

***Case No COMP/M.2602 -
GERLING / NCM***

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

Article 6(2) NON-OPPOSITION
Date: 11/12/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11/12/2001

SG (2001) /D292690

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

Subject: Case No COMP/M.2602 - Gerling/NCM

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

1. On 25 October 2001 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which the German undertaking Gerling-Konzern Versicherungs-Beteiligungs AG "Gerling" acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the Dutch undertaking NCM Holding N.V. (Nederlandsche Credietverzekering Maatschappij) "NCM".
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 and that, in view of the commitments made by the notifying undertaking, there are no serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Gerling offers insurance solutions for corporate and personal enterprises through four divisions: Industry, Commercial/Private, Credit and Reinsurance. It is represented in all five continents and is owned directly or indirectly by Dr. Rolf Gerling (70%) and by Deutsche Bank (30%).

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

4. NCM, currently a subsidiary of Swiss Reinsurance Company “Swiss Re”, is active in the field of receivables management with credit insurance as its core business. Swiss Re is a Swiss corporation active in the provision of risk transfer services, including life and non-life reinsurance, risk retention financing and asset management services on a world-wide basis.

II. THE CONCENTRATION

5. Gerling and Swiss Re will establish a new company “HoldCo” to which they will contribute their credit insurance activities. Following the contribution of Gerling’s and Swiss Re’s credit insurance businesses to HoldCo, Gerling will hold 51% of the shares, Swiss Re [...]%, ABN Amro Bank N.V. “ABN” [...]% and ING Bank N.V. “ING” [...]%. Ninety days after incorporation of HoldCo, an investment company designated by Gerling will buy the shares held by both ABN and ING. The investment company will also buy [...] of the shares held by Swiss Re.
6. As a result of the transaction, Gerling will have control of HoldCo and thereby acquire sole control over the entire business of NCM.

III. COMMUNITY DIMENSION

7. In 2000 Gerling and NCM had a combined aggregate world-wide turnover in excess of EUR 5,000 million² (Gerling: EUR 9,545 million; NCM: EUR 545 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Gerling: EUR [...] million; NCM: EUR [...] million) and 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, but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant product market

8. The product market affected by the present operation is the domestic and export credit insurance market, usually referred to as *delcredere insurance*.
9. In its previous decisions³, the Commission divided the global credit insurance business into four different market segments: delcredere insurance (comprising domestic credit insurance, export credit insurance and capital goods insurance), consumers credit insurance, fidelity insurance and guarantee insurance.
10. Domestic credit insurance protects the policyholder against insolvency of its domestic customers. Export credit insurance protects the policyholder against insolvency of its customers abroad. Capital goods credit insurance covers insolvency risks deriving from the purchase of infrastructure in the home market or abroad.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

³ See Case No. IV/M.1082, *Allianz/AGF* of 8 May 1998.

11. According to the parties, domestic and export credit insurance constitute one single product market. The parties however argue that capital goods credit insurance should constitute a separate market, as, unlike *delcredere* insurance policies covering only short-term accounts, capital credit insurance operates on a medium and long-term basis. Furthermore, capital goods credit insurance policies relate to one specific business contract or risk which is evaluated individually, whereas, in contrast, *delcredere* cover is provided for an unspecified number of contracts and customers. On the other hand, the parties propose to include other products in the relevant market. In their view there are various possibilities for the supplier to deal with the risk of insolvency of the customer or non-payment based on other grounds. Such possibilities include self-insurance, letters of credit and factoring⁴.
12. The market investigation therefore addressed three main questions:
 - should capital good credit insurance be included in the relevant product market as suggested by previous decisions;
 - should other products, such as factoring and letters of credit be included in the relevant product market; and
 - should the relevant markets be further subdivided according to the customer group.
13. The market investigation confirmed the parties' suggestion that the capital goods credit insurance should constitute a separate market. Capital goods credit insurance covers insolvency risks deriving from the purchase of infrastructure in the home market or abroad. Unlike the *delcredere* insurance policies covering only short-term account, capital goods credit insurance operates on a medium- and long-term basis. Furthermore, the capital goods credit insurance policies relate to one specific contract, which is evaluated individually, whereas, in contrast, *delcredere* cover is provided for a portfolio of customers.
14. The market investigation further confirmed that most of the customers considers letters of credit and factoring as specific instruments, non substitutable to credit insurance. Factoring is not just an instrument to protect against the loss of receivables but mainly a financing instrument. Letters of credit are also not directly in competition with credit insurance as they are expensive, associated with extensive administrative procedures and cover only single transactions.
15. Finally, the market investigation did not confirm the necessity for a further subdivision of the market according to the customer group. Even though the policies for SMEs tend to be more standardised and the policies for large multinational companies tend to be more tailor made, the main features of both types of policies remain the same. Also from the supply side point of view the necessary know-how and resources of insurance companies' to conclude policies with large multinationals and SMEs do not differ significantly.
16. On the basis of the above it may be concluded that the relevant product market is the market for domestic and export credit insurance, also referred to as *delcredere insurance*.

⁴ In *Allianz/AGF*, the Commission discussed the inclusion of factoring and letters of credit in the relevant product market but nevertheless concluded that these products are not yet sufficiently developed to substitute credit insurance products. See also Case No. IV/M.813, *Allianz/Hermes* of 27 September 1996.

B. Relevant geographic markets

17. In *Allianz/AGF*, the Commission found that domestic and export credit insurance represent a driving force in the internationalisation and concentration of the market as multinational customers prefer to obtain group-wide coverage from a single source. On the other hand, small firms and local business partners, according to the Commission, usually turn to local firms. For the purpose of the assessment of that particular case, the Commission did not need to reach a final conclusion and consequently left the final definition of the geographic markets open.
18. The parties to the present case submit that the relevant geographic market for delcredere insurance should be regarded as European in scope (EEA-wide market) from the supply-side perspective, because of the scope of activity of the major delcredere insurers, the low barriers to expansion into other Member States and the internationalisation of the product itself.
19. Similarly, the parties submit that the relevant geographic market should comprise at least the EEA also from the demand-side substitutability as Gerling and NCM achieve approximately 55% and between 50% and 60% of their respective premium income with customers having insurance that covers subsidiaries in more than one country. The parties further submit that, as a result of the single European currency, coupled with EU regulatory and legal actions designed to increase cross-border transparency, the share of international customers would be steadily growing. Furthermore multinational customers would require firm-wide policies covering their trans-national operations under a unified scheme and would not want to conclude different insurance policies for each Member State in which they are active. The parties consequently conclude that credit insurers in one Member State are competing for such customers with credit insurers with a seat in other Member States.
20. To support their argument, the parties emphasise the role of brokers, which are described as sophisticated buyers comparing delcredere insurance policies on an international level. The parties further indicate that leading brokers are active on a trans-national level, that smaller brokers are forming international alliances and that together with other intermediaries, brokers are estimated to sell and manage 50% of all delcredere insurance policies sold in Europe.
21. Contrary to the parties' suggestion of an EEA-wide market for credit insurance, the market investigation confirmed only a trend towards a growing internationalisation of the market. This trend is caused by the liberalisation of the European insurance markets and the internationalisation of business itself. As a result, multinational customers tend to conclude global group-wide policies covering all of their foreign subsidiaries.
22. The market investigation, however, confirmed the national scope of the credit insurance business for the reasons outlined in the following paragraphs.
23. First, local presence is essential for the credit insurance business, as personal contacts are required during the customer acquisition phase and for policy handling. A precise knowledge of the local business community is equally crucial. The use of Internet cannot substitute personal contact; it mostly represents an additional service that the credit insurers offer to their clients.

24. Second, even though multinational customers conclude global policies, in most of the cases their subsidiaries conclude additional sub-policies with subsidiaries or branches of the credit insurer.
25. Third, the market investigation has shown that the local presence is needed for achieving market shares above marginal levels in a given country. It also follows from the replies to the questionnaire that most of the customers would not contract or have not considered contracting outside their country. Therefore, credit insurers are currently setting up new branch offices in countries where they were not present before.
26. Finally, the market investigation showed additional elements, which clearly confirmed the heterogeneity of conditions of competition in different national markets, such as the use of brokers and the level of penetration of credit insurance in the national economies.
27. It can be concluded from the above that the delcredere insurance market is at this stage of its development still national in scope.

C. Assessment

28. The proposed concentration is likely to create a stronger competitor at the European level to the overall market leader, the Allianz Group, formed by Euler and Hermes. After completion, Allianz would still be the largest player in the EU, holding a market share of [40-50]%, followed by Gerling/NCM with a market share of [20-30]% and Coface with [15-25]%.
29. The geographic scope of the parties' activities is mostly complementary, thus enhancing their geographic presence. In most of the national markets the transaction would not lead to significant overlaps. In Belgium and in the United Kingdom, overlaps exist but do not raise competition concerns, as the merged entity's combined market shares will remain below 40%. In both countries, the clear market leader remains the Allianz Group and there are other established players present on the market.
30. However, there exist overlapping activities of the parties and relatively high market shares (above 50%) in four national markets, i.e. the Dutch, Danish, Norwegian and Swedish market. The market investigation, therefore, focused on these four countries.

The Netherlands

31. The Dutch market is characterised by a long-lasting monopoly of NCM, which was formed in 1925 by the Dutch Government to assist Dutch companies in export credit insurance. NCM still acts as the exclusive export credit agency of the Dutch government and therefore provides long-term credit insurance, unlike its competitors. Until the liberalisation of the market, the only competitor was L'Assurance de credit (Namur) "Namur" (which was later acquired by Gerling), established in 1970.
32. In the 1990's, new competitors changed the market situation in the Netherlands, leading to a significant decrease in NCM's market share. The last five years' development of the Dutch delcredere insurance market is as follows:

The Netherlands	1996	1997	1998	1999	2000
NCM	[90-95%]	[85-90%]	[80-85%]	[75-80%]	[70-75%]
Gerling	[0-5%]	[0-5%]	[5-10%]	[5-10%]	[5-10%]
Gerling/NCM	[90-95%]	[90-95%]	[85-90%]	[80-85%]	[80-85%]
Hermes/Euler	[5-10%]	[5-10%]	[5-10%]	[10-15%]	[10-15%]
Interpolis ⁵		entry	[0-5%]	[0-5%]	[0-5%]
<i>Hermes/Euler and Interpolis</i>	<i>[5-10%]</i>	<i>[5-10%]</i>	<i>[5-10%]</i>	<i>[10-15%]</i>	<i>[15-20%]</i>
Gothaer	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]
Coface			entry	[0-5%]	[0-5%]
Total Market (MEUR)	[170-175]	[170-175]	[165-170]	[175-180]	[180-185]

Table 1: Overview Dutch market; Source parties and competitors

33. The result of the transaction would be to give an [80-85] % market share ([70-75%] NCM, [5-10%] Gerling) to the new entity, compared to the [15-20%] held by Hermes/Euler⁶, the only other significant market player.
34. The parties argue that due to the important role of intermediaries on the Dutch market (almost 80% of the NCM policies are sold through brokers or banks), the very high market shares of the new entity would not impede efficient competition.
35. However, the Dutch credit insurance market is a stagnating market with a high penetration rate. This renders new market entry and/or expansion difficult. This can be concluded from the rather weak performances achieved by the more recent entrants Gothaer (entered in 1996 and currently holds a [0-5%] share) and Coface (entered in 1998 and currently has a [0-5%] share) over the last years. In addition, a number of Dutch customers have expressed concerns about the elimination of Gerling as a significant competitor in the Dutch market.
36. In conclusion, the transaction raises serious doubts that the entity would create or strengthen a dominant position on the Dutch delcredere insurance market.

Denmark

37. The recent development of the Danish delcredere insurance can be summarised as follows:

Denmark	1996	1997	1998	1999	2000
NCM	n.a.	[60-65%]	[60-65%]	[60-65%]	[60-65%]
Gerling	n.a.	[0-5%]	[0-5%]	[0-5%]	[0-5%]
Gerling/NCM	n.a.	[60-65%]	[60-65%]	[65-70%]	[65-70%]
Hermes/Euler ⁷	n.a.	[30-35%]	[30-35%]	[30-35%]	[30-35%]
Coface					entry
Total Market (MEUR)	n.a.	[30-35]	[30-35]	[35-40]	[35-40]

Table 2: Overview Danish market; Source parties and competitors

38. NCM, currently holds a market share of [60-65%]. It entered the market in 1995 by acquiring EKR, the former Danish export credit agency. Hermes/Euler, holds [30-35%] of the market. It entered the Danish market in 1997 by acquiring Dansk Kaution. Gerling entered the market in 1996. Coface just opened up an office in 2001 with the main objective to provide services to its international customers.

⁵ Controlled by Euler.

⁶ Combined market shares of the Allianz controlled companies Hermes-Euler and Interpolis.

⁷ In 1999 Hermes/Euler bought the delcredere insurance business from Dansk Kaution.

39. The transaction raises serious doubts that the concentration could lead to the creation or strengthening of a dominant position of the parties on the Danish delcredere insurance market for the reasons mentioned below.
40. First, as a result of the proposed transaction, the new entity will hold a very high market share of [65-70 %] with only one well-established competitor: Hermes-Euler (Allianz). Second, the Danish market is characterised by relatively high penetration and limited growth. These characteristics make it difficult for a new entrant to achieve market shares above a marginal level, as shown by the slow development of Gerling itself over the last few years. Third, compared to other markets, intermediaries penetration is relatively low on the Danish delcredere insurance market (around 20%). This limited presence of intermediaries results in new entrants having to build up their own distribution networks from scratch.
41. Furthermore, the concentration raises serious doubts due to the vertical integration of the parties factoring and credit insurance business in Denmark. Factoring companies reinsure their clients' receivables risk by buying credit insurance. This makes them dependent on the credit insurers' services. NCM is vertically integrated with Forenade Factors and BG Factoring, two providers of factoring in Denmark, whose combined market share is [30-40]%. This makes them the clear market leader. Strong concerns were raised by Danish factoring companies that the merged entity could foreclose the provision of their services, which would consequently make them dependent on Hermes, the only remaining non-integrated delcredere insurer on the Danish market.
42. The market investigation has confirmed that the dependency on a single remaining non-integrated supplier of credit insurance would likely result in increased costs to Gerling/NCM's factoring competitors and ultimately lead to the creation of a dominant position of the parties on the Danish factoring market.

Sweden

43. Currently, there are three significant players active in the Swedish delcredere insurance market. NCM and Hermes entered the market in 1992, Gerling entered in 1997. Coface just opened up an office in 2000. The Swedish market's recent history can be summarised as follows:

Sweden	1996	1997	1998	1999	2000
NCM	[60-65%]	[55-60%]	[55-60%]	[45-50%]	[50-55%]
Gerling	[0-5%]	[0-5%]	[0-5%]	[10-15%]	[10-15%]
Gerling/NCM	[60-65%]	[55-60%]	[55-60%]	[55-60%]	[60-65%]
Hermes/Euler	[35-40%]	[35-40%]	[35-40%]	[40-45%]	[35-40%]
Coface					entry
Total Market (MEUR)	[10-15]	[10-15]	[10-15]	[15-20]	[15-20]

Table 3: Overview Swedish market; Source parties and competitors

44. Despite Gerling/NCM's relatively high combined market shares ([50-55%] NCM, [10-15%] Gerling), the concentration would not lead to serious doubts on the Swedish delcredere insurance market for the following reasons:
45. Sweden is characterised by a small but increasing market volume and a very low penetration rate. Nevertheless, a rapid development has occurred recently, with more than [60-65%] growth over the last five years. These features facilitate market entry and achievement of relatively high market shares in a short time-period, as shown by Gerling's performance ([10-15%] in a 4 years time).

- 46. Due to Swedish companies’ advanced reporting requirements and shorter payment terms compared to most part of the Member States⁸, self-insurance is the preferred means of receivable management for Swedish companies. This specific market characteristic appears to put continued downward pressure on the delcredere premiums’ level in Sweden.
- 47. Intermediaries play a relatively important role in the Swedish market as a large part of all the policies (around 40%) is sold through their channels. Due to the importance of intermediaries, distribution expenditure requirements are lower in Sweden. This can facilitate new market entry expansion by companies, such as Coface, which has recently opened an office in this country.
- 48. Finally, in the market investigation, customers have not raised serious competition concerns on HoldCo’s position on the Swedish delcredere insurance market. Some customers expect that the transaction would result in a better quality of services due to the enhanced geographic presence of the new entity.

Norway

- 49. With regard to the Norwegian delcredere insurance market, its development over the last five years is as follows:

Norway	1996	1997	1998	1999	2000
NCM	[25-30%]	[25-30%]	[20-25%]	[15-20%]	[20-25%]
Gerling	[40-45%]	[40-45%]	[40-45%]	[40-45%]	[35-40%]
Gerling/NCM	[65-70%]	[65-70%]	[60-65%]	[60-65%]	[60-65%]
Hermes/Euler	[0-5%]	[0-5%]	[5-10%]	[10-15%]	[20-25%]
GIEK	[25-30%]	[30-35%]	[25-30%]	[25-30%]	[15-20%]
Coface					entry
Total Market (MEUR)	[5-10]	[5-10]	[5-10]	[10-15]	[10-15]

Table 4: Overview Norwegian market; Source parties and competitors

- 50. In addition to GIEK ([15-20%] market share), the Norwegian state-owned credit insurance agency, the merged entity will face Hermes ([20-25%]) as a well-established competitor active in the market since 1996, and Coface, which entered the market recently.
- 51. The proposed transaction would lead to a significant addition of market shares, giving HoldCo a clear leading position with around [60-65%] of the market. The new entity would, post-transaction, be faced by two strong competitors. Hermes/Euler, on the one hand, has proven its capabilities as a viable competitor over the last years by increasing its market share from its entry in 1996 up to [20-25%] in 2000. GIEK, on the other hand, benefits from a monopoly position over the distribution of the state-guaranteed medium and long-term credit insurance business, which gives it a competitive advantage vis-à-vis its rivals by being able to provide the full range of receivables management to its customers. Furthermore GIEK has removed its competitive disadvantage on the export credit insurance business by concluding a strategic alliance, whereby it becomes a member of Coface’s world-wide CreditAlliance network. This co-operation will enable GIEK to significantly increase its competitiveness regarding its international customers.
- 52. Moreover intermediaries play a relatively important role in the Norwegian credit insurance market as a large part of all the policies (around 40%) is sold through such intermediaries.

⁸ 37 days in Sweden compared to 120 in Italy

The intermediaries can facilitate new market entry and further development of the Norwegian credit insurance market.

53. In the light of the above, the concentration does not raise competition concern on the Norwegian delcredere insurance market.

V. COMMITMENTS SUBMITTED BY THE PARTIES

54. In order to remove the concerns raised by the operation, Gerling submitted undertakings as regards the anti-competitive effects of the proposed concentration pursuant to Art. 6(2) of the Merger Regulation in relation to the Dutch and Danish credit insurance markets. The text of these undertakings is annexed and forms integral part of this decision.

55. The proposed undertakings for both markets are substantially the same. They consist of a divestiture of the Dutch and Danish credit insurance business conducted by Gerling. However, they only include portfolios of credit insurance policies provided by Gerling to customers located in the respective countries, but exclude Gerling's international credit insurance policies serviced by Gerling's Dutch and Danish branches. The divested business includes also the employees, all related tangible assets and the provision of access to all documents to the extent that this is reasonably needed to operate it as a viable business.

Assessment

56. With regard to the Dutch and Danish credit insurance market, the proposed undertaking will reduce the addition of market shares to a marginal level. The exemption of policies issued for international customers covering several countries concerns only large multinational customers and is justified by the fact that the divestiture of a part of an international policy is not feasible without affecting the remaining parts of the policy. Indeed, an isolated transfer of an insurance cover would not be in the interest of the customer and is likely to be refused.

57. Moreover, the so remaining overlap, created by the transaction, of below 1% on the Dutch market and below 0.5% on the Danish market will not significantly impede competition on these markets. The divested businesses, acquired by a new or already existing competitor, will facilitate its development, which will remove the possible anti-competitive effects of the concentration. The transfer of the employees, assets and necessary information will ensure that the new owner of the former Dutch and Danish Gerling branch offices will be able to be a viable competitor on these two markets.

58. As regards the vertical effect on the Danish market the proposed undertaking will enable the establishment of a new viable non-integrated credit insurer, therefore maintaining the number of non-integrated credit insurers offering their services to factoring companies.

Conclusion on the Commitments submitted by the parties

59. For the above-mentioned reasons the Commission came to the conclusion that the commitments described above represent a sufficient remedy to eliminate the serious doubts raised by the concentration on the Dutch and Danish delcredere insurance markets, as well as on the Danish factoring business. Therefore, the undertakings are sufficient to eliminate the serious doubts as to the concentration's compatibility with the common market.

VI. CONDITIONS AND OBLIGATIONS

60. Pursuant to the second subparagraph of Article 6 (2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the

undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

61. The requirement for achievement of each measure that gives rise to the structural change of the market is a condition, whereas the implementing steps, which are necessary to achieve this result, are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands; where the undertakings concerned commit a breach of an obligation, the Commission may revoke its clearance decision, acting pursuant to Article 6(3) (b) of the Merger Regulation⁹.
62. In view of the foregoing, the Commission's decision in the present case must be conditional upon full compliance with the divestment of the Danish and Dutch credit insurance business operated by Gerling as set out in sections 1, 2, 7 of the commitments annexed, since only by fulfilling them the structural change on the relevant markets may be achieved. The other undertakings constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended.

VII. CONCLUSION

63. For the above reasons, the Commission has, subject to full compliance with the submitted undertakings, 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) and 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission
Mario Monti
Member of the Commission

⁹ cf. the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

ANNEX
Case M. 2602 – Gerling/NCM

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89 as amended (the “Merger Regulation”), Gerling-Konzern Versicherungs-Beteiligungs AG (hereinafter “Gerling”) hereby provide the following Commitments (hereafter “the Commitments”) in order to enable the European Commission (hereafter “the Commission”) to declare the acquisition of control of the undertaking Nederlandsche Credietverzekering Maatschappij N.V. (“NCM”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (hereafter “the Decision”).

These Commitments shall take effect upon the date of adoption of the Decision.

Any term used in this text shall be interpreted in the light of the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98¹⁰.

Section A. Definitions

In these Commitments, the following expressions shall have the following meaning:

Effective Date: the date of the Decision.

Gerling: Gerling-Konzern Versicherungs-Beteiligungs AG, incorporated under the laws of Germany and registered with the Commercial Register of the Local Court in Cologne, and includes all of its successors and assigns, the companies under its control, and the directors, officers, managers, agents and employees acting for or on behalf of it.

Gerling/NCM: the new company to which Gerling’s and NCM’s credit insurance activities will be contributed and of which Gerling has control as a result of the transaction.

NCM: Nederlandsche Credietverzekering Maatschappij N.V., incorporated under the laws of the Netherlands, and includes all of its successors and assigns, as well as the directors, officers, managers, agents and employees acting for or on behalf of it.

Subsidiaries: all undertakings currently or in future controlled¹¹ by Gerling.

The Closing Date: the date of the transfer of the legal title of the Divested Business to the Purchaser.

The Countries Concerned: The Netherlands and Denmark.

¹⁰ *Official Journal C 68, 02.03.2001, pages 3-11.*

¹¹ To be interpreted on the basis of Article 3 (3) of Council Regulation (EEC) No 4064/89 and the Commission notice on the concept of a concentration under Council Regulation (EEC) No 4064/89, *Official Journal C 66, 02.03.1998, page 5.*

The Divested Business: the business or businesses as defined in Section B that the Parties commit to divest within the time period provided for in Section D.

The Divestment Trustee: one or several legal or natural persons, independent from the Parties, which is approved by the Commission and appointed by Gerling, which has received from Gerling the irrevocable and exclusive mandate to sell the Divested Business to a Purchaser at no minimum price.

The Extended Divestment Period: the period from the date of expiration of the First Divestment Period within which the Divestment Trustee shall have an irrevocable and exclusive mandate from the Parties to sell the Divested Business at no minimum price.

The First Divestment Period: the period within which the Parties can propose a Purchaser for the Divested Business.

The Hold Separate Manager: the person employed by each Divested Business, who will be in charge of running the day-to-day business under the authority of the Monitoring Trustee.

The Monitoring Trustee: one or several natural or legal person, independent from the Parties, which are approved by the Commission and appointed by Gerling, which has the duty to monitor and to ensure that Gerling comply with the conditions and obligations under these Commitments.

The Personnel: the personnel necessary for the proper and continuous operation of the Divested Businesses by a Purchaser.

The Purchaser: the independent viable existing or potential competitor approved by the Commission as acquirer of the Divested Business in accordance with the criteria set out in Section E.

Section B. The Divested Business

Identification of the Divested Business

1. Gerling agrees to divest, or procure the divestment of, the Divested Business, consisting of the Danish Business and the Dutch Business, to the Purchaser. This divestment should restore effective competition on a lasting basis in the market for credit insurance business in the Dutch and Danish credit insurance markets and thus resolve the competition problems identified by the Commission thereby rendering the proposed concentration compatible with the common market and the EEA Agreement.

Definition of the Divested Business

2. The Divested Business consists of

- the Danish credit insurance business currently conducted by Gerling (“Danish Business”);
- the Dutch credit insurance business currently conducted by Gerling (“Dutch Business”); and

including:

- (a) the portfolio of credit insurance policies, i.e. all credit insurance policies provided by Gerling to customers located in the Netherlands and Denmark, provided that, despite Gerling’s best efforts to make the customers stay with the Divested Business, the companies

insured under these policies do not object to this transfer within the applicable statutory time limits; and

(b) as far as legally possible, all tangible assets that comprise the Divested Business including, but not limited to, fixed assets and fixtures, equipment, inventory, materials and supplies, used in the Divested Business; all agreements, office and other leases, commitments and understandings of the Divested Business, including supply agreements; all customer records; and all other records in relation to the Divested Business; and

(c) as far as legally possible and objectively required by the purchaser to continue to operate the Divested Business as a viable business, access to all information that is needed to operate the Divested Business as a viable credit insurance business, including the possibility to make copies of all documents containing such information or electronic copies of databases storing such information.

As far as the transfer of assets or access to information in accordance with paragraph 2 (b) and (c) above requires the approval of third parties, Gerling will use its best efforts to obtain such approvals.

Present structure of the Divested Business

3. The present legal and functional structure of each Divested Business as operated to date (including the organisational chart) are described in the schedules attached to these Commitments. The Parties commit that these schedules identify all the relevant functions of the Divested Business, including, but not limited to, underwriting, distribution, back office and other related services, and together with all the relevant Personnel, their functions and their employment status.

Transfer of personnel

4. The Divested Business shall be divested as a going concern. The Parties commit to transfer to the Purchaser all the Personnel providing local underwriting, distribution, back office and other related services in relation to the Divested Business. This transfer will be achieved in the following manner:
 - (a) Ensuring the compliance with all applicable labour and employment laws, in particular (where relevant) with the Council Directives on collective redundancies¹², on safeguarding employees rights in the event of transfers of undertakings¹³ and on informing and consulting employees¹⁴ as well as with national provisions implementing these Directives.
 - (b) Gerling shall, subject to customary confidentiality assurances, permit prospective purchasers of the Divested Business to have reasonable access to the Hold Separate Manager of each Divested Business to discuss the transfer of the Personnel on the basis of the result of the work described under (a) and (b) above. The Hold Separate Manager shall, subject to review by the Monitoring Trustee, decide upon the requests of prospective purchasers to have access to the personnel of the Divested Business.

¹² Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

¹³ Council Directive 77/187/EC of 14 February 1977 1998 on the approximation of the laws of the Member States relating to the safeguarding of employees rights in the event of transfers of undertakings, businesses or parts of a business as amended by Council Directive 98/50/EC.

¹⁴ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, as amended by Directive 97/74/EC.

(c) Gerling and/or the Hold Separate Manager shall provide to the Purchaser information relating to the Personnel to enable the Purchaser to make offers of employment taking into account all applicable labour and employment laws.

(d) Gerling shall waive all contractual rights concerning the Personnel of the Divested Business in order to facilitate the immediate transfer of the Personnel.

5. If the Purchaser wishes that all or any of the Personnel shall not be transferred, Gerling shall ensure that the Purchaser indicates to the Commission why it considers not necessary to have access to the Personnel.

Customer list

6. The customer list as referred to in these Commitments shall comprise all the customers in the Danish and Dutch credit insurance market with whom the Divested Business has credit insurance policies in place ("Customer List").

Non-divested businesses

7. (a) The Divested Business shall not include:

Gerling's international credit insurance policies serviced by Gerling's Danish and Dutch branches, i.e. policies for Danish and Dutch subsidiaries of parent companies that acquired an international Gerling Master Policy in another country (so-called subsidiary policies) and international master policies with a Danish or Dutch parent company also covering foreign subsidiaries of this parent company (so-called parent policies).

(b) The Customer List shall not include the customers under subsidiary and parent policies.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

8. Gerling undertakes to preserve from the Effective Date the full economic viability, marketability and competitiveness of the Divested Business until the Closing Date, in accordance with best commercial practice, as shall be monitored by the Monitoring Trustee in accordance with paragraphs 25-36. In this regard Gerling undertakes to reduce to the minimum any possible risk of loss of competitive potential of the Divested Business resulting from the uncertainties inherent to the transfer of a business. Pending divestiture, the Parties shall enable the Hold Separate Manager of each Divested Business to manage the Divested Business in the best interest of the business. In particular, Gerling undertakes not to carry out any act upon its own authority which may have a significant negative impact on the economic value, the management or the competitiveness of the divested Business until the Closing Date. Gerling also undertakes not to carry out upon its own authority any act which may be likely to alter the nature of or the scope of activity of the Divested Business, or the industrial or commercial strategy or the investment policy of the Divested Business. Sufficient resources shall be made available for the business to develop until the Closing Date, based on the approved strategic and business plans.

Hold-separate obligations of Parties

9. Gerling commits to continue to operate the Divested Business in accordance with its previous business practice. In particular, Gerling will apply the same principles of signing up new customers in the Netherlands and Denmark as it presently applies. Until the day on which Gerling has complied with the present undertakings in accordance with paragraph 18 below, Gerling will not sign policies with customers that it did not accept for the Divested Business without prior approval of the Monitoring Trustee. The Monitoring Trustee may grant the approval if Gerling shows that the non-

acceptance for the Divested Business is objectively justified by differences in the terms of the policies offered by the Divested Business, on the one hand, and Gerling/NCM, on the other. Furthermore, until the aforementioned date, Gerling will inform the Monitoring Trustee about all customers that sought a credit insurance from the Divested Business and that Gerling did not accept, and about all new customers signed up by Gerling/NCM in the Countries Concerned, the latter on a monthly basis. At the request of the Monitoring Trustee, Gerling will provide reasons for the rejection of a potential new customer. Gerling will also provide the Monitoring Trustee with the underwriting guidelines for the Divested Business, i.e. the guidelines which specify the terms and conditions under which the Divested Business is permitted to sign up new customers without prior approval of Gerling.

10. Prior to the Closing Date, Gerling shall assist the Monitoring Trustee in ensuring that the Divested Business is managed as a distinct and saleable entity separate from the retained businesses of the Parties. The Monitoring Trustee shall in particular ensure that the Divested Business shall have its own management, for which the Hold Separate Manager is responsible. The Divested Business shall be managed in the best interest of the business and ensuring its continued viability and marketability
11. The underwriters in the countries in which the Divested Business is located will continue to provide underwriting services to Gerling for Gerling's credit insurance operations outside of the Countries Concerned for a transitional period of [...].

Non-compete clause

12. Gerling commits to abstain absolutely, and to procure that Subsidiaries shall abstain absolutely, pending divestiture and for a period of two years after the Closing Date, from carrying on or seeking any business with any of the customers of the Divested Business on the Customer List.

Non-solicitation clause

13. Gerling shall take all reasonable steps, including appropriate incentive schemes, to cause all Personnel listed in schedule 1 – 4 as currently employed by the Divestment Business to remain with the Divested Business. The incentives shall be agreed with the Commission upon recommendation of the Monitoring Trustee and after having heard the Hold Separate Manager. The incentives shall be determined on the basis of industry practice.
14. Gerling undertakes not to hire or solicit, and to procure that Subsidiaries, in particular Gerling/NCM, shall not hire or solicit, the Personnel transferred with the Divested Business for a period of two years after the Closing Date. Gerling shall ensure that any of the personnel retained who have been employed by or seconded to the Divested Business within the last two years, as listed in Schedule 1-4, and any of the personnel who might not remain with the Divested Business, shall not be employed by or seconded to Gerling/NCM, and shall not be assigned to any Gerling business unit that directly or indirectly competes with the Divestment Business for a period of two years after the Closing Date.

Transitional Arrangements

15. Gerling commits, unless otherwise agreed with the Purchaser, to procure that, with respect to all contracts of the Divested Business with the Parties existing at the Effective Date and for a transitional period of up to two years after the Closing Date, the Divested Business shall be entitled to be supplied with services from Gerling at terms and conditions that are equivalent to the terms and conditions that are made available at present to the Divested Business. This obligation of Gerling applies only as far as such services are objectively required by the purchaser to operate the Divested Business as a viable business and as far as such services cannot reasonably be purchased on the market or provided captively by the purchaser.

Section D. The Divestment Procedure

The First Divestment Period

16. Gerling undertakes to find a Purchaser for the Divested Business and to enter into a final binding sales and purchasing agreement with such a Purchaser for the sale of the Divested Business until [...] at the latest. The final binding sales and purchasing agreement shall be conditional only upon the Commission's approval and the required regulatory clearances.

The Extended Divestment Period

17. If Gerling is not able to enter into a binding agreement for the sale of the Divested Business in accordance with paragraph 18 above, the time limit for the divestment of the Business shall be extended of another [...] from the date of the expiration of the First Divestment Period. Gerling undertakes to give the Divestment Trustee (to be appointed pursuant to Section G of these Commitments) an irrevocable and exclusive mandate to sell the Divested Business within the Extended Divestment Period at no minimum price.

Closing

18. Gerling shall be deemed to have complied with this undertaking if, until [...], it has entered into a binding agreement for the sale of the divested Business in accordance with paragraphs 24 and 25 below, provided that the closing of the sale takes place within two calendar months after the conclusion of the sales and purchasing agreement. The closing may be deferred beyond this two-month time limit if the necessary regulatory authorisations cannot be obtained within this time period.

Reporting

19. Gerling shall report in full in writing in English or in German to the Commission and the Trustee on developments in the negotiations with potential purchasers of the Divested Business within 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

Section E. The Purchaser

20. The Purchaser shall be a viable existing or potential competitor, independent of and unconnected to Gerling, possessing the financial resources, proven expertise and having the incentive to maintain and develop the Divested Business as an active competitive force in competition with Gerling/NCM and other competitors. In addition, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the Divested Business. Gerling must be able to demonstrate to the Commission that the purchaser meets the requirements of the Commitments and that the Divested Business is sold in a manner consistent with these Commitments. In order to maintain the structural effect of these Commitments, the Parties

will not subsequently directly or indirectly acquire influence over the whole or part of the Divested Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the divested business is no longer necessary to render the proposed concentration compatible with the common market.

21. When Gerling has or is about to reach an agreement with the Purchaser referred to in the paragraph above, it will submit a fully documented and reasoned proposal enabling the Commission to verify that the criteria above with regard to the identity of the Purchaser are fulfilled and that the Divested Business is sold in a manner consistent with these Commitments. Gerling shall send simultaneously to the Trustee a copy of the sale and purchase agreement in order to enable it to perform its duties in accordance with paragraph 32 (iii).
22. The verification that the Divested Business is sold in a manner consistent with the commitment shall include an approval by the Commission of the Purchaser and of the final binding sale and purchase agreement. The Commission will inform Gerling as soon as practicable whether it approves the purchaser proposed by Gerling and the terms of the sale and purchase agreement.

Section F. Monitoring Trustee

Appointment Procedure

23. Gerling shall appoint one or more Monitoring Trustees (e.g. one Monitoring Trustee for each Divested Business) (separately or collectively “Monitoring Trustee”), such as an investment bank or consultant or auditor, subject to approval by the Commission. The Monitoring Trustee shall be independent of Gerling, possess the necessary qualifications to carry out its mandate and shall not be, or become, exposed to a conflict of interest. The Monitoring Trustee shall be remunerated in such a way as not to impede its independence and effectiveness in fulfilling its mandate.

Proposal by the Parties

24. Gerling shall propose a Monitoring Trustee or a list of proposed Monitoring Trustees and the terms of the mandate for approval to the Commission with adequate information for the Commission to verify that the Monitoring Trustee fulfils these requirements. The mandate submitted for approval shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments. The Parties shall also procure that the proposed Monitoring Trustee shall submit to the Commission a detailed work plan in which it is described how the Monitoring Trustee intends to monitor all aspects of these Commitments. This proposal shall be made within one week after the Effective Date.

Approval or rejection by the Commission

25. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee or Trustees, and to approve the proposed mandate subject to modifications, that the Commission deems reasonably necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, Gerling shall appoint or cause the individual or institution concerned to be appointed as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Gerling shall be free to choose the Monitoring Trustee to be appointed from among the names approved.

New proposal by the Parties

26. If all the proposed Monitoring Trustees are rejected, Gerling will submit the names of at least two further such individuals or institutions within one week of being informed of the rejection, together with the full terms of the proposed mandate as agreed with the proposed Monitoring Trustees as well as all information necessary for the Commission to verify that the proposed Monitoring Trustees possess the necessary qualifications to carry out the task and shall not be, or become, exposed to a

conflict of interest. If only one name is approved, Gerling shall appoint or cause the individual or institution concerned to be appointed as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one further name is approved, Gerling shall be free to choose the Monitoring Trustee to be appointed from among the names approved.

Monitoring Trustee nominated by the Commission

27. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a suitable Monitoring Trustee which Gerling will appoint or cause to be appointed.

Appointment by the Parties

28. As soon as the Commission has given approval to one or more proposed Monitoring Trustees, Gerling shall appoint or cause the Monitoring Trustee concerned to be appointed within one week thereafter, in accordance with the mandate approved by the Commission.

Content of the Mandate

Duties and obligations of the Monitoring Trustee

29. The Monitoring Trustee shall assume its specified duties in order to ensure compliance in good faith with the Commitments on behalf of the Commission and taking into account the legitimate interest of Gerling.

30. The Monitoring Trustee shall, following its appointment:

- (i) oversee the on-going management of the Divested Business with a view to ensuring its continued viability and marketability and monitor the compliance by Gerling with the conditions and obligations under these Commitments. Therefore the Monitoring Trustee shall:
 - (a) monitor that Gerling maintains the viability and marketability of the assets and/or businesses to be divested in accordance with this undertaking, and the management and operation of the assets or businesses in the normal course of business, in accordance with past practice, until divestiture;
 - (b) propose to Gerling such measures as the Monitoring Trustee considers necessary to ensure compliance with the conditions and obligations under these Commitments, in particular the maintenance of the viability or marketability of the Divested Business, and the Monitoring Trustee shall be entitled to impose such measures (with the approval of the Commission) in the event that Gerling does not comply with the Monitoring Trustee's proposals within the timeframe set by the Monitoring Trustee;
- (ii) provide to the Commission, with a simultaneous non-confidential copy to Gerling, a written report within 10 days after the end of every month concerning the monitoring of the operation and management of the Divested Business in order to assess whether the business is held in a manner consistent with these Commitments. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission if the Monitoring Trustee concludes on reasonable grounds that Gerling is failing to comply with any of the conditions or obligations under these Commitments. Gerling shall receive a simultaneous non-confidential copy of any such additional reports;
- (iii) assess the suitability of the proposed purchaser and the viability of the Divested Business after the sale to the purchaser and give its opinion to the Commission on whether the proposed divestment complies with the conditions and obligations under these Commitments;

- (iv) cease to act as Monitoring Trustee only after the Commission has discharged it from its duties, following a request from the Monitoring Trustee made after all the Commitments with which it has been entrusted have all been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Duties and obligations of the Parties

- 31. Gerling shall provide the Monitoring Trustee with all such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require to monitor compliance with the conditions and obligations under these Commitments. Gerling shall make available to the Monitoring Trustee one or several offices on their premises or on the premises of Gerling's Danish or Dutch branches. Gerling shall be available for regular meetings with the Monitoring Trustee, according to a timetable agreed between them, in order to provide the Monitoring Trustee, either orally or in document form, with all information necessary for the completion of his task. At the request of the Monitoring Trustee, Gerling shall provide the Monitoring Trustee with access to sites which are being divested. Gerling shall provide all managerial and administrative support which may reasonably be requested by the Monitoring Trustee on behalf of the management of the Divested Business. This shall include all administrative support functions relating to the Divested Business which are currently carried out at headquarters level.

Replacement of the Monitoring Trustee

- 32. The Commission may, after hearing the Monitoring Trustee, order the Parties to remove the Monitoring Trustee in the event that the Monitoring Trustee has not acted in accordance with the provisions of these Commitments or for any other good cause.
- 33. The Monitoring Trustee may also be removed by Gerling with the prior approval of the Commission and after the Commission has heard the Monitoring Trustee in the event that the Monitoring Trustee has not acted in accordance with the provisions of these Commitments or for any other good cause.
- 34. The Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. Regarding the appointment of a new Monitoring Trustee the same procedure applies as described in this section.

Section G. Divestment Trustee

- 35. Gerling shall appoint one or more Divestment Trustees (separately or collectively "Divestment Trustee"), such as an investment bank or consultant or auditor, subject to approval by the Commission. The Parties' proposal for the Divestment Trustee shall be made within four months from the Effective Date. Regarding the appointment and the replacement of the Divestment Trustee the same procedure applies as described in paragraphs 25-30 and 34-36. The mandate of the Divestment Trustee only comes into effect if Gerling is not able to enter into a final binding agreement for the sale of the Divested Business within the First Divestment Period.
- 36. The Divestment Trustee shall be independent of Gerling, possess the necessary qualifications to carry out the task and shall not be, or become, exposed to a conflict of interest. The Divestment Trustee will be remunerated in such a way as not to impede its independence and effectiveness in fulfilling the mandate. In particular, the remuneration package of the Divestment Trustee may not contain a clause, which provides for a premium for success in selling the Divested Business that is linked to the final value of the sale.
- 37. Within the Extended Divestment Period, the Divestment Trustee shall sell at any price the Divested Business to a Purchaser independent of the Parties, provided that the Commission has approved both

such a purchaser and the final binding sales and purchasing agreement in accordance with procedures laid down in paragraphs 24, 25 and 26.

38. The Divestment Trustee shall report in full in writing in English or in German to the Commission on developments in the negotiations with potential purchasers of the Divested Business within 10 days after the end of every month following the expiration of the First Divestment Period (or otherwise at the Commission's request). A simultaneous non-confidential copy of these reports shall be provided to the Monitoring Trustee.
39. The Divestment Trustee shall cease to act as Divestment Trustee only after the Commission has discharged it from its duties, following a request from the Divestment Trustee made after that the sale of the Divested Business to a third party independent of the Parties has been completed. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant Commitments might not have been fully and properly implemented.

Section H. The review clause

40. The Commission may, upon request from Gerling showing good cause and after hearing the Trustee, and where relevant allow for:
 1. (i) AN EXTENSION OF THE DIVESTMENT PERIOD, OR
 - (ii) THE SALE OF THE DIVESTED BUSINESS TO A PURCHASER PROPOSED TO THE COMMISSION WITHOUT ONE OR MORE ASSETS, FACILITIES, CONTRACTS OR OTHER RIGHTS OR OBLIGATIONS THAT ARE PART OF THE DIVESTED BUSINESS AS DESCRIBED IN SCHEDULE [...], OR
 2. (iii) WAIVE OR MODIFY ONE OR MORE OF THE CONDITIONS AND OBLIGATIONS IN THESE COMMITMENTS.
 - 3.
 4. GERLING SHALL ADDRESS ANY REQUEST FOR AN EXTENSION OF TIME PERIODS NO LATER THAN ONE MONTH PRIOR TO THE EXPIRING OF SUCH TIME PERIOD, SHOWING GOOD CAUSE. ONLY IN EXCEPTIONAL CIRCUMSTANCES SHALL GERLING BE ENTITLED TO REQUEST AN EXTENSION WITHIN THE LAST MONTH OF ANY PERIOD.

.....
duly authorised for and on behalf of
Gerling-Konzern Versicherungs-Beteiligungs AG