

***Case No COMP/M.1660 -
BANK OF NEW YORK /
ROYAL BANK OF
SCOTLAND / RBSI
SECURITY SERVICES***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/08/1999

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.08.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sirs,

Subject: Case No IV/M.1660 – Bank of New York/Royal Bank of Scotland/RBSI Security Services

Notification of 29.07.1999 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 29.07.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 of the acquisition by the undertaking, BNY International Financing Corporation (“BNY”), belonging to the Bank of New York Company, Inc., (“BNY Group”) of a 30% shareholding in RBSI Security Services (Holdings) Limited (“Security Services”), a wholly-owned subsidiary of the Royal Bank of Scotland International (Holdings) Limited (“RBSI Holdings”), an indirect wholly-owned subsidiary of the Royal Bank of Scotland Group, plc (“RBS”). Through the arrangements for decision-taking, BNY will acquire joint control of Security Services with RBSI Holdings.
2. Following 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.

¹ OJ L 395, 30.12.89 p.1; corrigendum OJ L 257 of 21.09.90, p.13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 09.07.97, p.1, corrigendum OJ L 40, 13.02.98, p.17).

I. THE PARTIES

3. The BNY Group provides a broad range of banking and financial services, including retail and corporate banking, financial market services, investment management and private banking, and securities services and cash processing.
4. RBSI Holdings provide banking and other financial services (including trust, custody and fund administration services) in a number of off-shore jurisdictions.
5. The activities of Security Services consist of fund administration services in Jersey and custodian and certain other banking services in Jersey, Guernsey and the Isle of Man.

II. THE OPERATION

Joint Control

6. Under the terms of the Shareholders' Agreement relating to Security Services, BNY will be given consent rights at both the shareholder and boardroom level which extend to certain strategic business matters of Security Services, including the business plan and budget. Thus it is considered that the operation will result in Security Services being jointly controlled by BNY and RBSI Holdings.

Full-function Concentrative Joint Venture

7. After the operation Security Services will continue to operate a separate and distinct service to those of the RBS Group and will continue to operate in Jersey, Guernsey and the Isle of Man, where neither of the parent companies have operations. Furthermore, both parents have agreed not to compete with Security Services as regards its business in these islands.
8. At an international level, only BNY will be active with the services offered by the joint venture company, as the Royal Bank of Scotland is selling simultaneously its subsidiary for this type of services, the Royal Bank of Scotland Trust Bank, to the Bank of New York (Case No.IV/M.1618-Bank of New York/Royal Bank of Scotland Trust Bank). Thus Security Services is considered to constitute a concentrative full-function joint venture.

III. CONCENTRATION OF A COMMUNITY DIMENSION

9. The operation constitutes a concentration within the meaning of Article 3.1.b of the Merger Regulation.
10. The BNY Group and RBS have a combined aggregate worldwide turnover in excess of EUR 5,000 million (The BNY Group, EUR 5,167 million; RBS, EUR 10.926 million). Each of them has a Community-wide turnover in excess of EUR 250 million (The BNY Group, EUR [...] ; RBS, EUR 8,991 million). The BNY Group and RBS do not both achieve more than two-thirds of their aggregate Community-wide turnovers within one and the same Member State. The notified operation has, therefore, a Community dimension.

IV. COMPETITIVE ASSESSMENT

11. Security Services is not active in, and its activities do not directly affect, any Member State or the EEA territory. There are thus no affected markets, and the proposed joint venture does not raise any other competition concerns. It is thus considered that the operation does not result in the creation or strengthening of a dominant position.

V. ANCILLARY RESTRAINTS

12. Under clause 9.1 of the Share Sale and Purchase Agreement, the vendor, RBS, undertakes to BNY that it shall not, and that it shall procure that the members of the RBS Group shall not, for a period of [...] years from completion, engage in Jersey, Guernsey or the Isle of Man in any of the activities carried on by the Security Services Group.
13. Under clause 10.4, BNY agrees to procure that for so long as any member of the BNY Group remains a shareholder of the Security Services Group, the Security Services Group shall remain the sole provider to such member and its associated companies and to their respective clients of the activities carried on by the Security Services Group in each of Jersey, Guernsey and the Isle of Man. The notifying parties submit that this restriction is analogous to a non-compete provision and is within the spirit of expressing the lasting withdrawal of the parent, BNY, from the market assigned to the joint venture, since it requires BNY to use only the Security Services Group for the provision of such services in the countries in which the Security Services Group operates, meaning that BNY should not undertake such activities itself. In this context, the provision can be considered an integral part of the concentration.

VI. 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,