

*Case No IV/M.1306 -
BERKSHIRE
HATHAWAY /
GENERAL RE*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/09/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.09.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1306 –BERKSHIRE HATHAWAY/GENERAL RE

Notification of 20 August 1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20 August 1998 the Commission received a notification of a proposed concentration by which the undertaking Berkshire Hathaway acquires sole control over the undertaking General Re by purchase of all outstanding shares in the Target Company.

I. THE PARTIES INVOLVED AND THE OPERATION

2. Berkshire is a holding company owning subsidiaries engaged in a number of diverse business activities, the most important of which is property and casualty insurance and reinsurance business through a number of subsidiaries.
3. General Re is a holding company for global reinsurance and related risk management, owning General Re Corporation and controlling Cologne Re, two large reinsurers, mainly involved in property/casualty insurance world-wide.
4. The transaction will involve two stages. According to the Merger Agreement dated 19 June 1998 a newly formed subsidiary of Berkshire, NBH, will first acquire all of the voting shares of Berkshire and General Re Corporation. Second, two subsidiaries of NBH will be created and each of them will merge with Berkshire and General Re respectively. As a result, NBH, according to the Stock Option Agreement of 19 June 1998 will acquire all of the issued and outstanding common stock of Berkshire and General Re. The transaction will therefore constitute a concentration in the meaning of Art. 3(1)b of the Merger Regulation.

II. COMMUNITY DIMENSION

5. Berkshire Hathaway and General Re have a combined aggregate worldwide turnover, calculated in accordance with Article 5 (3) (b) of the Regulation in excess of ECU 5,000 million. Each of them has a Community-wide turnover of more than ECU 250 million, 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.

III. COMPATIBILITY WITH THE COMMON MARKET

Relevant Product Market

6. The market concerned by the concentration is the global market for reinsurance. The Commission has established that reinsurance is a market separate from insurance because of its purpose of spreading risks between insurers. It is conducted between insurers and reinsurers on an international basis because of the need to pool the risks. The regulatory framework is less stringent than that of life or non-life direct insurance. For these reasons the reinsurance market gives rise to different conditions of competition compared to life and non-life insurance (see for example cases No. IV/M. 1043-BAT/Zürich and No. IV/M.1280-KKR/Willis Corroon). Reinsurance can be further subdivided into the life and non-life segment (see for example cases No. IV/M.1017-Hannover Re/Skandia and No. IV/M.880 Schweizer Re/Uniorias).
7. For the purposes of the present decision it is not necessary to exactly define the product market since with every alternative definition effective competition will not be impeded on the Common market or any substantial part of it.

Relevant geographical market

8. Given the need to pool risks on an international basis and the conduct of reinsurance business on a worldwide basis, the geographical reference market for reinsurance is global (see for example cases No. IV/M. 862-AXA/UAP and No. IV/M.813-Allianz/Hermes).

IV. ASSESSMENT

9. The parties have overlaps in the global reinsurance sector. Independently from any further subdivision of the overall reinsurance market there are no markets where the concentration would give rise to competitive concerns.
10. On the overall global reinsurance market, Berkshire is at present ranked 20th largest consolidated global reinsurer and achieves a market share of less than [...]¹ General Re is ranked 4th global reinsurer and has around [...]². In the non-life segment of reinsurance Berkshire achieves less than [...]³, General Re has [...]⁴. The parties after the concentration will achieve combined market shares both in

1 Deleted for publication (a negligible market share)

2 Deleted for publication (between 1 and 10 %)

3 Deleted for publication (a negligible market share)

4 Deleted for publication (between 1 and 10 %)

the overall reinsurance market and in the non-life segment of approximately [...]⁵, the increment with both definitions being less than [...]⁶.

11. Figures for the life-sector are not available but are negligible in the present case since Berkshire only wrote [...]⁷ between 1995-1997. In any case the life segment certainly represents a less important part of the premium income and market shares of a reinsurer, given the fact that life insurers fully finance expected future payments and as a rule cede a lower proportion of total assumed risk volume to reinsurers compared to non-life insurers.
12. Main competitors of the parties are professional reinsurers. According to the parties, the market leaders Munich Re and Swiss Re/NCM achieve market shares of [...]⁸ and [...]⁹ respectively, which is almost twice than the market shares, which will be held by the parties after the merger. Other important competitors are Employers Re (5%), Hanover Re (4%), BAT/Zurich (4%) or Assicurazioni Generali SpA (3%).
13. According to the legal provisions governing reinsurance law in most European countries and for reasons of risk spreading direct insurers normally seek insurance coverage with many different reinsurance companies. This peculiarity of the insurance market offers a chance to smaller competitors with less significant market share to effectively compete with big reinsurance companies. Therefore, customers are not entirely dependent on one reinsurer but have the possibility to choose between a number of suppliers.
14. There are no major regulatory barriers to market entrance in the global reinsurance market as the reinsurance business is amongst the least regulated. In recent years there have been a number of market entrances world-wide.
15. It follows from the foregoing that the concentration will not create or strengthen a dominant position of the parties in the Common Market or any substantial part of it.

V. CONCLUSION

16. For the above reasons, the Commission decided not to oppose the notified operation and to declare it compatible with the Common market. This decision is adopted in application of Article 6 (1) (b) of Council Regulation (EEC) No 4064/89.

For the Commission,

⁵ Deleted for publication (between 1 and 10 %)

⁶ Deleted for publication (a negligible market share)

⁷ Deleted for publication (negligible number of life reinsurance contracts)

⁸ Deleted for publication (between 10 and 20 %)

⁹ Deleted for publication (between 10 and 20 %)