

***Case No IV/M.1106 -
BAYERISCHE
VEREINSBANK / FGH
BANK***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 004/03/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.03.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

to the notifying party

Dear Sirs,

Subject: Case No IV/M.1106 Bayerische Vereinsbank/FGH Bank

Notification of 04.02.98 pursuant to Article 4 of Council Regulation N 4064/89

1. On 04.02.1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the German undertaking Bayerische Vereinsbank AG ("Vereinsbank") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of Dutch FGH Bank N.V. ("FGH") by purchase of 99.75% of the issued share capital.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. The business activities of the undertakings concerned are the following:
4. Vereinsbank is a commercial bank established in Germany providing a broad range of banking products and services in the areas of retail banking, commercial banking and financial markets. The Vereinsbank is predominantly active in Germany.
5. FGH is a specialised commercial real estate bank, providing real estate credit facilities and related activities. FGH focuses on the wholesale segment of the Dutch real estate market (i.e. commercial real estate) and is a niche player with

respect to residential mortgages. In addition FGH provides a number of related services. FGH is almost exclusively active in the Netherlands.

II. COMMUNITY DIMENSION

6. The undertakings Vereinsbank and FGH have a combined aggregate world-wide turnover in excess of ECU 5,000 million (¹). Each of them has a Community-wide turnover in excess of ECU 250 million (²), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. COMPETITIVE ASSESSMENT

A. Relevant product and geographic markets

7. The notifying party states that the activities of FGH only relate to real estate financing. This is the only segment in which both FGH and Vereinsbank might have overlapping activities. The notifying party furthermore states that the relevant geographic market is national.
8. However, it is not necessary to further delineate the relevant product and geographic markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Assessment

9. As the activities of FGH only relate to real estate financing, this is the only market segment in which both FGH and Vereinsbank have overlapping activities. The market shares of both banks in the Netherlands in the area of real estate financing do not exceed 3%. The same is true if one were to subdivide this area into residential and commercial retail financing.
10. In Germany Vereinsbank has a slightly higher market share in the area, of real estate financing, i.e. 5.55% (9.2% for commercial, 4.47 residential), to which FGH would however contribute only with a share of 3 per thousand. This would thus create only a de minimis overlap and no affected market either.
11. This assessment would not be altered if one were to add the market shares of the Bayerische Hypotheken-und Wechselbank AG ("Hypo-Bank"). Vereinsbank intends to merge with Hypo-Bank in the third quarter of 1998 and already owns 45% of Hypo-Bank's shares. The Bundeskartellamt has cleared the merger in January 1998. Hypo-Bank's market shares in the Netherlands do not exceed a third of a percent under any of the constellations examined here. Its market shares in Germany are 5.31% in the real estate financing sector and 4.76% and 7.2% in the residential and commercial real estate financing respectively.

¹ Deleted for publication.

² Deleted for publication.

12. In view of the market position of the parties to the concentration, it appears that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

IV. ANCILLARY RESTRICTIONS

13. The parties have notified a non-solicitation clause and a non-competition clause binding the seller Aegon N.V. The application of the clauses is limited to a period of three years and covers commercial real estate financing in the Netherlands only. These clauses are in line with the principles set out in the Commission notice regarding restrictions ancillary to concentrations (OJ C203, 14.08.1990, p.5) and in particular its points III.A.1. - 3.

V. CONCLUSION

14. 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 (EEC) No 4064/89.

For the Commission,