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*Case No IV/M.207 -
EUREKO*

Only the English text is available and authentic.

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

Article 6(1)(a) INAPPLICABILITY
Date: 27.04.1992

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Brussels 27.4.92

PUBLIC VERSION

MERGER REGULATION
ARTICLE 6(1)(a) DECISION

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To the notifying parties

Dear Sirs,

Re: Case No. IV/M207 - EUREKO

Your notification pursuant to Article 4 of Council
Regulation No. 4064/89 (Merger Regulation)

1. On 20 March 1992, the undertakings Coöperatie Avéro/Centraal Beheer Groep U.A. (AVCB), Friends' Provident Life Office, Topdanmark A/S and WASA Insurance Group (WASA Sakförsäkring and WASA Livförsäkring) notified their agreement to set up a joint venture, EUREKO B.V., to which they will transfer their non-life and life insurance business outside their respective home countries.

2. After full examination of the notification, the Commission has come to the conclusion that the notified operation does not fall within the scope of the Merger Regulation.

I. THE PARTIES AND THE AGREEMENT

3. The four parties are insurance companies or groups engaged in direct non-life and life insurance, except for Friends' Provident which is only active in the life insurance sector. Each operates primarily in its own country: AVCB in The Netherlands, Friends' Provident in the UK, Topdanmark in Denmark and WASA Insurance Group in Sweden.

4. The agreement, signed on 18 March, will create a holding company, EUREKO B.V., to which they will contribute all their direct life and non-life insurance operations outside their own countries. This involves the transfer of a number of subsidiaries or minority shareholdings in the following countries: Portugal, Belgium, Italy, Spain, Luxembourg, United States, Canada, Australia and Barbados.

II. COMMUNITY DIMENSION

5. The proposed operation has a Community dimension. Calculated in accordance with Article 5(3) of the Merger Regulation, the aggregate worldwide turnover of the undertakings concerned in 1991 amounted to [...] million ECU for AVCB, [...] million ECU for Friends' Provident, [...] million ECU for Topdanmark and [...] million ECU for WASA Insurance Group. AVCB, Friends' Provident and Topdanmark achieved an aggregate Community-wide turnover of more than 250 million ECU, of which they did not achieve more than two-thirds in one and the same Member State.

III. JOINT VENTURE

Joint control

6. In principle, each of the parent companies will hold a 25% share in EUREKO. This is the situation at present following signature of the Formation Agreement and the Shareholders' Agreement. However, the precise shareholdings of the parties may fluctuate over time, depending on a number of factors, including the relative value of the international business that each of the parties will transfer to EUREKO. However, with the aim of ensuring that each shareholder has approximately equal voting and economic rights in EUREKO, the parties have agreed that none of them will hold more than 30% of the voting rights and that a shareholder with less than 20% in EUREKO will have the possibility to increase its stake with cash or shares up to 25%.

7. The initial shareholders in EUREKO are AVCB, Friends' Provident, Topdanmark and WASA Insurance Group, but further shareholders will be sought, on the basis of one new participant per geographic area. If new shareholders join, the shareholding structure will be adapted in such a way that they will acquire an equivalent stake to that of the parties and the same degree of influence in EUREKO's management as the parties have at present.

8. EUREKO will hold a stake of at least 10% in each of its parent companies' share capital and will also nominate two representatives to the supervisory board to each of them. The shareholding taken by EUREKO in Topdanmark may be of the order of 30% but EUREKO will nevertheless not be entitled to have more than two directors in Topdanmark.

9. EUREKO will be set up with a Management Board, whose members will be appointed by simple majority in the general shareholders' meeting. Its activity will be subject to the control of the Supervisory Board, to which each of the parent companies is entitled to nominate two directors.

10. The Supervisory Board is entitled to approve a number of decisions of the Management Board by simple majority or a super majority (more than two-thirds of the votes). In any case the parent companies will not have a veto right in respect of these decisions. Thus, in all areas of commercial importance, decisions can be taken by simple majority or even super majority allowing

* The figures have been deleted as they constitute business secrets. The turnover of all the parties together exceeded 5,000 million Ecu.

changing alliances in the decision-making process. The only issue which requires a unanimous vote at a general shareholders' meeting is the amendment of the list of core businesses of EUREKO.

11. The above elements indicate that there may not be enough grounds to consider that EUREKO is jointly controlled. Control would become even more diluted in the event that new shareholders joined EUREKO.

12. However, it is not necessary to definitively decide on this point since, as it is explained below, the operation leads to the coordination of the competitive behaviour of the parties and is therefore not a concentration in the sense of Article 3 of the Regulation.

Full function joint venture

13. EUREKO has been set up on an indefinite basis. The assets that will be transferred to it - together with the human and material resources - will in principle enable it to develop direct non-life and life insurance business in a number of countries. It could therefore be regarded as a joint venture performing on a lasting basis all the functions of an autonomous economic entity.

Co-ordination of competitive behaviour

14. EUREKO and its parent companies will be active in the same product markets with the exception that Friends' Provident is not present in the non-life insurance market and the parent companies will not be active in the travel insurance market, which will be entirely transferred to EUREKO. With regard to re-insurance, the parties' activities are marginal.

15. As far as the geographic area of activities is concerned, there is only a slight overlap as it was agreed that, in principle, the parent companies would retain their domestic business while their other 'international' business would be transferred to EUREKO. The only overlap therefore will be in geographic areas where the parent companies are not active in a given product market in their own countries. Thus EUREKO will be active in the life and travel insurance markets in the UK as Friends' Provident is only active in the non-life business**.

16. However, the following reasons lead to the conclusion that the operation will give rise to co-ordination of the competitive behaviour of the parties:

- a) According to the objectives of the joint venture described in the shareholders' agreement and in the briefing paper for the Commission, EUREKO must be considered, to a great extent, as a vehicle for the co-ordination of the parent companies:
 - "The EUREKO joint venture is an alliance between companies that wish to combine their resources in order to provide improved services in insurance ...

** Material error. It should read: Thus EUREKO will be active in the non-life and travel insurance markets in the UK as Friends' Provident is only active in the life business.

- The long term aim of the alliance is for the shareholders to achieve increasingly close co-operation and interdependence, thereby joining the shareholders as one economic and organisational group.
- The company will be a vehicle for the exchange of know-how and experience within the core business of the alliance ...
- [...]***

EUREKO's function as an instrument for co-ordinating the parent companies in relation to its own business is further emphasised when it is taken into account that the aim of the initial shareholders is to seek further shareholders on the basis of one participant per local market. It could be the case that after some time EUREKO itself will not conduct business in the various Member States but will simply co-ordinate its shareholders' activities on their domestic markets. This could lead to a complete division of the markets.

b) Even assuming that the insurance markets (with the exception of the re-insurance market which is considered to be worldwide) currently can be considered to be national, the operation as notified gives rise to co-ordination of the competitive behaviour for the following reasons:

- The parties will be operating in neighbouring geographical markets and will, therefore, remain potential competitors. This is in particular true for industrial clients and large risk which do not depend necessarily on national insurance companies.
- The currently assumed existence of national markets will not be maintained: a gradual process of opening of national markets is taking place which will be aided by the Community harmonisation efforts in the field of insurance. This seems also to be confirmed by the parties: "with increased liberalisation of the insurance industry within the EC and also within the wider European economic area, the insurance sector within Europe is facing rapid change as national barriers diminish". Because of this opening up of the markets, the parties will become at least potential competitors in the near future.
- The possibility for potential competition is further strengthened by the fact that EUREKO will be active in the geographic areas of its parent companies in the travel insurance business and in the UK in non-life insurance. Having its own distribution network will facilitate enlargement of the product range. This seems to be true in particular for the UK where EUREKO will take over the non-life business of Topdanmark.
- The lack of joint control in EUREKO which limits the influence of each parent in the joint venture's future

*** Deletion - business secrets

business, the potential for competitive overlapping with regard to industrial clients and large risks and the opening of their respective domestic markets are reflected in a non-competition clause with many exceptions. The principal exception is that EUREKO will be able to enter the home market of one of its parent companies with its consent, and the same applies to the parent companies trying to enter each other's market or EUREKO's area of activities, the only requirement being the consent of the affected party. This shows that the operation will only result in a partial withdrawal of the parent companies.

IV. CONCLUSION

17. For the above reasons, and in particular in view of the fact that there is a risk of co-ordination which is likely to lead to a division of markets, the Commission has concluded that the notified operation does not constitute a concentration within the meaning of Article 3 of the Merger Regulation and consequently does not fall within the scope of application of that Regulation. This decision is adopted in application of Article 6(1)(a) of the Merger Regulation.

18. Following the request of the parties, the Commission has decided to examine the compatibility of the operation under Article 85 of the EEC Treaty and will therefore treat the notification pursuant to Article 5 of Commission Regulation No. 2367/90 as an application within the meaning of Article 2 or a notification within the meaning of Article 4 of Regulation No. 17.

For the Commission