

*Case No COMP/M.1979 -  
CDC / BANCO URQUIJO  
/ JV*

Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION  
Date: 04/08/2000

*Also available in the CELEX database  
Document No 300M1979*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04/08/2000  
SG(2000)D/

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party**

**Subject: Case No COMP/M.1979 - CDC/BANCO URQUIJO**

Notification of 03.07.2000 pursuant to Article 4 of Council Regulation No 4064/89.

1. On 03.07.2000, the Commission received the notification of a proposed operation by which the undertakings Caisse des dépôts et consignations ("CDC", France) and Banco Urquijo of Spain ("Banco Urquijo") will acquire joint control over a Joint Venture company, named Banco CDC Urquijo S.A. ("Banco CDC Urquijo").
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<sup>1</sup> (the "Merger Regulation") and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

**I. THE PARTIES AND THE OPERATION**

3. CDC is a French public-sector institution initially established to safeguard private deposits. CDC is *inter alia* currently active either directly or through subsidiaries in banking and finance, life insurance, service and support for local development, saving funds and social housing. Most of CDC's business is achieved in France.

---

<sup>1</sup> OJ L 395, 30.12.1989, amended by OJ L 180, 9.7.1997

4. Banco Urquijo is a subsidiary of Kredietbank SA Luxembourgeoise, a Luxembourg based private and investment bank which offers a complete range of financial products and services and which is in turn owned by the Almanij Group, an international network of financial institutions and companies. Banco Urquijo is a private and investment bank based in Spain. It has concentrated its activities in the areas of multinational companies, high-income individuals and business banking providing all kinds of banking services such as specialised advice, custody, agency relating to foreign currencies and stocks, complementary banking activities (deposit, loans, transfers). Most of Banco Urquijo's business is achieved in Spain.

## **II. CONCENTRATION**

5. The Transaction consists of the acquisition by CDC and Banco Urquijo of joint control over a newly created company incorporated by them, Banco CDC Urquijo, which will carry out custody activities for institutional investors and corporate bodies in Spain. It may expand its operations into [...] [unnamed country] in the future.
6. Banco Urquijo will contribute its current institutional custody operations in Spain to Banco CDC Urquijo and will also acquire a [...] % stake in the newly created company. CDC will acquire a [...] % participation in Banco CDC Urquijo. CDC will be entitled to appoint [...] out of [...] members of the board of Directors. Decisions on strategic business issues will, however, have to pass the Supervisory Board which decides by qualified majority vote, thus requiring the approval of both shareholders. The parent companies will thus acquire joint control over Banco CDC Urquijo. Banco CDC Urquijo will be established on a lasting basis and will be vested with the necessary financial and human resources in order to perform all the functions of an autonomous economic entity. It will be able to use the CDC and Banco Urquijo brand names. Banco Urquijo will withdraw from the custodian services activities performed for institutional clients in Spain. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

7. The combined aggregate world-wide turnover of the undertakings concerned is more than €<sup>2</sup> 5,000 million (CDC € 25,700 million; Banco Urquijo (Almanij) € 15,847 million). The aggregate Community-wide turnover of the undertakings is more than € 250 million (CDC € [...] million; Banco Urquijo € [...] million) and the undertakings do not each attain more than two-thirds of their aggregate Community-wide turnover in one and the same Member State. Hence the concentration has a Community-wide dimension. It does not constitute a co-operation case under the EEA Agreement pursuant to Article 57 of that Agreement.

---

<sup>2</sup> Turnover calculated in accordance with Article 5(3) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

## IV. COMPATIBILITY WITH THE COMMON MARKET

### A. *The relevant product markets*

8. The parties consider that custodian services for institutional clients in Spain is likely to be the relevant market with respect to the transaction. The parties describe custodian services to encompass safekeeping for securities and equities (as a sub-segment of the financial services market) as well as the management of cash accounts linked to such securities and equities (sub-segment of the corporate banking market).
9. Within custodian services, the notifying parties propose to differentiate between “global custody services market”, comprising services to investment institutions owning or managing securitised investments, “domestic institutional custody services”, comprising services destined to institutions which require only domestic services (asset managers, pension funds, broker dealers, etc.) and “domestic retail custodian services”, comprising custody of securities belonging to individual clients.
10. The Commission in the case “Bank of New York/Royal Bank of Scotland Trust Bank”<sup>3</sup> has distinguished between global and domestic custodian services. In the present case this market definition remains appropriate. Whether domestic custodian services could be further subdivided into institutional custody services and retail custody services, can be left open, given that with neither of the two alternative market definitions the concentration will lead to the creation of a dominant position.

### B. *The relevant geographical markets*

11. The parties argue that “global custody services”, as implied by the name of this segment, would be a global market, in which numerous major international banks and other financial services companies are active. The parties contend that competition with regard to “retail custody services” would take place at a national level, given that customers requiring domestic services would have to be served through a local branch network. The same would hold true for “domestic institutional custody services” as such services would be provided through a local custodian.
12. Given that the proposed operation does not raise serious doubts with any of the above-mentioned definitions, the question of the exact geographic scope for the provision of custodian services can be left open in the present case.

### C. *Assessment*

13. The parties do not have any overlapping activities in any of the relevant product markets. Neither of the parties has activities in global custody services. Banco Urquijo is active in domestic retail custody services in Spain, but CDC is not active in this market, nor will the joint venture. As regards domestic institutional custody services Banco Urquijo will contribute all its activities in Spain to Banco CDC Urquijo, which in 2000 will have an estimated market share of [0-5]%<sup>4</sup> in Spain. At any rate, there will

---

<sup>3</sup> Case No IV/M.1618-Bank of New York/Royal Bank of Scotland Trust Bank, decision of 25.08.1999.

<sup>4</sup> Overall market for domestic institutional custody services and domestic retail custody service.

be no overlap in the activities between the parties and the joint venture and there will be no market share addition resulting from the operation.

14. Hence it can be concluded that the proposed operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.

## **V. ANCILLARY RESTRAINTS**

15. The parties submit that the following restrictions contained in the Shareholders Agreement would constitute ancillary restrictions.
16. Pursuant to clause [...] of the Shareholders Agreement, the parties for the life span of the Shareholders' Agreement (being [...] years at minimum), shall not directly or indirectly solicit, initiate or respond to any approach made with a view to enter into a joint venture or more generally into a transaction having an object similar of falling within the territorial scope and scope of activity of Banco CDC Urquijo, which may conflict with the purposes of the Shareholders Agreement. The territorial scope of this non-compete clause may be extended to [unnamed country] by a majority vote of [...] of the Board of Directors (clause [...] of the Shareholders Agreement).
17. Pursuant to clause [...] and Annex [...] of the Shareholders Agreement, Banco Urquijo commits itself to use exclusively Banco CDC Urquijo for certain custodian activities which are not transferred to the subsidiary (in respect of non-institutional clients) for at least a period of [...] years. Pursuant to the same provision and Annex [...] of the Shareholders Agreement, CDC undertakes to transfer to Banco CDC Urquijo its custody accounts held in Spain and maintain them at least [...] years on an exclusive basis. Pursuant to Clause [...] and Annex [...] of the Shareholders Agreement, Banco Urquijo commits that it will cause its parent KBL and Urquijo Gestión to [...] [certain businesses].
18. For none of the above restrictions have the Parties given any specific justification as to their duration ([...] years or even [...]). Neither have they given any justification for the restriction concerning activities that have not been transferred to the joint venture. A non-compete restriction may be considered as directly related to the concentration and necessary to its implementation only insofar as it concerns products and services in which the vendor (Banco Urquijo) is active upon completion of the operation and insofar as it relates to geographic markets where the vendor is already active (Spain).
19. Therefore, within the meaning of the Merger Regulation, the non-compete clause can be regarded as directly related and necessary for the implementation of the operation only for a period of three years from implementation and only with regard to Banco CDC Urquijos' activities in Spain. The remaining restrictions cannot be considered to be directly related to and necessary to the implementation of the concentration and thus ancillary in nature and are therefore not covered by the present decision.

## **VI. CONCLUSION**

20. 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 the Merger Regulation.

For the Commission,