicly listed European provider of insurance and pension solutions headquartered in Basel, Switzerland. Bâloise provides insurance and banking services in Switzerland as well as life and non-life insurance services in several European countries (Austria, Belgium, Croatia, Germany, Liechtenstein, Luxembourg and Serbia).

3. Nateus is a subsidiary of Ethias SA ("Ethias"), which is a Belgian insurance group. Nateus offers life and non-life insurance in Belgium through Nateus Life S.A. and Nateus S.A. respectively.

1 OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

4. Nateus also offers, to a limited extent, non-life insurance in the Netherlands through Nateus Nederland B.V., a subsidiary of Nateus S.A. Nateus Nederland B.V. is not part of the proposed transaction.

II. THE OPERATION AND THE CONCENTRATION

5. The proposed transaction derives from State aid proceedings (SA.28476, N256/2009) and, in particular, from Ethias' commitment to enter into a final binding sale and purchase agreement for the sale of 100% of its participation in the Nateus Group at the latest on 31 December 2011 as part of the State aid restructuring plan approved by the Commission in May 2010.[2]

6. The notified transaction concerns the acquisition by Bâloise of the entire share capital of Nateus from Ethias, for which Bâloise and Ethias signed a share purchase agreement on 15 March 2011. As indicated, Nateus Nederland B.V. will not be acquired as part of the proposed transaction. Article 8.2(a) of the share purchase agreement provides that Nateus' participation in Nateus Nederland B.V. will be sold by Nateus to Ethias prior to completion of the proposed transaction. Ethias intends to sell these activities in due course.

7. The proposed transaction will grant Bâloise sole control over Nateus. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EU Merger Regulation.

III. EU DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[3] (Bâloise: EUR 5 319 million, Nateus: EUR 342 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Bâloise: EUR […] million, Nateus: EUR […] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

IV. RELEVANT MARKETS

9. The proposed transaction concerns the provision of life and non-life insurance in Belgium.

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2 Commission Decision N 256/2009 Restructuring aid to Ethias – Belgium.

3 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

1. RELEVANT PRODUCT MARKET

10. Within the insurance sector, the Commission has distinguished in previous cases three different segments, namely: (i) life-insurance, (ii) non-life insurance and (iii) reinsurance.[4]

11. The Commission has noted that, from the demand-side, both life and non-life insurance may at least in theory be divided into as many individual product markets as there are different kinds of risks covered, given that characteristics, premiums and purposes are distinct and that there is no substitutability from the consumer's perspective between different risks insured.[5]

12. However, the Commission has recognized that supply-side considerations may lead to broader product markets in respect of certain types of risk, indicating that different types of insurance may be included in the same product market.[6]

a) Life insurance

13. In life insurance, the Commission has made a primary distinction between (i) group life insurance products and (ii) personal life insurance.[7] In some cases, the Commission has considered whether a distinction could be made between (i) risk-based products on the one hand and (ii) products oriented towards savings and pension provision on the other hand.[8] The market investigation in one case appeared to support the broad segmentation of life insurance into different product groups: (i) protection products; (ii) pension products and (iii) savings and investment products.[9] The Commission has however so far left the exact product market definition open.[10]

14. The notifying party submits that there is a single product market for life insurance and that there is no need to make a further segmentation given that most insurers are active in various possible sub-segments of life insurance, or would at least be able to be active without significant increases in costs.

15. In this case, the product market definition for life insurance can be left open as no serious doubts arise under any plausible market definition.

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4 See e.g. Case COMP/M.5925 *Metlife / Alico / Delam*, paragraph 9.

5 *Ibid.*, paragraph 10; Case COMP/M.5083 *Groupama / OTP Garancia*, paragraph 10, Case COMP/M.5010, *Berkshire Hathaway / Munich RE / GAUM*, paragraph 23.

6 See Case COMP/M.5925 *Metlife / Alico / Delam*, paragraph 10, Case Comp/M.4284 *AXA/Winterthur*, paragraph 9.

7 See Case COMP/M.5925 *Metlife / Alico / Delam*, paragraph 11, Case Comp/M.4284 *AXA/Winterthur*, paragraph 12.

8 See Case COMP/M.5384 *BNP Paribas / Fortis*, paragraph 70.

9 See Case COMP/M.4701 *Generali / PPF Insurance Business*, paragraph 20.

10 See Case COMP/M.5925 *Metlife / Alico / Delam*, paragraph 11.

b) Non-life insurance

16. In non-life insurance, the Commission has considered various possible sub-segments. The precise segmentation of the non-life insurance markets retained in different cases has differed slightly from case to case, given in particular the classifications made of insurances under national law[11].

17. With regard to the Belgian non-life insurance market, the Commission has noted in a previous case the following categories: (i) accident and health insurance, (ii) workers' compensation, (iii) third party liability (TPL) motor insurance, (iv) non-TPL motor insurance, (v) insurance against fire and other damage to property, (vi) liability insurance, (vii) legal protection insurance and (viii) transport insurance. The exact market definition was, however, left open.[12]

18. The notifying party claims that there is a single market for non-life insurance and that there is no need to make a further segmentation given that most insurers are active in various segments of non-life insurance, or would at least be able to be active without significant increases in costs.

19. In this case, the product market definition for non-life insurance can be left open as no serious doubts arise under any plausible market definition.

c) Non-life insurance - Transport insurance

20. According to the notifying party, the Belgian regulator identifies seven branches within transport insurance, namely: Railway material hull insurance (branch 4); Aviation hull insurance (branch 5); Marine hull insurance (branch 6); Cargo insurance (branch 7); Transporter liability insurance (branch 10b); Civil liability insurance for aviation (branch 11); and Civil liability insurance for marine (branch 12).

21. Based on this segmentation, the Parties' activities overlap with regard to (i) marine hull insurance, (ii) cargo insurance and (iii) transporter liability insurance.[13]

22. According to the Belgian regulatory classification, marine hull insurance covers against damage incurred by floating methods of transport, such as sea-going vessels and inland crafts. This branch also includes certain related risks, such as those against damage to land-based (harbour) materials used in the context of marine transport (e.g. cranes) and insurance against damage caused by ship builders and repairers. Cargo insurance covers against damage or loss of goods that are

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11 COMP/M.5083 *Groupama / OTP Garancia*, paragraph 12.

12 COMP/M.4284 *AXA/Winterthur*, paragraphs 14 and 16.

13 The Parties' activities also overlap to a limited extent with respect to pleasure crafts, of which part of the gross written premiums (GWPs) is reported in branch 12 of the Belgian regulatory classification (Civil liability insurance for marine). Each of the Parties offers third party liability and hull insurance for pleasure crafts/yachts in Belgium, but the annual GWPs generated by the Parties with these activities are very limited (approximately […] for each of the Parties). No market data are available for pleasure crafts/yachts, but based on the Parties' best estimate, insurance products for pleasure crafts/yachts generate total annual GWPs of approximately EUR 3.5 million in Belgium. Consequently, no affected market arises with regard to pleasure crafts.

transported, irrespective of the means of transportation used. Finally, transporter liability insurance covers the mandatory liability which road transporters have with respect to transported goods on the basis of the CMR Convention.[14]

23. The notifying party submits that the above Belgian regulatory classification of transport insurance products is appropriate for the competitive assessment of the proposed transaction since this segmentation is traditionally used by undertakings active in transport insurance in Belgium and reliable gross written premium (GWP) and segment size data are available for this segmentation.

24. The notifying party considers that a further segmentation of transport insurance segments based on means of transport is not appropriate. A sub-segmentation based on means of transport would typically distinguish the following segments within marine hull insurance: (i) marine hull insurance, including marine hull insurance for sea-going vessels and construction risks, and (ii) inland marine hull insurance, consisting of inland crafts and land-based (harbour) materials.

25. With regard to cargo insurance, the notifying party indicates that this insurance typically covers all different kinds of goods transported, regardless of whether transport takes place over sea, air, land or inland waterways, and that it is common practice to insure cargo for the entire voyage, including all handling activities. The notifying party explains that cargo insurance is typically offered to companies through two types of contract: (i) 'single voyage' policy, which offers door-to-door coverage for a particular voyage, and (ii) 'open cover' policy, which is an agreement to automatically insure all shipments falling within the terms and conditions of the policy, which has a certain duration.

26. Finally, with regard to transporter liability insurance, the notifying party notes that the corresponding Belgian regulatory branch covers liability of the *road* transporter with respect to the goods transported, thereby excluding other means of transport. This branch also includes the insurance coverage for freight forwarders and logistical services providers against possible liability for goods damaged or lost during transport. Liability of rail road transporters with respect to the goods transported is covered by another branch of the Belgian regulator classification (branch 13).

27. The notifying party argues that further segmenting the segments for marine hull insurance, cargo insurance and transporter liability insurance on the basis of means of transport or other product sub-categories is not appropriate in the light of supply substitution considerations. The notifying party submits that there is complete supply-side substitutability regarding the risks covered within each of those segments as such risks are similar (for example, between sea-going vessels, inland crafts and land-based (harbour) materials, or between 'single voyage' and 'open cover' cargo policies), and are typically all offered (or could easily be offered) by insurers active in each of such segments.

28. The market investigation examined whether or not the segments for marine hull insurance, cargo insurance and transporter liability insurance should be further segmented by means of transport or product sub-categories. However, the results of

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14 Convention on the Contract for the International Carriage of Goods by Road (CMR), Geneva, 19 May 1956.

the market investigation were inconclusive. Whilst some respondents considered that some sub-segments should be regarded separately from other sub-segments, other respondents expressed the view that some or all of those sub-segments should be grouped together.

29. In any event, in this case, the product market definition for transport insurance can be left open as no serious doubts arise under any plausible market definition.

2. RELEVANT GEOGRAPHIC MARKET

30. With regard to the geographic scope of the life and non-life insurance markets, the Commission has generally defined these markets as national as a result of national distribution channels, established market structures, fiscal constraints and differing regulatory systems.[15]

31. The Commission has, however, found that the insurance of large commercial risks, such as the insurance of aerospace risks, are most likely to be at least EEA-wide in scope.[16] Similarly, with respect to transport insurance, the Commission has indicated that the market is likely to be wider than national for large corporate customers and large risk insurance respectively.[17] In particular with respect to marine insurance, the Commission's market investigation in one case indicated that such a market is at least EEA-wide.[18] However, the Commission finally left the exact scope of the geographical market open.

32. The notifying party submits that the geographic scope of the market for non-life transport insurance is at least EEA-wide as distribution channels are organised on an international level.

33. In this case, the geographic market definition for life and non-life insurance can be left open as no serious doubts arise under any plausible market definition.

V. ASSESSMENT

34. Both Bâloise and Nateus are active in the provision of life insurance and non-life insurance in Belgium.

Horizontal overlaps

a) <u>Life insurance</u>

35. The Parties estimated their market shares on the basis of market data gathered by Assuralia, the professional association of insurance companies active in Belgium.

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15 COMP/M.4284 *AXA/Winterthur*, paragraph 18.

16 COMP/M.5010 *Berkshire Hathaway / Munich RE / GAUM*, paragraph 23.

17 COMP/M.2676 *Sampo / Varma Sampo / If Holding / JV*, paragraph 19.

18 COMP/M.4284 *AXA/Winterthur*, paragraph 18.

36. Although the notifying party claims that there is a single market for life insurance based on supply-side substitutability, it has provided market shares on an overall market for life insurance and on each of the possible segments considered by the Commission in previous cases, namely (a): (i) group life insurance products and (ii) personal life insurance; (b): (i) risk-based products and (ii) products oriented towards savings and pension provision; and (c): (i) protection products, (ii) pension products and (iii) savings and investment products. The Parties' activities in life insurance lead to combined market shares below 5% on an overall market for life insurance and also on each of the above-mentioned segments.

37. The proposed transaction does not therefore lead to any horizontal affected market in life insurance.

b) <u>Non-life insurance</u>

38. As is the case with regard to life insurance, the Parties estimated their market shares on the basis of market data gathered by Assuralia.

39. Although the notifying party claims that there is a single market for non-life insurance based on supply-side substitutability, it has provided market shares on the basis of the categories examined by the Commission on the Belgian market in previous cases, namely (i) accident and health insurance, (ii) workers' compensation, (iii) third party liability (TPL) motor insurance, (iv) non-TPL motor insurance, (v) insurance against fire and other damage to property, (vi) liability insurance, (vii) legal protection insurance and (viii) transport insurance.

40. The Parties' activities in non-life insurance lead to combined market shares below 10% on an overall market for non-life insurance and also on each of the above-mentioned segments except for transport insurance, where the Parties have a combined market share above 15%.

41. Therefore, the proposed transaction only leads to a horizontally affected market in the non-life insurance segment for transport insurance, examined hereafter.

c) <u>Non-life insurance - Transport insurance</u>

42. The transport insurance branches laid down by the Belgian regulator are aggregated by Assuralia for statistical reporting purposes and, therefore, Assuralia does not provide market data for each of the separate transport insurance branches in Belgium.

43. In order to estimate their market shares within the relevant transport insurance segments, the Parties relied on statistical data made available by the Belgian transport insurance industry association, ABAM/BVT, which gathers information on gross written premiums (GWPs) generated in transport insurance segments in Belgium in accordance with four categories of risk: ocean marine hull, inland marine hull, cargo and CMR (i.e. goods transported by road).

44. The Parties examined their market position in all the plausible product market definitions described in this decision with regard to transport insurance (paragraphs 20 et seq.). The Parties' information on market shares refers to 2010 and is based on GWPs.

45. The Parties' combined market share on an overall market for transport insurance covering the seven segments within transport insurance identified by the Belgian regulator (see paragraph 20) is [10-20]%.

46. The Parties' combined market shares on the three segments within transport insurance identified by the Belgian regulator on which the Parties' activities overlap are as follows:

Type of insurance	**Estimated combined market share**
Marine hull insurance (branch 6)	[20-30]% (Bâloise: [10-20]%, Nateus: [5-10]%)
Cargo insurance (branch 7)	[10-20]% (Bâloise: [5-10]%, Nateus: [5-10]%)
Transporter liability insurance (CMR) (branch 10b)	[10-20]% (Bâloise: [0-5]%, Nateus: [5-10]%)
Total transport insurance	[10-20]% (Bâloise: [5-10]%, Nateus: [5-10]%)

47. Within the segment of marine hull insurance, the Parties' combined market shares on possible sub-segments based on means of transport are as follows:

Type of insurance	**Estimated combined market share**
Sea-going vessels	[10-20]% (Bâloise: [10-20]%, Nateus: <[0-5]%)
Construction risks	[10-20]% (Bâloise: [5-10]%, Nateus: [0-5]%)
Inland crafts	[30-40]% (Bâloise: [5-10]%, Nateus: [20-30]%)
Land-based (harbour) materials	[30-40]% (Bâloise: [20-30]%, Nateus: [5-10]%)
Total marine hull insurance	[20-30]% (Bâloise: [10-20]%, Nateus: [5-10]%)

48. With regard to the cargo insurance segment, the notifying party notes that market data for a possible sub-segmentation based on means of transport is not available. However, the Parties estimate that their combined market share of [10-20]% on the overall cargo segment would not change materially if it were sub-segmented on the basis of the means of transport used. With regard to a possible sub-segmentation into 'single voyage' and 'open cover' policies, the Parties estimate that their combined market share in each of such sub-segments would be below 15%.

49. Finally, with regard to a possible sub-segmentation of the segment for transporter liability insurance based on means of transport, the notifying party notes that their overall combined market share on this segment ([10-20]%) only covers goods transported by road (CMR) and therefore excludes insurance for transporters for damage or loss of goods transported by railroad or waterway. The Parties only have marginal activities on railroad transporter liability insurance (covered by branch 13 of the Belgian regulator classification of transport insurance), and they estimate that their combined market share with regard to transporter liability insurance based on this means of transport would be less than 5%.

50. With regard to insurance coverage for freight forwarders and logistical services providers against possible liability for goods damaged or lost during transport, commonly considered to be part of the segment for transporter liability insurance for goods transported by road (CMR), the notifying party indicates that there are no separate data available for this sub-segment. However, the Parties estimate that their combined market share on a sub-segment covering the insurance of this specific risk would be below 15%.

51. The review of the Parties' market shares on all plausible product market definitions shows that the proposed transaction would only lead to horizontally affected markets on the following possible markets: (i) an overall market for transport insurance covering also segments where the Parties' activities do not overlap (10-20]%); (ii) an overall market for marine hull insurance ([20-30]%); and (iii) three of the possible sub-segments within the market for marine hull insurance, namely sea-going vessels ([10-20]%), inland crafts ([30-40]%) and land-based (harbour) materials ([30-40]%).

52. Although the sub-segment within marine hull insurance covering sea-going vessels technically leads to an affected horizontal market, the proposed transaction is not considered likely to raise competition concerns on this possible market given the marginal increment in market share brought about by it (<1%).

53. With regard to the other possible product markets, the Parties' combined market shares are not high (all significantly below 40%). In addition, there will remain post-merger in each transport insurance segment concerned a number of credible competitors able to impose a competitive constraint on the merged entity:

- Marine hull insurance: ASCO [30-40]%, AMLIN [20-30]%, Tokyo Marine [10-20]%, AXA:[5-10]%

- Inland crafts: AMLIN [20-30]%, ASCO: [20-30]%, AXA: [10-20]%

- Land-based (harbour) materials: AMLIN [20-30]%, ASCO: [20-30]%, AXA: [10-20]%

54. With regard to both an overall market for transport insurance and all its possible segments, including marine hull insurance, inland crafts and land-based (harbour) materials, the notifying party submits and the market investigation confirmed that barriers to entry into these markets are low, given that in order to enter a new transport insurance segment, an insurer would essentially need to hire or train specialised personnel and build a client base and a reputation. In response to the market investigation, the Parties' competitors generally considered that it would take them from 6 to 12 months to be able to enter a new transport insurance segment.

55. The notifying party also argues that, for the end customer, the costs involved in switching transport insurance supplier are very limited given that the broker remuneration will be typically deducted from the premiums charged by the insurer. A clear majority of the Parties' customers confirmed that they would not face major switching costs if they wished to switch supplier. The notifying party adds that end customers are not normally prevented from switching to another insurer on the basis of contractual arrangements as exclusive agreements are uncommon between insurers and brokers. Brokers confirmed that they have no exclusive contractual relationship with either of the Parties to the proposed transaction.

56. Finally, the market investigation revealed no substantiated competition concerns from customers or competitors in connection with either an overall market for transport insurance or any of its possible segments for marine hull insurance, inland crafts or land-based (harbour) materials.

57. In view of the foregoing, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to either an overall market for

transport insurance or any of its possible segments for marine hull insurance, inland crafts or land-based (harbour) materials.

Vertical links

58. The proposed transaction does not give rise to any vertically affected markets between the direct insurance services provided by the Parties and the possible vertically linked markets for (i) insurance distribution, (ii) underwriting and management services and (iii) reinsurance.

VI. CONCLUSION

59. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

60. It should be noted that the decision in the present case under the Merger Regulation is without prejudice to the relevant State aid obligations pursuant to the State Aid case SA.28476, N256/2009.

For the Commission

(signed)
Johannes HAHN
Member of the Commission