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*Case No IV/M.018 - AG
/ AMEV*

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

Article 6(1)(b) NON-OPPOSITION
Date: 21.11.1990

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Brussels, 21 November 1990

VERSION FOR THE PUBLIC

MERGER PROCEDURE
ARTICLE 6(1) (b) DECISION

Registered letter with advice
of delivery

1. Notifying party
2. Notifying party

Dear Sirs,

Subject: Case No. IV/M018 - AG/Amev

After full examination of your notification, the Commission has come to the conclusion that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. Concentration

1. The notified operation envisaged by Compagnie Financière et de Réassurance du Groupe AG (AG) and N.V. Amev will be completed as follows: all interests and activities of both groups will be brought under two subholding companies (respectively AG 1824, Belgische Maatschappij van Algemene Verzekeringen, and Amev/VSB 1990 N.V.). AG and Amev will each take 50 % of the shares of these subholdings and both parent companies will merely continue to exist as independent holding companies. Both the subholding companies will operate as one single group under one single management. The decision-making bodies of the new group (Supervisory Committee, Management Committee, Co-ordinating Committee) will be composed of an equal number of members respectively appointed by AG and Amev.

2. Since AG and Amev will bring all activities, on a lasting basis, into the new, jointly controlled group the operation constitutes a merger from an economic point of view and the acquisition by AG and Amev of 50 % in each other's subholdings has to be considered as a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. Community dimension

3. The operation in question raises a legal issue as to the calculation of the turnover for insurance companies. It is a common practice that insurance companies invest part of the premiums received in real estate as a means of cover for technical reserves. If the turnover of AG's and Amev's insurance activities is calculated by excluding the turnover realised by the companies active in the real estate sector and belonging to the groups AG and Amev, then the aggregate worldwide turnover of both groups, in 1989, is only 4,903 million ECU. Whereas, if the turnover of real estate companies is included, the worldwide turnover is 5,053 million ECU and, therefore, the threshold of Article 1(2)(a) is met.

4. The parties argue mainly that the real estate investments as well as other investments are inherent in the insurance activities and that therefore the financial results of these investments should not be taken into account since the special rule for calculating the turnover of insurance companies, laid down in Article 5(3)(b), applies. They point out that there is a legal obligation for insurance companies to invest the acquired premiums and that it would be arbitrary to treat the turnover from real estate in the framework of Article 5 differently from the turnover from other investment categories.

5. This argument is not convincing. Article 5(3)(b) states that for insurance undertakings the value of gross premiums shall be used in place of turnover. This provision does not constitute a special threshold for insurance companies, but only a special method of calculation of turnover and does not exempt them from the general rules stated in Article 5. Article 5(4) provides for the turnover of an undertaking itself and the other companies belonging to the same group. If an insurance company conducts other kinds of business through a subsidiary, this business generates a turnover which has to be added to the turnover of the insurance company itself (i.e. its gross premium income). In this case, it is irrelevant that the capital of the subsidiary is raised by the insurance company out of its technical reserves. For the purpose of the thresholds laid down in Article 1, the aims and methods of generating turnover are immaterial.

6. The turnover of AG and Amev has, therefore, to be calculated including the turnover achieved by their real estate companies. Hence it follows that the 5 billion ECU threshold is met. Since the other requirements of Article 1(2) are also fulfilled, the notified operation has a Community dimension within the meaning of Article 1.

III. Compatibility

7. The insurance companies Amev and Group AG are major providers of insurance services with significant market positions especially in their home markets, in the Netherlands and in Belgium respectively. As the parties are to a large extent active on geographically complementary markets and do not create or strengthen a dominant position on markets where they are competitors, their merger does not raise doubts as to its compatibility with the common market.

1. Relevant markets

a. Service market

9. Amev and Group AG are mainly active in the insurance business. Both groups also have interests in banks, Amev in the Dutch VSB Groep N.V. and Group AG in the Belgian Metropolitan S.A. But there is very little geographical overlap in the banking activities of these companies and the market shares do not go beyond 5 % with the exception of one market (credit cards in the Netherlands). The impact of the merger on competition in banking markets is therefore insignificant and can be ignored.

10. Amev and Group AG offer a wide range of insurances mainly to the final consumer to cover all kinds of risks. The parties distinguish between up to 19 different insurances across the life and non-life (damage) sector. The most important insurances with regard to volume of premiums are life, automobile, fire, general liability and accidents. Amev and Group AG suggest the existence of as many relevant service markets as there are insurances for different kinds of risks. It can be left open whether this suggestion is correct, because even on this narrow market definition the merger does not raise serious doubts.

b. Geographical market

11. The activities of both companies in the insurance business are geographically widely spread. Within the EEC they offer their services in the Netherlands, Belgium, Luxembourg, France, the United Kingdom, Ireland, Spain and Denmark. However, most of the gross premium income stems from only the two countries, Belgium and the Netherlands.

12. The relevant geographical markets for the insurances in question seem to be the national markets of each Member State:

- Risk levels vary due to different legal environments and social security systems.
- Distribution systems vary from Member State to Member State.
- Public supervision and regulation of markets (inter alia for tax reasons) differ. Freedom to establish and provide cross-border services has not yet been fully effective. So far only Council Directive 88/357 for the non-life sector with regard to large risks has entered into force.

13. Again, the question of the relevant market can remain open. Even on the narrow basis of national insurance markets, which the parties claim to be the relevant geographical markets, the merger does not raise serious doubts.

2. Market shares

14. The merger of Amev and Group AG mainly concerns competition in the insurance markets of the Netherlands and Belgium. The aggregate market shares of the parties in the insurance markets of France, Denmark and Ireland are below 3 %. A significant impediment to effective competition on these markets through the merger is, therefore, unlikely. The same is true for the insurance markets in Luxembourg, the United Kingdom and Spain. The market shares of either Amev or Group AG are partly above 3 % on some of these markets. But, as only one of the companies concerned is

active on each of these markets and the market shares held by one of them do not exceed % ⁽¹⁾ (travel insurance, United Kingdom), the merger is not detrimental to the structure of competition on these markets.

a. The Dutch insurance markets

15. Although Amev is one of the largest providers of insurances in the Netherlands besides Nationale Nederlanden and Aegon, it holds, in general, market shares in the range of only % ⁽²⁾ to % ⁽²⁾. Its market share is considerably higher only in one market, called "Spaarkasbedrijf". The service provided in this market is a combination of a risk insurance and a savings scheme. Amev introduced this service a few years ago, created a niche market and remains the market leader with a % ⁽³⁾ market share as of today. Except for this market, the Dutch insurance markets are moderately concentrated.

16. Groupe AG is active on only two Dutch insurance markets where it is an almost insignificant competitor with market shares of % (life insurance) and % (fire and other damage to property). The creation or strengthening of a dominant position on these markets through the merger of Amev and Groupe AG can therefore be excluded. With regard to the Dutch insurance markets, the merger does not give rise to serious doubts as to its compatibility with the common market.

b. The Belgian insurance markets

17. Groupe AG ranks first among the major Belgian insurance companies. It is closely followed by Royale Belge. The company is particularly strong in the following four markets: life insurance, medical care, disability and fire insurance. It is, in all four markets, the market leader with market shares above 10 %. In two of these markets, Groupe AG holds market shares well beyond this level: % for other damage to property and % for disability.

18. Apart from the aforementioned markets, all other Belgian insurance markets are less concentrated. The market shares of Groupe AG do not surpass the 10 % threshold.

19. The significance of relatively high market shares for the appraisal of a merger depends, to a considerable extent, on the barriers to entry to the relevant market. It is reasonable to assume that there are significant entry barriers to the Belgian insurance markets, as indeed to other insurance markets in the Community:

- Legal requirements and prudential rules call for substantial resources of a newcomer in capital and financial reserves.
- Return on investment is slow in the initial phase after entry. There are high start-up costs for promotion and advertising.
- Competitors in neighbouring geographical markets are not yet fully free to offer cross-border services (see above).

20. For all these reasons, there are relatively few new entrants

(1) Precise figure deleted; market share is below 25 %.
(2) Precise figure deleted; market share is below 10 %.
(3) Precise figure deleted; market share is above 25 %.

to the Belgian insurance markets, as has been confirmed by the notifying parties.

21. Although the barriers to entry underline the strong position Groupe AG holds in some Belgian insurance markets, the creation or strengthening of a dominant position through the merger with Amev is not likely.

22. Amev is, like Groupe Ag in the Dutch markets, only a minor competitor on the Belgian insurance markets. The merger does not change the market position of Groupe AG in a way that it is not compatible with the common market. Amev does not offer a full range of insurances in Belgium. Where Groupe AG is strongest - in the market for disability insurances with a % ⁽⁴⁾ market share - Amev does not operate. In the other market where Groupe AG holds a strong position with a % ⁽⁵⁾ market share (other damage to property), Amev has a market share of only % and is, therefore, an insignificant competitive force. In this market, as in all the other markets where both parties are competitors, the gap with regard to market shares between Groupe AG and its nearest competitor (which is never Amev) remains quite narrow. This will not substantially change after the merger. Furthermore, there are other competitors with considerable financial resources and experience besides Groupe AG and Amev, like Royale Belge, la Baloise, DKV, Axa, Smap/Omob, Cger/Aslk, Cigna and Assubel. Where the market share of Groupe Ag does not surpass the 10 % level, Amev's market share does not exceed 2 %.

23. The establishment of a link between Groupe AG and Royal Belge through the merger with Amev, the latter having a joint venture with Royale Belge in the French insurance market, does not significantly impede effective competition among them. (Three sentences deleted here). Given the very limited scope of the joint venture, it will not have an appreciable impact on competition in Belgian markets.

IV. Comments of third parties

24. The notification of the proposed operation was published in the Official Journal of the European Communities on 24 October 1996 ⁽⁶⁾. No comments from third parties were received following that publication.

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⁽⁴⁾ Precise figure deleted; market share is above 25 %.

⁽⁵⁾ Precise figure deleted; market share is between 20 and 30 %.

⁽⁶⁾ O.J. C 268/8, 24.10.90.

For the above reasons, the Commission has 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, paragraph 1(b) of Council Regulation No. 4064/89.

For the Commission,