

EN

***Case No COMP/M.5010 -  
BERKSHIRE  
HATHAWAY / MUNICH  
RE / GAUM***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 14/07/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.07.2008  
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.5010 – Berkshire Hathaway/ Munich Re/ GAUM  
Notification of 9 June 2008 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 9 June 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the Merger Regulation) by which the undertakings Northern States Agency, Inc., a wholly owned indirect subsidiary of Berkshire Hathaway Inc. ("Berkshire Hathaway", USA), and Münchener Rückversicherungs-Gesellschaft AG ("Munich Re", Germany) acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, joint control of the undertaking Global Aerospace Underwriting Managers Ltd ("GAUM", UK), by way of purchase of shares.

#### **I. THE PARTIES**

2. **Berkshire Hathaway** is a US based company engaged in a number of diverse business activities, including property and casualty insurance business conducted on both a direct and reinsurance basis.
3. **Munich Re** is a German company active in reinsurance, direct insurance and asset management.
4. **GAUM** is a company that provides management services including underwriting, claims and other services, to an aerospace insurance underwriting pool i.e. the Global Pool and also to third parties. Currently, the members of the Global Pool are Berkshire Hathaway, Munich Re, Tokio Marine and Mitsui Sumitomo.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

## **II. THE OPERATION**

5. The proposed concentration concerns a change of control of GAUM, from joint control by Berkshire Hathaway and Converium<sup>2</sup> (Munich Re being a minority shareholder) to joint control by Berkshire Hathaway and Munich Re.
6. The proposed transaction is a result of the acquisition of Converium by SCOR,<sup>3</sup> which, according to the GAUM Pool Members' Agreement and the GAUM Shareholders' Agreement, triggered provisions related to change of control.
7. Subsequently, on 22 April 2008 the Parties, by signature of the Share Purchase Agreement, agreed to acquire the Converium shares in GAUM conditional upon the obtaining of required clearances and approvals.
8. Following the proposed transaction, Berkshire Hathaway will own 60% of the shares and Munich Re will own the remaining 40%. GAUM's Shareholders' Agreement provides that decisions concerning the approval of the budget and the business plan are to be passed by a majority of the shareholders holding more than 75% of the shares. Therefore, Berkshire Hathaway and Munich Re acquire joint control over GAUM.
9. As the activities of GAUM will not change the joint venture will remain a full-function joint-venture.
10. On the basis of the above, the transaction constitutes a concentration within in the meaning of Article 3(1) (b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

11. The transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation. The Parties have a combined aggregate worldwide turnover in excess of €5 bn (in 2006, Berkshire Hathaway €78.5 bn, Munich Re €37.4 bn) and a Community-wide turnover in excess of €250 million (Berkshire €..., Munich €...).<sup>4</sup> Neither of the Parties realizes more than two-thirds of its Community-wide turnover in any single Member State of the EU.

## **IV. RELEVANT MARKETS**

12. The proposed transaction concerns three markets: insurance, reinsurance, and the provision of underwriting services (including claims) and management services to insurers and reinsurers ("underwriting and management services"). In order to assess the market shares and exact market definition a market investigation has been carried out by the Commission among main brokers, customers and competitors of the Parties.
13. In respect of both the aerospace insurance and reinsurance business written by GAUM, it needs to be borne in mind that, as the market investigation in the present case has

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<sup>2</sup> M.3035: Berkshire Hathaway/Converium/GAUM decision of 28 February 2003

<sup>3</sup> M.4619: SCOR/Converium decision of 20 April 2007.

<sup>4</sup> 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).

confirmed, this business is typically written in coinsurance between a number of insurers or reinsurers, using the procedure known as subscription. The Commission analyzed this practice in its recent final report on the Sector Inquiry into Business Insurance.<sup>5</sup>

### **Underwriting and management services**

#### *Product market*

14. The Parties provide underwriting and claim management services to insurance and reinsurance providers. They argue that the relevant product market is the provision of underwriting and management services for all classes of risk, not just aerospace insurance or reinsurance.
15. In a previous Commission decision, *Berkshire Hathaway/Converium/Gaum/JV*, the market for underwriting and management services was considered as a market distinct from the provision of insurance and reinsurance.<sup>6</sup> The Commission also noted that many insurers provided these services in-house and concluded that there may also be an outsourcing market for such services, which was particularly relevant for insurance pools as an alternative to relying on one company.
16. The Commission also considered whether the market for underwriting and management services should be further subdivided to the provision of such services in respect of aerospace insurance, but was able, in the context of the case to leave this question open.<sup>7</sup>
17. The current market investigation confirmed the existence of a possible segment of underwriting and management services for aerospace risk insurance and a number of respondents pointed out that underwriting and management services for satellite/space risk could be a possible sub-segment, as these services require special knowledge and expertise.
18. The Parties have also argued that the relevant market should be enlarged to include services provided internally by insurers, i.e. captive provision of the same services. Whilst the Commission recognizes, however, the similarity in the services provided between entities that act on the market as pure agents and entities that provide these services in-house it requested the Parties to provide also market share excluding captive use.
19. However, for the purposes of the present decision it is not necessary to conclude on the exact definition of the relevant product market, since, even on the narrowest definition considered, namely the provision of underwriting and management services in respect of aerospace risks by entities that act exclusively as agents or provision of such services to satellite/space insurers, no competition concerns have been raised.

#### *Geographic market*

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<sup>5</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Sector Inquiry under Article 17 of Regulation (EC) No 1/2003 on business insurance (Final Report) COM/2007/0556 final of 25 September 2007 {SEC(2007) 1231}. See also [http://ec.europa.eu/comm/competition/sectors/financial\\_services/inquiries/final\\_report\\_annex.pdf](http://ec.europa.eu/comm/competition/sectors/financial_services/inquiries/final_report_annex.pdf)

<sup>6</sup> Commission Decision Case No COMP/M.3035 of 28 February 2003, para. 15-21.

<sup>7</sup> COMP/M.3035, *Berkshire Hathaway/Converium/Gaum/JV*, §§ 19-21.

20. The Parties argue that the market for providing underwriting and management services to aerospace risk insurance is at least EEA-wide, and probably worldwide, in scope. This is in line with previous Commission Decision M.3035<sup>8</sup> and the market investigation in the current case.

## Insurance

### *Product market*

21. Berkshire Hathaway and Munich Re are both active on the insurance market and argue that the relevant product market is the market for all direct insurances.
22. This is not in line with the Commission's practice. In numerous previous decisions, the Commission has distinguished between life insurance and non-life insurance.<sup>9</sup> Both parties are active in non-life insurance, only Munich Re is active in life insurance.
23. Regarding non-life insurance the Commission has observed that, from the demand side, there are as many different product markets as there are different kinds of risks covered, such as aerospace, marine, commercial and real estate etc. since their characteristics, premiums and purposes' are distinct and there is typically no substitutability from the customer's perspective between the different risks insured. The Commission has noted, however, a degree of similarity on the supply side of non-life insurance and that most large insurers are active in several classes of insurance, factors which might argue for a wider market definition.<sup>10</sup>
24. In previous decisions, however, the Commission has also noted that even if supply-side substitution might operate over a range of risks, and particularly in industrial insurance, certain types of insurance by virtue of their specific characteristics may be an exception to this rule. The latter might in particular include large industrial risks. In the *Berkshire Hathaway/Converium/Gaum/JV* decision it was suggested, but not finally decided upon, that this could apply to aerospace insurance. It was left open whether aerospace insurance itself needed to be further divided into individual segments<sup>11</sup>.

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<sup>8</sup> COMP/M.3035, *Berkshire Hathaway/Converium/Gaum/JV*, §25

<sup>9</sup> Cases No COMP/M.4844, *Fortis/ABN Amro Assets*, of 3/10/2007; COMP M.4713 *AVIVA/ Hamilton* of 27/09/2007; COMP/M.4284, *AXA/Winterthur*, of 28/06/ 2006; COMP/M.4059 *Swiss Re/General Electric Insurance Solutions* of 24/04/2006; M.2676 *Sampo/Vama/IF Holding/JV* decision of 18/12/2001; COMP/M.2400, *Dexia/Artesia* of 14/06/2001; COMP/M.1453, *AXA/GRE*, of 8/4/1999; COMP/M.2343, *Toro Assicurazioni/Lloyd Italo*, decision of 15/03/2001; COMP/M.2225, *Fortis/ASR* of 13/12/2000; COMP/M.1886, *CGU/Norwich Union* decision of 13/04/2000; COMP/M.1712, *Generali/INA* decision of 12/01/2000; COMP/M.759-*Sun Alliance/Royal Insurance* of 18/06/1996; and COMP/M.862- *AXA/UAP* of 20/12/1996.

<sup>10</sup> See Commission decisions in Cases: IV/M.2676 *Sampo/Varma Sampo/IF Holding/JV*; COMP/M.3035 *Berkshire Hathaway/Converium/Gaum/JV*; COMP/M.3446, *UNIQA/Mannheimer*; COMP/M.3556 *Fortis/BCP*; Case COMP/M.3556, *Fortis/BCP*; COMP/M.4047 *AVIVA/ARK LIFE*; COMP/M.4055 *Talanx/Gerling*; COMP/M.4059 *Swiss Re/GE Insurance Solutions*; COMP/M.4284 *AXA/Winterthur*; COMP/M.4844 *Fortis/ABN AMRO ASSETS*.

<sup>11</sup> COMP/M.3035, *Berkshire Hathaway/Converium/Gaum/JV*, §§26-28.

25. On request of the Commission the Parties provided the following eventual segmentation of the aerospace risk insurance:<sup>12</sup>
- a) **airline** risks, i.e. cover for hull damage and passenger and third party liability;
  - b) **product and airport** risks, i.e. insurance provided to product manufacturers, airport authorities, service providers and component manufacturers as well as refuelling and fuelling activities;
  - c) **general aviation** risks, i.e. cover for hull and liability for all aircraft not operated by airlines (such as private and corporate jets, air taxi services, and occasional charters);
  - d) **banks (financial)/non-ownership** risks, i.e. (residual) insurance of the legal owners of aircraft when these are not their users (this mainly refers to banks and leasing companies) ;
  - e) **satellite/space** risks.
26. The market investigation confirmed that the aerospace risk insurance could constitute a separate market of non-life insurance. A number of companies pointed out in the market investigation that satellite/space risk insurance could be distinguished as a sub-segment of aerospace risk insurance due to the experienced personnel required in order to provide this kind of insurance.
27. However, for the purpose of this case, it is not necessary to decide on the exact definition of the relevant product market since whatever market definition is considered the transaction does not raise any competition concerns.

#### *Geographic market*

28. The Parties submit that provision of aerospace insurance as well as its possible segments should be regarded world-wide or, at the very least, EEA-wide as distribution channels are established on an international basis.
29. In previous decisions the geographic scope of non-life insurance has generally been held to be national,<sup>13</sup> with the exception, however, of the markets for insurance of large commercial risks.<sup>14</sup> Also, in the *Berkshire Hathaway/Converium/Gaum/JV* case, the Commission found that the market for the provision of aerospace risk insurance was most likely at least EEA-wide.<sup>15</sup>
30. In the present case, most respondents to the market investigation agreed that, due to distribution channels organised on international level the market for aerospace risk insurance market is at least EEA-wide. However, it is not necessary to decide on the exact

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<sup>12</sup> The Parties noted three further categories, namely hull war insurance, hull deductible insurance, and excess war third party liability coverage, but since the notified transaction did not lead to material overlaps in respect of these segments, they are not considered further.

<sup>13</sup> COMP/M.4701 Generali/PPF Insurance Business, §26; see also [forthcoming] decision in case M.5075 Vienna Insurance Group / Erste Bank Versicherungssparte.

<sup>14</sup> COMP/M.2676 Sampo/Varmo Sampo/IF Holding/JV.

<sup>15</sup> COMP/M.3035, Berkshire Hathaway/Converium/Gaum/JV.

geographic scope of the market since, on the assumption that it is at least EEA-wide, no competition concerns have been raised regardless of the exact geographic market definition.

## **Reinsurance**

### *Product market*

31. Both Berkshire Hathaway and Munich Re are active on the reinsurance market and suggested that the relevant product market should not be further segmented by type of reinsurance.
32. In previous decisions the Commission has left open whether reinsurance constitutes a single relevant product market or whether it might be further sub-divided into life and non-life segments. It has also reviewed market share data according to class of risk (e.g., liability, motor, property, etc.), without, however, concluding that these constituted separate product markets.<sup>16</sup>
33. In the present case, the market investigation tends to suggest that the relevant market was wider than a possible market for aerospace reinsurance, since most reinsurers are active in many classes of risk and able to move into a new class within a comparatively short period of time. However, a number of respondents pointed out that aerospace risk reinsurance could be a possible segment of the reinsurance market since its provision requires specific expertise and knowledge.
34. In any case, the precise market definition can be left open in the present case, since, even on the narrowest market definition considered, namely that of aerospace reinsurance, serious doubts do not arise as to the compatibility of the notified transaction with the common market.

### *Geographic market*

35. In previous decisions the Commission has affirmed that the geographic market for the supply of reinsurance is global due to the need to pool risks on a global basis.<sup>17</sup> The Parties have stated that they agree with the view of the Commission and the results of the market investigation also confirm the view that the market for reinsurance, including the aerospace risk insurance, is worldwide.

## **V. COMPETITIVE ASSESSMENT**

36. In the present instance, it needs to be considered that Berkshire Hathaway and Munich Re provide insurance and reinsurance not only directly, but also through their membership in the Global Pool, for which GAUM acts as agent.
37. According to the information submitted by the Parties, using 2006 figures which were the latest complete figures available to the Parties, and based on the conclusions as to

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<sup>16</sup> See, e.g., COMP/M.4059 *Swiss Re/GE Insurance Solutions*.

<sup>17</sup> Case No IV/M.1306 - Berkshire Hathaway/General Re; Case No COMP/M.4059 - Swiss Re/GE Insurance Solutions.

potentially relevant markets set out above, the proposed transaction gives rise to horizontal overlaps and to two potentially affected markets, namely in **aerospace underwriting and management services** and **aerospace reinsurance**. The Parties acknowledged, however, that these figures were only their best estimates. Accordingly, and as explained below, the market investigation has shown that also two potential market segments within **aerospace insurance** could be affected i.e. space/satellite and banks (definition see paragraph 26).

### **Underwriting and management services**

38. The Parties combined market share on the overall underwriting and management services market is below [0-5]% on a worldwide and EEA-wide level.
39. If the relevant product market is to be limited only to the provision of services for aerospace risk (re)insurance including captive use, the parties estimate their combined worldwide market shares at around [10-20]% (GAUM: [0-10]%, Berkshire Hathaway: [0-10]%, Munich Re: [0-5]%). At EEA level, the parties indicate a combined market shares of around [10-20]% (GAUM: [0-10]%, Berkshire Hathaway: [0-10]%, Munich Re: [0-10]%).
40. 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 respective combined market shares would be [30-40]% on a worldwide market (GAUM: [20-30]%, Berkshire Hathaway: [0-10]%, Munich Re: less than [0-10]%). On an EEA-wide market their combined market share would be [30-40]% (GAUM: [10-20]%, Berkshire Hathaway: [10-20]%, Munich Re: less than [0-5]%).
41. Although the Parties clearly disagreed with further segmentation of the aerospace risk insurance, they provided their best estimates on the sub-segment of underwriting to space/satellite risk. The estimated market share on this sub-segment would be less than [20-30]% (GAUM: <[0-10]%, Munich Re: < [10-20]% and Berkshire Hathaway: < [0-5]%).
42. It should, however, be noted that, Berkshire's incentives to provide these services independently do not change materially as a result of the present transaction and that the increment due to Munich Re becomes marginal.
43. Even if the above relevant market does not include the provision of analogous services in respect of other classes of insurance, it may well be that the ability to switch to self-supply or for an existing integrated insurer to enter the outsourcing market is sufficient to constrain GAUM and would not, therefore, lead to increased prices for this kind of service.
44. The results of market investigation show that it would not be very difficult for such an integrated insurer to quickly enter the outsourcing market if it had an incentive to do so. During the market investigation, none of the relatively few potential customers for this type of service expressed concerns as to the impact of the notified transaction on the availability or terms of the service.
45. Finally, the Parties cite one example of a recent new entry to the market (Starr Managing Agents Ltd.), suggesting its contestability.
46. Given all of the above, the proposed transaction does not raise serious doubts as to its compatibility with the common market.



## **Insurance**

47. It would only be on two very narrow markets for Space/Satellite insurance and the market for Banks as defined in paragraph 25 that the proposed transaction would lead to affected markets.
48. On a possible segment of space/satellite insurance the Parties have a combined market share of around [10-20]% on a worldwide level (GAUM: [0-5]%, Berkshire Hathaway: [0-5]%, Munich Re: [10-20]%). On an EEA-wide level their market share would also be around [10-20]% (GAUM: [0-5]%, Berkshire Hathaway: [0-5]%, Munich Re: [10-20]%).
49. On a possible "bank" segment within aerospace insurance the Parties have a combined market share of [20-30]% on a worldwide level (GAUM: [10-20]%, Berkshire Hathaway: [10-20]%, Munich Re: [0-5]%). On an EEA-wide level their market share would increase to around [30-40]% (GAUM: [10-20]%, Berkshire Hathaway: [10-20]%, Munich Re: [0-10]%).
50. The market investigation confirmed a significant number of insurers active on the market for aerospace risk insurance. Respondents pointed out that switching suppliers for aerospace insurance is not difficult due to the limited duration of contracts (in general 1 year) and the barriers to entry for potential insurance providers were considered low.
51. The market investigation has also confirmed that a significant number of strong international players, such as ACE, AIG or Allianz supply aerospace risk insurance with the similar possibility to place premiums in lead capacity as the Parties.
52. Finally it should be noted that none of the customers of aerospace insurance surveyed during the market investigation, and no broker, raised substantive concerns in relation to any creation of market power as a result of notified transaction.
53. Based on all of the above considerations, it can be concluded that the proposed transaction does not raise serious doubts as to its compatibility with the common market within the insurance market or any submarket thereof.

## **Reinsurance**

54. The Parties estimate that their combined market share in reinsurance on a worldwide level is around [10-20]% (GAUM: [0-5]%, Berkshire Hathaway: [0-10]%, Munich Re: [10-20]%). Their combined market shares for the non-life reinsurance and aerospace risk reinsurance are around [10-20]% respectively. The market investigation confirmed that there is a significant number of reinsurers active on the aerospace reinsurance market and taking into consideration a limited duration of contracts switching suppliers for aerospace reinsurance is not difficult.
55. The market investigation has also confirmed that a significant number of strong international players exist in the market with the ability to act as lead reinsurer on aerospace risks and, thus, to act as a competitive constraint to the Parties. These include La Reunion Aerienne, Allianz, AIG, Swiss Re.
56. Finally it should be noted that none of the insurer customers of reinsurance surveyed during the market investigation, despite being sophisticated customers, raised substantive concerns in relation to any creation of market power as a result of the notified transaction. The same applies to all of the reinsurance brokers surveyed.
57. Based on all of the above considerations, it can be concluded that the proposed transaction does not raise serious doubts as to its compatibility with the common market within the reinsurance market or any submarket thereof.

## **VI. COOPERATIVE EFFECTS OF JV**

58. In the present case also the possibility of co-operative effects between the Parties have to be considered as the article 2(5) of the Merger Regulation requires the Commission to take into account in this respect, *inter alia*, the activities of the parent companies both in the same market as that in which GAUM is active and in any market upstream to it.
59. The provision of insurance and reinsurance as principal are upstream to the provision of underwriting and management services to insurers and reinsurers. Moreover there is a direct vertical commercial relationship between the Parties and GAUM via the membership of the Parties in the Global Pool.
60. The Parties market shares in underwriting and management services for aerospace risk insurance and reinsurance are, as stated above, only around [10-20]%. Further, it has to be borne in mind that the transaction is a change of control in a pre-existing company and not a combination of two or more competitors which would result in the removal of one of those undertakings from the market.
61. Also, as for the possible vertical relationships are concerned, Munich Re and Berkshire Hathaway are both active in provision of insurance and reinsurance which are upstream from GAUM's underwriting and management services. In the narrowest possible market, which is aerospace risk insurance, Munich Re and Berkshire Hathaway have market share around [0-10]% and in aerospace risk reinsurance they have around [10-20]%. However, both insurance and reinsurance markets of aerospace risk are characterised by over capacity. Also, the Parties claim that GAUM will not share any sensitive information about the markets through the joint venture as it does not disclose its underwriting terms and prices to individual Pool Members or shareholders.

62. Also, the market investigation pointed out that the transaction is not expected to diminish the incentives of the controlled entity to compete as independent players in any relevant market and thus lead, by withdrawal or weakening of a competitive force, to a concentration of that market which might then result in a significant impediment to effective competition.
63. Further, as seen above in the previous section, there are a significant number of independent competitors in the markets where Parties are present.
64. Therefore, even if the concentration increased the risk of coordination, this would not afford the Parties the possibility of restricting the competition in the market for underwriting and management services to aerospace risk insurance/reinsurance as well as market for aerospace insurance and reinsurance. Hence it can be concluded that the proposed transaction does not raise serious doubts as to its compatibility with the common market as to its possible coordination effects.

## **VII. CONCLUSION**

65. 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