

***Case No COMP/M.3035 -
BERKSHIRE
HATHAWAY /
CONVERIUM / GAUM /
JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/02/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28/02/2003

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.3035 – Berkshire Hathaway/Converium/Gaum JV
Notification of 29.01.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 29.01.03, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Northern States Agency, Inc (“Northern States”, USA) belonging to the Berkshire Hathaway group (“Berkshire Hathaway”, USA) and Converium AG (“Converium”, Switzerland) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Global Aerospace Underwriting Managers Limited (“GAUM”, UK) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

¹ OJ L 395, 30.12.1989 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).

I. THE PARTIES

3. Northern States is a subsidiary of Berkshire Hathaway, a US-based holding company with subsidiaries engaged in a number of diverse business activities, the most important of which are property and casualty insurance.
4. Converium is primarily active in the provision of insurance and reinsurance for all major lines of non life insurance.
5. GAUM is a supplier of underwriting and management services to insurance and reinsurance companies. Its main client is the Global Pool but it also serves third parties, which are active mainly in the aerospace risk sector.
6. The Global Pool is a provider of aviation risk insurance. It consists of several insurance companies (the "Members"). Each Member has a certain level of participation in the Pool, which corresponds to the percentage of liability he will assume among the totality of liabilities covered by the Pool. The Members and their participation in the Global Pool may change from year to year. As regards the level of participation, it should be noted that since 01.01.2003, Berkshire Hathaway and Converium are members of the Global Pool with a participation of 25% each whereas CGU International Insurance PLC ("Aviva") has completely withdrawn and Royal & Sun Alliance Insurance PLC ("RSA") has reduced its participation from 28.12 % to 9.25%.

II. THE OPERATION

7. The share capital of GAUM is presently held equally by Aviva and RSA (together the "Sellers"). According to a Share Purchase Agreement concluded on 27.11.2002 between the Sellers and each of Northern States, Converium and Münchener Rückversicherungs-Gesellschaft Aktiengesellschaft ("Munich Re") (together the "Buyers"), Northern States, Converium and Munich Re will all acquire shareholdings in GAUM of 40%, 25% and 24.9% respectively. RSA will retain a shareholding of 10.1%.

III. CONCENTRATION

Joint control

8. According to a Shareholders' Agreement [between] Northern States, Converium, Munich Re, RSA and GAUM, strategic business decisions concerning GAUM including [...], are to be passed by a majority of [...]. [...] Converium and Northern States [...] will each have the ability to veto these strategic decisions. [...] neither RSA nor Munich Re is able to block votes on any strategic decisions. There is no common interest between RSA and Munich Re pursuant to which these parties, or any other combination of parties, will always vote together on strategic decisions. In particular, the Shareholders' agreement [...]. Therefore, Northern States and Converium will exercise joint control over GAUM.

Full-function

9. GAUM has, and will continue to have, a management dedicated to its day-to-day operations. The individuals comprising the management are specialists who are not

seconded from the parents. GAUM has access to all other necessary resources including finance, staff and assets. It is intended to operate on a lasting basis.

10. GAUM operates in the market for the provision of underwriting and management services to insurers and reinsurers, including pools, and is therefore acting on behalf of a principal. More specifically, GAUM is in charge of “writing” insurance or reinsurance cover within specified classes of risks, that is to say sell (re)insurance cover from his principal (the insurance or reinsurance company or a pool) for that type of risk, and to set the price of the policy (“the premiums”). An underwriter therefore needs to have expertise in risk assessment. Management services consists mainly in handling the formalities for the conclusion of policies, the administration of claims, and the provision of services to pools or companies that are in “run off”, that is to say that do not write new business but whose insurance policies have not yet all expired.
11. GAUM does not purchase insurance from its parent companies (nor from the members of the Global Pool), but writes business on behalf of the members of the Global Pool. In addition, GAUM provides management services to insurers and reinsurers, including other pools. For instance, it performs “run-off” services on behalf of previous members of the Global Pool and third parties. For 2003, the business plan of GAUM intends to achieve [...] % of its turnover with its parent companies, [...] % with the other members of the Global Pool and [...] % with third parties. This calculation is made on the basis of the participation of each Member in the Global Pool for 2003.
12. On the basis of the above, GAUM meets the criteria of a jointly controlled full-function joint venture, intended to operate on a lasting basis. Therefore, the notified operation is a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

13. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion² (Berkshire 42,040 million, Converium 3,215 million, Gaum 89.9 million). Two of them have a Community-wide turnover in excess of EUR 250 million (Berkshire [...] million, Converium [...] million), but 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.

V. RELEVANT MARKETS

14. The parties have activities in three areas :
 - provision of underwriting and management services to insurers/reinsurers;
 - insurance;
 - reinsurance.

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). 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.

Underwriting and management services to insurers/reinsurers

Relevant product market

15. GAUM provides services for the members of the Global Pool and third parties in relation to insurance and reinsurance. These services include: 1) the underwriting of insurance/reinsurance risks; and 2) the management of policies on behalf of insurers/reinsurers and their pools.
16. The parties are of the opinion that underwriting and managing services represent a market distinct from the provision of insurance or reinsurance, although many insurance and reinsurance companies do not resort to external suppliers of these services. The Commission's investigation has confirmed this point. In particular, many respondents have explained that many pools of insurers or reinsurers resort to external suppliers since the members of these pools do not want to rely on the expertise of one of them.
17. According to the parties the provision of underwriting and management services constitutes one single product market regardless of whether they are provided to insurance or reinsurance companies. This is because the assessment of risk does not differ from an insurer's or reinsurer's point of view. This point has been confirmed by the Commission's investigation. No respondent has claimed that underwriting and management services differ depending on whether they are provided to insurers or reinsurers.
18. The parties also submit that the provision of underwriting services and the provision of management services to insurers/reinsurers constitute one single product market because these services are strongly complementary from both suppliers' and customers' point of view. In addition the parties argue that all suppliers could offer both categories of services and that customers are always seeking suppliers that can deliver the two categories of services. The Commission's investigation has largely confirmed the view of the parties in this respect. In particular, many respondents have indicated that underwriting and management services are usually supplied as part of the same package.
19. On the basis of the above, it can be concluded that there is a separate product market for the underwriting and management services to insurers and reinsurers.
20. Having decided this, it has to be verified whether this market needs to be further subdivided on the basis of the kind of risks for which the services are provided. The parties are of the opinion that the relevant product market encompasses the provision of management and underwriting services in respect of all types of risks and not just the provision of these services to aviation risk (re)insurers. According to the parties, there is a high level of supply-side substitutability between providing management and agency services for different types of risks. It can nevertheless be argued that aerospace insurance has specific characteristics due to the particular nature and size of the risks it covers and that therefore the provision of underwriting and management services in this field requires specific expertise and skills.
21. However, for the purpose of this case, the question whether within the market for the provision of underwriting and management services there is a distinct product market for the provision of such services to the (re)insurers active in the aerospace field can be

left open since the proposed transaction does not raise any competition concerns even on this narrower product market definition.

Relevant geographic market

22. The parties consider that the relevant geographic market for the provision of underwriting and management services to insurers/reinsurers is worldwide. Competing suppliers include undertakings established in Europe, Asia and in the US and (re)insurance companies from across the globe seek out managers possessing the appropriate expertise and skills. The market investigation has confirmed the views of the parties concerning the relevant geographic market.
23. On the basis of the above, it seems that the market for underwriting and management services is at least EEA-wide and probably worldwide. However, for the purpose of this case, there is no need to exactly determine whether the relevant geographic market is EEA-wide or worldwide, because the proposed transaction does not raise any competitive concerns for each of these two geographic markets.

Insurance

Relevant product market

24. Both Berkshire and Converium provide non life insurance. They are not active in life insurance. The operation concerns more specifically the provision of aerospace insurance.
25. In a number of previous decisions³, the Commission has indicated that insurance and reinsurance are considered to belong to different product markets. In past decisions, the Commission has also stated that in the insurance sector a distinction is to be made between life and non life insurance⁴. In addition, the Commission has also held that non life insurance from the demand side could be divided into as many product markets as there are different kinds of risks covered, such as aerospace, marine, commercial & real estate, etc, since their characteristics, premiums and purposes are distinct and there is typically no substitutability for the consumer for the risk insured. However, the Commission has also found that, from a supply side perspective, the conditions for insurance of different risk types are quite similar and most large insurance companies are active in several risk types. This suggests that many different types of non life insurance should be included in the same product market⁵.
26. The parties submit that although there exist different types of risks, the relevant product market is that for insurance as a whole since any insurer could easily switch market insurance coverage for one type of risk to another. The Commission's investigation however has indicated that the life and non life insurance have different characteristics and are probably separate markets. In addition, the Commission's

³ See *inter alia* case IV/M.1306 – Berkshire Hathaway/General Re

⁴ See *inter alia* case IV/M.1172 – Fortis AG/Generale Bank

⁵ See *inter alia* case IV/M.2676 - Sampo/Varma Sampo/IF Holding/JV

investigation has revealed that the aerospace insurance has specific features due to the particular nature and size of the risks it covers, so that it could be regarded as a distinct product market within the broader insurance sector.

27. The aerospace insurance sector itself could possibly be further subdivided into a number of separate markets comprising each of a particular type of risk, such as airline, products/airports, General Aviation, hull, war/terrorism, satellite/space, etc. From the demand side there is clearly no substitution for the insured between the different categories of policy offered. However, the respondents to the Commission's investigation have clearly indicated that there exists within the broad category "aerospace risks" a high supply side substitutability.
28. However, for the purpose of this case, it is not necessary to exactly define the relevant product market since whatever market definition is considered the transaction does not raise any competition concerns.

Relevant geographic market

29. Although the Commission has previously acknowledged that the markets for insurance are national in scope, it has not excluded that the markets for the insurance of large commercial risks could be wider than national⁶.
30. The parties submit that the provision of aerospace insurance is to be regarded as covering "large risks". Although general aviation may be characterised as a comparatively "small risk", the parties submit that competition to provide this cover is also contested on an international basis.
31. The parties therefore state that the markets for aerospace insurance is at least Community-wide. For example, major airlines have hull insurance covering that risk up to the limit of 250 million US dollars for a large commercial aircraft such as a Boeing 747. The parties also state that there are no national distribution channels for these products since they are mainly sold via brokers which are established on a worldwide basis and that fiscal/regulatory constraints are not trade barriers. The Commission's investigation has confirmed that the market for the provision of aerospace insurance is at least European-wide and may even be worldwide.
32. Based on the above, it can be concluded that the market for the provision of aerospace risk insurance is at least EEA-wide.

Reinsurance

Relevant product market

33. In previous decisions, the Commission has suggested that the reinsurance sector market could be subdivided into two markets: life and non life⁷.

⁶ See *inter alia* case IV/M.2676 - Sampo/Varmo Sampo/IF Holding/ JV

⁷ See *inter alia* case IV/M.1306 – Berkshire Hathaway/General Re

34. The parties submit that while some reinsurers may specialise in particular types of covers, the relevant product market is that of the supply of reinsurance as a whole since any reinsurer could readily and swiftly offer reinsurance coverage for any type of risks. The Commission's investigation has largely confirmed this view. In particular, many respondents have explained that the barriers to enter a new risk are quite low since (a) the approval which is rarely required to offer reinsurance cover for a new type of risk is easy to obtain, (b) no specific additional distribution channels are needed since reinsurance cover for a new type of risk could always be sold via brokers, and (c) the relevant expertise required to offer reinsurance cover for a new type of risk could be acquired by recruitment relatively easily and rapidly. Nevertheless, due to the particular nature and size of aerospace risk, it could be argued that reinsurance of such risk may be regarded as a distinct product market within the broader (non life) reinsurance sector.
35. However, for the purpose of this case, it is not necessary to exactly define the relevant product market since whatever market definition is considered the transaction does not raise any no competition concerns.

Relevant geographic market

36. The parties submit that the market for the provision of reinsurance is worldwide mainly because of the very nature of this activity which requires to pool risks on an international basis and this was confirmed by the market investigation. This is in line with previous Commission's decisions⁸.
37. On the basis of the above, it can be concluded that the market for the provision of reinsurance is worldwide.

VI. COMPETITIVE ASSESSMENT

Provision of underwriting and management services to insurers/reinsurers

38. The only market where GAUM and its two parent companies are active is the market for the provision of underwriting and management services. Indeed, Berkshire controls both USAU (which manages the USAIG Pool) and Faraday (which is the managing agent of a Lloyd's Syndicate). Converium controls Satec, which manages the Italian-based Satec Pool which is a provider of satellite/space insurance.
39. If the relevant product market were to be defined as that of underwriting and management services to insurers and reinsurers regardless of the type of risk, the parties estimate that their worldwide market shares are less than 1% for each of them. At the EEA level, the parties indicate that their market shares are less than [...]% (GAUM), less than [...]% (Faraday), less than [...]% (Satec), resulting in a combined market share below [20]%. USAU is not active in the EEA.
40. If the relevant product market is to be limited only to the provision of services for aerospace risk (re)insurance, the parties estimate their worldwide market shares at [...]% (GAUM), [...]% (USAU), approximately [...]% (Faraday) and below [...]% (Satec), resulting in a worldwide combined market share [of less than 20]%. At the

⁸ See *inter alia* case IV/M.1306 – Berkshire Hathaway/General Re

EEA level, the parties indicate that their market shares are less than [...] % (GAUM), and less than [...] % (Satec and Faraday), resulting in a EEA combined market share [of less than 10] %.

41. If the relevant product market is defined even more narrowly as that of underwriting and management services provided by external suppliers (disregarding self-supply of underwriting and management services) in the aerospace (re)insurance field, the parties estimate their respective worldwide market shares in the range of [...] % (GAUM), [...] % (USAU) and [...] % (Satec), resulting in a worldwide combined market share of approximately [less than 45] %. Since Faraday is not an external supplier of services to the Lloyd's syndicate that it manages, it is not a competitor in this market. The parties indicate that their respective market share in the EEA are not materially different from those on a worldwide basis.
42. Other important competitors such as Allianz (which manages the Deutsche Luftpool), La Réunion Aérienne ("LRA"), Nordic Aviation Insurance Group, Swiss Pool and Japanese Aviation Insurance Pool are active in the same market.
43. The parties argue that, the concentration will not create a dominant position in the market for the provision of underwriting and management services, because an external provider of such services could not exercise market power against the interest of the (re)insurers to which it provides its services or against the purchaser of the insurance or reinsurance cover. Insurers and reinsurers, which are large and sophisticated companies, exercise significant countervailing buyer power. Furthermore, the possibility for (re)insurers to start self-supplying underwriting and claims management exerts a significant constraint on providers of such services. All these points have been largely confirmed by the respondents to the Commission's investigation.
44. It has also been stated by the parties that many companies that presently write aviation risk insurance could enter the market for the provision of underwriting and management services without great difficulty and within a limited period of time. The parties estimate that an undertaking that currently only provides management and underwriting services to itself could begin to supply these services to third parties in less than a year. The Commission's investigation has confirmed this point.

Insurance

45. As neither Berkshire nor Converium is active in the provision of life insurance, there is therefore no aggregation of market share in the provision of life insurance in any geographic market.
46. The market share of both Berkshire and Converium on the world and EEA non life segment of the insurance sector is [below 15] % for each of them. When considered at a national level and/or for each type of risks, the combined market share of the parties remains well below 15%.
47. Concerning the aerospace risk insurance, Berkshire Hathaway and Converium indicate that their market shares are [less than 10] % and [less than 10] % respectively. The parties also indicate that the aerospace risk insurance business which GAUM writes in the name of the Global Pool members represents a worldwide market share of [less than 10] %.

48. At the EEA level, the parties estimate that their combined market share is lower than [10]% (GAUM: less than [...]%, Berkshire Hathaway/Faraday: less than [...]%, Converium/Satec less than [...]%). USAIG [...] and its share of the EEA market for the provision of aerospace insurance is de minimis. If the aerospace insurance market were to be further subdivided on the basis of the different types of risks, the aggregated market share of the parties would [be less than 30]% in the EEA (with the exception of the satellite/space segment where their combined market share could reach 30%) and [less than 40]% at a worldwide level (with the exception of the satellite/space segment where their combined market share could reach 40%).
49. However, the parties submit that the other suppliers of aerospace risk insurance such as Ace, AIG, Allianz and LRA have similar shares to the Global Pool, that is to say [less than 10%] worldwide or in the EEA. The parties also explain that there are approximately 40 insurers worldwide that are active in the provision of aerospace risk insurance. The Commission's investigation has confirmed the existence of other important suppliers (pools and individual companies) of aerospace risk insurance.
50. In addition, on the demand side, three large international brokers are responsible for arranging about three quarters of the aerospace business written worldwide which may give them substantial countervailing buying power which could potentially benefit their clients, the end-customers.
51. Furthermore, the parties state that the market for the provision of aerospace insurance is characterised by over-capacity (for almost all classes of aerospace insurance risks) and that this overcapacity has the effect of increasing competition and lowering prices to the end customers' benefit as brokers are able to play one insurer off against another to obtain cover at the best terms and price for the customer. In general, the market investigation has confirmed this view.

Reinsurance

52. A further vertical relationship exists between the market in which GAUM operates and the market for the provision of reinsurance in which each of Berkshire and Converium operate.
53. The parties estimate that Converium and Berkshire have a worldwide reinsurance market share (2001) of [...]% and [...]% respectively, resulting in a combined market share of [less than 20]%. Furthermore, the parties state that the reinsurance market is highly fragmented and that a large number of strong competitors are active in the market, such as Munich Re ([less than 20]%) and Swiss Re ([less than 20]%)⁹. The respondents to the Commission's investigation have largely confirmed the parties' estimates.
54. If the reinsurance market were to be segmented into life and non life reinsurance, the parties estimate that Converium and Berkshire Hathaway would have a worldwide market share of less than [...]% and less than [...]% respectively, resulting in a combined market share of less than 15% in each of these segments. On a hypothetical market for the provision of aerospace risk reinsurance, the parties indicate that the worldwide market share of Berkshire Hathaway is [less than 10]% and that of

⁹ Estimates of the parties based on publicly available information.

Converium [less than 10%]. The parties also indicate that the reinsurance business which GAUM writes in the name of the Global Pool members is approximately [...] million US dollars representing a negligible market share whatever product market definition is retained.

55. Consequently, the parties would not be able to use their position in the (aerospace) reinsurance market to foreclose or otherwise hinder competition in the (aerospace) insurance market.

General conclusion

56. On the basis of the above-mentioned position of the parties in the relevant markets and the fact that they will continue to face several strong competitors, it can be concluded that the transaction does not raise any competition concerns.
57. In light of the above, the Commission has concluded that the proposed transaction is not likely to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

VII. CONCLUSION

58. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

(Signed)

Mario MONTI
Member of the Commission