



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.05.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.710 BHF-Bank/Crédit Commercial de France

Notification of 29 March 1996 pursuant to Article 4 of Council Regulation No 4064/89

1. On 29.3.1996, the Commission received a notification of a proposed concentration by which the undertakings BHF-Bank Aktiengesellschaft (BHF) and Crédit Commercial de France S.A. (CCF) acquire joint control of MMTG Mietgesellschaft für medizinisch-technische Geräte GmbH (MMTG), which will be renamed BHF & CCF Leasing GmbH.
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 (The Merger Regulation) 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 AND THE OPERATION

3. The business activities of the undertakings concerned are :

- BHF-Bank Aktiengesellschaft: banking
- Crédit Commercial de France SA: banking
- BHF & CCF Leasing GmbH: leasing business such as airplane, ship, and industrial plant leasing (that is, "big-ticket", leasing, and not leasing of consumer goods such as cars).

4. According to a sales contract signed by the notifying parties and the present shareholders of MMTG, these shareholders cede the majority of their shares to BHF and CCF. CCF will acquire its shares in the joint venture through its 100% subsidiary Société Financière et Mobilière. The resulting distribution of shares and the decision mechanisms will be such, that BHF and CCF acquire joint control of MMTG (see below). MMTG will afterwards be renamed BHF & CCF Leasing GmbH.

II. THE CONCENTRATION

A. Joint Control

5. After the majority of shares has been sold to BHF and CCF and after an increase in capital, the share capital of BHF & CCF Leasing GmbH will be held as follows:

- BHF	30%
- CCF	30%
- private shareholder 1	11%
- private shareholder 2	11%
- private shareholder 3	9 %
- private shareholder 4	9 %

6. The draft articles of association (Gesellschaftsvertrag) of BHF & CCF Leasing GmbH, being part of the submitted notification, stipulate that decisions can only be taken if 75% of share capital is present, i.e. BHF's and CCF's presence is always necessary.

7. According to the above-mentioned articles of association the shareholders take decisions with a majority of 75% of votes, except the decision to dissolve the company, which is taken with a simple majority of votes. The 75%-quorum confers a veto right to BHF and CCF. According to a regulation concerning the organisation of the joint venture (Geschäftsordnung), being part of the submitted notification, the shareholders have to decide - among others - on the following:

- questions of structure, organisation and strategy of the business
- middle- and long-term business plan
- budget
- leasing contracts, where the cost of the leasing object exceeds five times the share capital of the joint venture
- investments above 100'000 DM (German Marks), if not budgeted
- appointment of senior management

8. The distributions of shares and the decision mechanisms are such, that BHF and CCF are able to veto strategic decisions, but they do not have the power, each on their own or together, to impose such decisions. But because CCF and BHF each can produce a deadlock situation they acquire decisive influence and will therefore jointly control BHF & CCF Leasing GmbH in the sense of Article 3(3) of the Merger Regulation.

B. Full Function

9. BHF & CCF Leasing GmbH is a start-up company destined to operate in a specific segment of the leasing sector. An important part of its business activity will consist in the

consultancy in and the conception of solutions for financing big-volume investments (see above). In some cases the joint venture will also be lessor, but in each such case it will refinance such deals by reselling the income resulting from the lease contract to a bank or other finance institution.

10. For these reasons, also a share capital of one million German marks will be sufficient to carry out the business of the joint venture. The joint venture will have sufficient staff and assets to perform the functions normally carried out by other undertakings operating in the same market and - according to the articles of association - it is intended to operate on a lasting basis.

C. Absence of Scope of Coordination of Competitive Behaviour

11. BHF is not operating in the same market where the joint venture will be active and has therefore no relevant know-how. According to a draft shareholder agreement, being part of the submitted notification, BHF and CCF will not engage in new business in the specific leasing segment in Germany, where the joint venture will operate. The same agreement provides that whenever the banks would have to acquire such leasing business in Germany in the future, they will assign it to the joint venture.
12. It could be said that BHF and CCF are active in neighbouring markets - banking markets - of the one the joint venture will be active. Although these neighbouring markets are of significant economic importance compared with that of the joint venture, a coordination of the competitive behaviour of the mother companies can realistically be excluded, because BHF and CCF operate mainly in different geographic markets.

III. COMMUNITY DIMENSION

13. The operation has a Community dimension as specified in Article 1 (2) of the Merger Regulation. Calculated in accordance with Article 5(3)(a) of the Merger Regulation, the undertakings concerned have an aggregate worldwide turnover of more than Ecu 6.5 billion (BHF: Ecu 2.29 billion, CCF: Ecu 4.34 billion), which is above the Ecu 5 billion requested in the Merger Regulation. BHF and CCF do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant Product Market

14. As mentioned above, BHF & CCF Leasing GmbH will offer financial consultancy services related to higher volume investment leasing and fund leasing (a leasing fund is a limited partnership with the purpose of financing capital goods through private investors). This service will be offered on a fee basis in connection with leasing contracts and fund leasing. The joint venture will also act as a lessor. Therefore the parties submit that the relevant product market is the leasing market excluding real estate and consumer goods (cars, furniture etc.) leasing.
15. It is necessary to assess whether the method of financing these goods is relevant (see IV/M.664 GRS Holding and IV/M.669 Charterhouse/Porterbrook). A potential operator of goods that necessitate a high investment will consider all kinds of possible solutions in

order to finance this investment. This will certainly include renting, leasing and outright purchase of these goods.

16. It is also conceivable that consultancy in and concept development of financing solutions for big-volume investments could be considered a separate market, because this service is not necessarily linked to the leasing, renting or selling operation. The assumption of a separate market for this service is strengthened by the fact that it will be offered on a fee basis and will therefore not be included in the rent or leasing cost.
17. However, for the purposes of this case, the question of whether the relevant product market includes all types of financing or only financing through leasing or if consultancy in solutions for financing investment goods is a separate product market can be left open as, on the basis of the assessment set out below, a dominant position would not be created or strengthened even on the narrowest definition of the product market.

B. Relevant Geographic Market

18. According to its business plan, the joint venture will almost exclusively operate in Germany and its envisaged customers consist of BHF's target customers. It is therefore the parties' opinion, that the relevant geographic market is Germany.
19. When defining the relevant geographic market, not only the conditions on the supply-side, but also those on the demand-side have to be considered. A potential operator of goods that necessitate a high investment, e.g. aeroplanes or trains, is willing to look for an optimal financing solution and competent consultants probably in all Europe, if not worldwide. Therefore the relevant geographic market is wider than Germany.
20. However, for the purposes of this case, the exact definition of the relevant geographic market can be left open, because a dominant position would not be created or strengthened even on the narrowest, but also on a wider definition of the geographic market.

C. Competitive Assessment

21. As stated above, BHF and CCF Leasing GmbH is a start-up company, destined to operate in a specific segment of the leasing sector, that is, "big-ticket" leasing. It is being created out of MMTG, which is currently just a shell company with no activities in the leasing sector. Therefore no combination of market shares in the leasing sector can or will occur as a result of the current transaction.
22. No overlap between the operations of BHF and CCF will result through the concentration, because BHF is not active in the future business of the joint venture. BHF & CCF Leasing GmbH is a market entrant and the concentration will therefore not have anti-competitive effects, even if the relevant geographic market were considered to be Germany alone.
23. CCF's subsidiary Loxxia is specialised in equipment and financial leasing operations, structured as a consulting business, similar to the field of activities the joint venture will be operating in. It might therefore be argued that CCF strengthens its position in the relevant market through the participation in the joint venture. However, CCF's actual market share on the Europeanwide market is below 1% and its main competitors - only in France and

Germany - are companies like BNP, Société Générale, Paribas, Crédit Lyonnais, Deutsche Leasing AG, KG Allgemeine Leasing AG and so on.

24. Consequently, the creation of the joint venture by BHF and CCF does not create or strengthen a dominant position in the common market.

V. CONCLUSION

25. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,