

***Case No IV/M.491 -
General RE / Kölnische
RE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/10/1994

*Also available in the CELEX database
Document No 394M0491*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.10.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Registered with advice of delivery

To the notifying parties.

Dear Sirs,

**Subject : Case IV/M.491 - GENERAL RE/KÖLNISCHE RE
Notification of 21.9.94 pursuant to Article 4 of Council Regulation n ° 4064/89**

1. On 21st September 1994, General Re Corporation ("GR") and CKAG Colonia Konzern AG ("CKAG") notified an operation whereby GR will establish indirect sole control over Kölnische Rückversicherungs-Gesellschaft AG ("KR"), a subsidiary of the UAP Group ("UAP") controlled through CKAG.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. GR is an American corporation which provides reinsurance, insurance and related services mainly in the United States of America and in more than thirty other countries throughout the world. CKAG is a wholly owned subsidiary of UAP, a composite insurer engaged in all types of insurance, reinsurance and, to a minor extent, banking and financial services.

4. GR intends to establish indirect single control over KR. For this purpose, GR and CKAG have agreed to create a new company which will hold all of CKAG's in KR (75% of the voting shares and 29.83 % of the non-voting preference shares). CKAG is transferring its stake at book value and taking in exchange 49.9% stake in the new company while GR will contribute cash and will take a 50.1% stake. The remaining cash contributed by GR will be attributed to a capital reserve. The new company will manage and invest the funds made available by GR's capital contribution. A guaranteed dividend is to be paid to CKAG. A call option in favour of GR to be exercised between 2002 and 2004 exists. If GR chooses not to exercise its call option before it expires, CKAG in turn will have a call option to be exercised between 2004 and 2007.

II. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5.000 million ECU. Both GR and KR have a Community-wide turnover in excess of 250 million ECU but they do not both 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.

III. NATURE OF THE OPERATION

6. The decision making process in the new company will be carried out by a supervisory board of three members (two appointed by GR, one appointed by CKAG) and a board of management of 3/4 members (two to be nominated by GR and one by CKAG). If four managing directors are appointed, the fourth director will be nominated jointly by GR and CKAG. The chairman of the board of management will be nominated by GR and will have a casting vote. In the shareholders' meetings GR will have 50.1% of the voting rights while CKAG will have 49.9%. Resolutions will be passed by majority. Unanimity or qualified majority (75% vote) is only required for the management of funds and for matters not going beyond the protection of shareholders rights.
7. The agreement will confer sole control of the new company on GR even though the management and investment of funds available will be jointly controlled by GR and CKAG.
8. KR is a German corporation (Aktiengesellschaft - AG) governed by its board of management appointed by the company's supervisory board. Four members of the supervisory board are appointed by the staff and eight by the shareholders' meeting. The parties have agreed that GR will nominate six and CKAG two members each. The chairman, appointed by GR will have a casting vote. [...] ⁽¹⁾. GR will exert sole control over KR.
9. In view of the above, the notified operation constitutes a concentration within the meaning of Article 3(1)b of the Regulation.

(1) Deleted business secret.

IV RELEVANT MARKETS

A) Relevant product market

10. The business of reinsurance represents a specialist form of insurance. The purpose of reinsurance is to spread the risks between insurers. The reinsurer accepts either the whole or part of the risk insured by another insurer and thereby provides the primary insurer with the ability to increase the amount of insurance underwritten and to diversify risk over time and geographic area. Thus, reinsurance is traded between industry specialists, it is written only with other insurance companies, no premium income is derived from reinsurance sales to the public, and no channels for retail distribution are therefore required. Accordingly reinsurance must be considered distinct from direct insurance.

B) Relevant geographic market

11. Since reinsurance products are traded between industry specialists and not sold to the general public, the controls by national authorities over the conduct of pure reinsurance tend to be much less extensive than in direct insurance. The fact that the reinsurance business can be run without the necessity to maintain a large distribution force also tends to indicate the global character of the market. The existence of a world market is also evidenced by the presence of international broker firms which mediate reinsurance volumes on a worldwide scale.

V ASSESSMENT

12. GR provides predominantly non-life reinsurance to its clients. Less than 2% of its EEA premium is derived from life insurance. KR provides both life and non-life reinsurance. Exact statistics on reinsurance world market shares are not available. KR and GR are currently ranked sixth and seventh respectively amongst the world's largest reinsurers, and their combined world market share will be less than the individual shares of the two largest reinsurers, Munich Re and Swiss Re, and in any case, well below 10%. In view of this, the operation does not raise serious doubts about its compatibility with the common market.

VI ANCILLARY RESTRAINTS

13. In the joint venture agreement, GR and CKAG have included a non-competition clause which stipulates that CKAG will not compete with KR during the period of time that CKAG remains a shareholder in the J.V. plus an additional five years which implies a minimum period of twelve years. CKAG remains free to hold limited participation in other reinsurance companies and UAP's reinsurance activities are not in any way restricted.
14. This clause is intended to guarantee the transfer to GR of the full value of the assets transferred; these include both the technical know-how required to operate a reinsurance business, which includes sophisticated actuarial techniques and also the goodwill, which in the reinsurance sector includes the professional reputation of the reinsurance company and the loyalty of its customers.

15. As CKAG would be in a position to start a new entity which could run a professional reinsurance business like KR, GR must be allowed to safeguard its investment and therefore the non competition clause can be seen as a restriction directly related and necessary to the implementation of the concentration. However a period of five years is recognised as appropriate when the transfer of assets includes goodwill and know-how, and the present decision covers the non-competition clause for a maximum period of five years.

*
* *

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

For the Commission,