

***Case No COMP/M.4912 -
CALYON / SOCIETE
GENERALE /
NEWEDGE***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 19/12/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19-XII-2007

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4912 - Calyon / Société Générale / Newedge
Notification of 09 November 2007 pursuant to Article 4 of Council
Regulation No 139/2004¹**

1. On 15 November 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which the undertaking Fimat Group ("Fimat", France) currently part of Société Générale S.A ("Société Générale", France) enters into a full merger within the meaning of Article 3(1)(a) of the Council Regulation with Calyon Financial Group ("Calyon Financial", France) controlled by Calyon S.A. ("Calyon", France), part of the Crédit Agricole group ("Crédit Agricole", France), by way of creation of a newly created company constituting a joint venture ("JV").

I. THE PARTIES

2. **Crédit Agricole** is Europe's fifth largest bank by assets. Calyon is its corporate and investment banking subsidiary and a major global player in this field.
3. **Calyon Financial** – a company active in the brokerage of listed derivatives - is a wholly-owned subsidiary of Calyon.

¹ OJ L 24, 29.1.2004 p. 1.

4. **Société Générale** is the tenth largest European bank by assets.
5. The **Fimat Group** comprises various wholly-owned subsidiaries of Société General active in the brokerage business.

II. THE OPERATION

6. The notifying parties intend to create a JV – Newedge – which will be engaged in brokerage, i.e. the intermediation of various financial and non-financial instruments. Fimat and Calyon will contribute all of their assets, equity interests, branches and divisions to the JV.

III. THE CONCENTRATION

7. Each of the notifying parties will have 50% of the voting rights. Each will appoint four directors to the company board, which will have a quorum of four (including at least two from each of Société Générale and Calyon). [...] Board approval is necessary for the adoption of (or material amendment of) strategic plans and annual budgets, major investments and the appointment of the senior management.
8. For the above-mentioned reasons, the JV must be regarded as jointly controlled by the parties.
9. According to terms of the Joint Venture Agreement, Newedge will have access to sufficient resources including finance, staff and assets (tangible and intangible) in order to conduct on a lasting basis its business activities. The company will be an independent market player which is separate from its parent companies and which will offer its services directly to the market. All business between Newedge and its parents will be conducted on an "arm's length" basis.
10. For a five-year period, both parent companies will continue to provide a portion of their brokerage business to Newedge. This portion will decrease each year according to a pre-determined formula ([...] % in 2008 decreasing to [...] % in 2012). This arrangement will according to the parties not detract from the full-functionality of the JV, because the business "committed" to Newedge by its parents is likely to represent only a small proportion of the JV's total revenue. Newedge will therefore not be dependent on its shareholders for a significant proportion of its business².
11. The parties undertake not to compete with Newedge in the areas of clearing services, listed options and futures as long as they are shareholders in Newedge.³ The non-compete clause is in line with Commission's ancillary restraints notice.⁴

² According to the parties, on the hypothesis that the parents were to guarantee 100% of the business currently placed with Fimat and Calyon Financial with Newedge, this would represent only [5-10]% of Newedge's income.

³ As far as execution services are concerned, no non-compete covenant has been given. Each parent company is therefore free to set up its own execution brokerage business in competition with Newedge, should it so wish.

12. Thus, Newedge can be considered a full-function JV within the meaning of Article 3(4) of the Merger Regulation.

IV. COMMUNITY DIMENSION AND ARTICLE 4(5) REFERRAL

13. The undertakings concerned generated a combined aggregate worldwide turnover of more than EUR 5 billion in 2006 (Crédit Agricole: EUR 89 billion; Société Générale: EUR 61 billion). Their aggregate Community-wide turnover exceeded EUR 250 million in 2006 (Crédit Agricole: EUR [...] billion; Société Générale: EUR [...] billion). However, both undertakings realise more than two-thirds of their turnover in France. Therefore, the transaction does not have a Community dimension within the meaning of Article 1 of the Merger Regulation⁵.
14. On 26 September 2007, the Commission received by means of a reasoned submission from the notifying parties a referral request pursuant to Article 4(5) of the Merger Regulation. According to the parties, the operation would have been capable of being examined under the national merger control laws of sixteen EU Member States (Bulgaria, Cyprus, Czech Republic, Finland, France, Germany, Greece, Ireland, Italy, The Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom), as well as Norway. No Member State objected to the referral of the proposed transaction to the Commission. The proposed transaction is therefore to be examined by the Commission.
15. The operation is also subject to open merger review proceedings in Switzerland, the USA and South Korea.

V. COMPETITIVE ASSESSMENT

V.1 Relevant Product markets

16. The notifying parties are currently active in the intermediation of various financial and non-financial instruments, primarily derivatives instruments but also listed equity, prime brokerage, and various ancillary services.
17. Newedge will offer its customers (which are financial institutions, hedge funds, asset managers and corporate clients) access to more than 70 exchanges in Europe, North America and the Asia/Pacific region, as well as the global OTC markets. Newedge's business will be limited to brokerage (i.e. it will not offer its own derivatives products).
18. Newedge will offer (i.) brokerage services for the execution and clearing of listed derivatives, (ii.) brokerage services for over-the-counter ("OTC") products, (iii.) brokerage services on listed securities, (iv.) prime brokerage services, and (v.) various ancillary services. It should be noted that brokerage on listed cash securities and prime brokerage (iii) and (iv) above) are contributed to Newedge only by Fimat.

⁴ Para 36 of the Commission notice on restrictions directly related and necessary to concentrations, OJ 2005 C56, p. 24.

⁵ 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).

19. The parties suggest that there are two relevant product markets where horizontal overlaps occur: (i.) brokerage services for listed derivatives and (ii.) brokerage services for OTC derivatives.

1) Brokerage services for listed derivatives

20. According to the parties, brokerage services for listed derivatives consist in services allowing investor clients to buy and sell futures and options in financial and non-financial assets which are quoted on an exchange or other trading platform, without the need to become direct members of the platform which is subject to regulatory and commercial restrictions.
21. Derivatives allow clients to hedge against the risk of future movements in the price of underlying assets such as currencies or commodities, as well as to speculate on how these prices will move, thereby generating a liquid forward market in the underlying asset. Brokers' clients may be institutional investors such as pension funds and other investment funds, hedge funds, the proprietary trading desks of banks and corporate customers.
22. In the first place, the Commission considered whether the product market should be sub-divided into separate markets for execution and clearing of listed derivatives. Although these services may be bundled, they are also available separately in many cases.
23. Execution consists in the activities a broker carries out from the time an order is received from a client to the time at which that order is despatched to the relevant trading platform and reporting back to the client. It may also be considered to include provision of direct access to the market through an electronic system managed by the broker. This might, in principle, also constitute a separate product market.
24. Clearing consists in the services performed between the matching of the trade and the eventual settlement (if any). In essence this involves the management of risk and collateral during the lifetime of the contract on behalf of a client vis-à-vis the relevant trading platform or central clearinghouse. Clients may use different brokers for execution and clearing, or may self-execute⁶ on the trading platform but continue to rely on a broker for clearing. On certain markets, clearing brokers may have additional responsibilities related to physical delivery of the underlying.
25. The market investigation confirmed the existence of two separate markets for execution and clearing of listed derivatives.
26. In selecting a broker, numerous factors were cited by respondents to the market investigation as playing a role. In addition to price, these included past experience, reputation, financial strength, product knowledge, scope of services offered (i.e. range of instruments that can be traded and trading venues accessible) and in some cases local knowledge. The provision of a global clearing account is also considered important by many customers as well.

⁶ Often, very large traders may have direct execution access to an exchange but require a broker for clearing purposes.

27. The Commission also considered whether these services should be further subdivided in either of two ways: according to underlying asset classes or according to the trading platform (exchange) on which the product concerned was listed.
28. In respect of a possible subdivision based on asset class of underlying, the Commission considered three classes of financial assets – income, equity and currency derivatives – as well as four classes of non-financial assets, namely energy, metals, agricultural commodities and carbon emissions.
29. Since customers use derivatives in part to hedge very specific risks from the demand side, these different types of derivatives are generally substitutable only to a very limited extent, if at all. Customers investing in derivatives products for investment purposes may consider a wider range of instruments but substitutability is likely to be limited since the choice of instrument depends on the individual customer's investment strategy.
30. On the supply side, the market investigation suggested, however, that all of the parties' main competitors provided brokerage services in listed derivatives based on all classes of underlying asset without distinction, and that there was no barrier to so doing provided that the membership conditions of the trading platforms where the various products were traded were met and that membership of the trading platform was a viable economic proposition.
31. Viewing the market on the basis of trading platforms (exchange), the market investigation suggested that, once it was a member of a given platform, there was no barrier to a broker offering brokerage services in respect of all instruments listed on that platform. However, clients wishing to trade a given contract and reliant on brokered access to the platform could only do so via a broker which was actually a member of the platform concerned. Only in limited circumstances was the same product, or one with an equivalent profile, traded in significant volume on more than one platform. This consideration suggested that supply-side substitution might only broaden the relevant product market to the class of instruments traded on a specific platform. The extent to which the market should be broadened in practice might therefore be a function, *inter alia*, of the rules of an individual platform.
32. For the purposes of the present case, it is not necessary to conclude whether execution brokerage services and clearing brokerage services for listed derivatives should be considered as separate product markets or not, since the transaction will not raise serious doubts as to its compatibility with the common market regardless of any alternative product market definition. Equally, there is no need to conclude on any further subdivision, on the basis of to underlying asset classes or according to the trading platform (exchange)

2) Brokerage services for over-the-counter derivatives

33. Brokerage services for OTC derivatives typically involve brokers pro-actively searching for a counter-party to an intended trade. This is necessary when the instrument is tailor-made or the trade is very large in size and there is no adequate public source of liquidity.
34. Unlike a listed derivative, which is a standardized product, in OTC trading the parties themselves agree many of the key characteristics of the trade, such as the

strike price, the amount of the trade as well as the conditions for collateralization and settlement.

35. In this case, demand for brokerage services is driven primarily by the market knowledge of the brokers concerned and their consequent ability to find a counterparty ready to engage in the desired trade at economically favourable terms.
36. Brokers provide this service either on the basis of pure agency or as riskless principal. In the latter case, the broker carries exposure to the trade throughout its lifetime but on a net-zero basis. In some cases, bilaterally brokered deals are given up to a clearinghouse for clearing.
37. Because of the bespoke nature of the instruments brokered OTC, it is difficult to form a generic view as to the extent of supply substitution and therefore to formally exclude that there may exist products in respect of which only a few brokers are in a position to offer brokerage services. However, the Commission's market investigation did not bring to light any instances of concern.
38. For the purposes of the present case, it is not necessary to conclude on the definition of what is the relevant product market for brokerage services for OTC derivatives, since the transaction will not raise serious doubts as to its compatibility with the common market regardless of any alternative product market definition.

V.2 Relevant Geographic markets

39. The parties argue that both relevant markets are global in scope and that no markets are affected.
40. As regards the market for brokerage services in both listed and OTC financial and commodity derivatives, the products in which the Parties provide brokerage services, trade for the most part in a global market. As regards listed derivatives these trade on exchanges located, for the most part, in Europe and the United States, each of which specializes in certain classes of contract rather than in serving clients from a particular geographic zone. OTC products are constructed by global investment banks. Both classes of derivatives are principally used by global corporations for hedging global exposures to commodity prices and financial variables such as exchange rates and interest rates, and by global investors for speculating on the future development of these variables. The market investigation also confirmed that the brokerage services connected to these products are generally provided on a global basis.

V.2.1. Brokerage services for listed derivatives

41. During the market investigation, the Commission examined whether a narrower market definition may nonetheless be appropriate in certain cases, in particular EEA-wide or national, since certain exchange-traded energy contracts are specific to European supply as are tradable carbon emissions. It therefore could not be excluded that the relevant geographic market might be the EU/EEA for some relevant product markets. Moreover, given the significant presence of both parties in France, the Commission also examined the possibility of any more narrow geographic market limited to France, where both parties have a strong presence, or for a specific exchange.

42. The market investigation broadly confirmed that the geographic scope of the relevant market was global. However, for the purposes of the present case it is not necessary to conclude on the geographic scope of any relevant product market since the transaction will not raise serious doubts as to its compatibility with the common market regardless of any alternative geographic market definition.

V.2.1. Brokerage services for OTC derivatives

43. During the market investigation, the Commission similarly examined whether a narrower geographic market definition may be appropriate in certain cases for OTC derivatives. The market investigation broadly confirmed that the geographic scope of the relevant market was likely to be global but it could not be conclusively excluded that for some products the scope of the market could be narrower in scope.
44. However, for the purposes of the present case it is not necessary to conclude on the geographic scope of any relevant product market since the transaction will not raise serious doubts as to its compatibility with the common market regardless of any alternative geographic market definition.

V.3. Competitive Assessment.

V.3.1. Horizontal aspects

45. In a presumed worldwide market for brokerage services for listed derivatives, the combined market share of the parties would be [0-5]% and Newedge would be, according to the parties, the 6th largest global player. If the geographic market is assumed to be EEA-wide, the market share of Newedge would amount to [5-10]% and the JV would be, according to the parties, the 2nd largest listed derivatives broker in the EU. Distinguishing between execution and clearing does not affect these conclusions materially.
46. If the markets are looked at on a trading platform (exchange) basis, Newedge would have a substantial market share in one market, namely on the ICE Futures Europe Energy exchange, where the combined market share would be [25-35]⁷, [25-35]% for execution and [25-35]% for clearing. . The Parties' combined share would also exceed 15% for both execution and clearing on one non-European exchange, the Singapore Exchange ([15-25]% for execution and [15-25]% for clearing), and, for clearing only, marginally on two others, the Osaka Exchange ([around 15]%) and the Sydney Futures Exchange ([around 15]%)⁸.
47. The parties argue that, despite their relatively large market share on ICE Futures Europe, there would not be any competition concerns because large customers⁹ exercise countervailing buyer power and barriers to entry and to expansion are low.

⁷ Calyon Financial had a share of [10-20]% and Fimat of [15-25]% in 2006.

⁸ In respect of these non-European markets, the market investigation showed that even if they were considered to be separate relevant markets for the purpose of merger control, the parties would not be able jointly to exercise market power.

⁹ Indeed, for both Fimat and Calyon a small number of customers represented around 50% of their total turnover in 2006.

They noted that there are already 21 brokers that are members of the exchange, including most of the largest global actors, any of which could be used as an alternative by clients who in many cases already had brokerage relations with one or more of these competitors. They also noted that certain products traded on ICE Futures Europe competed head to head with similar products traded on the much larger New York Mercantile Exchange, NYMEX.

48. The Commission's investigation confirmed the parties' view and also showed that many of the customers consulted use more than one broker. There are also a number of actual and potential competitors to the parties and there was no evidence, either, that the parties were each others' closest competitors. Customers trading on ICE Futures Europe did not express any significant concerns that the merger would lead to higher prices or a degraded quality of service.
49. In the light of these considerations, the Commission has concluded that the concentration does not raise serious doubts as to its compatibility with the common market in respect of brokerage services for instruments trading on ICE Futures Europe, should the markets be looked at on a trading platform (exchange) basis.
50. Concerning the worldwide market for brokerage services for OTC derivatives, the parties' combined market share would be below 1%. The market investigation did not suggest any possible concerns on any narrower product or geographic market definition.

V.3.2. Vertical aspects

51. The Commission considered, lastly, but did not identify, any concerns in relation to any vertical effects caused by the proposed transaction.

VI. CONCLUSION

52. 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 (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission