EN

Case No IV/M.597 - Swiss Bank Corporation / S.G. Warburg

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REGULATION (EEC)No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 28/06/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.6.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject : Case No IV/M.597 - Swiss Bank Corporation/S.G.Warburg
Notification of 22.05.1995 pursuant to Article 4 of Council Regulation No 4064/89

1. On 22 May 1995 Swiss Bank Corporation (SBC), through its wholly-owned U.K. subsidiary SBCI Swiss Bank Corporation Investment banking Limited (SBCI), notified a proposed concentration by which it will acquire, by means of a cash purchase, all the investment banking activities of the S.G. Warburg Group plc. Excluded from the operation will be those activities carried by S.G. Warburg Group plc's 75% subsidiary, Mercury Asset Management Group plc (MAM), which are primarily related to asset management.

I. THE PARTIES

2. SBC, which is one of the "big three" Swiss credit institutions, is engaged in retail banking, private banking and asset management in its home country but also in wholesale banking, investment banking, securities and treasury trading, both in Switzerland and abroad.

3. The S.G. Warburg Group (SGW) is the leading UK investment bank and its main activities include mergers and acquisitions (M&A) advice, equity and fixed interest underwriting, securities distribution and trading, specialist and project financing and the management of pension fund and investment trusts.

Rue de la Loi 200 - B-1049 Brussels - Belgium
Telephone: exchange (+32-2)299.11.11
Telex: COMEU B 21877 - Telegraphic address: COMEUR Brussels

II. THE OPERATION

4. Under a share purchase agreement signed on 10 May 1995, SBCI, the UK investment banking subsidiary of SBC, will acquire all the issued shares of six wholly-owned subsidiaries of SGW, namely S.G. Warburg & Co. Limited, S.G. Warburg Securities Limited, S.G . Warburg Overseas Limited, S.G. Warburg Group Management Limited, S.G. Warburg Holdings Limited and Rowe & Pitman Money Broking Limited. These companies comprise all of the trading and operating companies involved in SGW's investment banking operations.

5. [...][1], the parties entered into several other agreements, in particular:

   - a "put and call option agreement", by which MAM (which in the meantime will become the owner of S.G. Warburg Group plc and the intermediate holding companies) will sell and SBC will buy all the shares of the above mentioned companies (the "option companies");

   - a "funding agreement" by which SBC undertakes the obligation to fund the indebtedness of the option companies under the defined external borrowing agreements;

   - an "administration agreement" under which the option companies will appoint SBCI as their administrator to perform services and act as their agents in connection with the defined external borrowing arrangements; and

   - By a series of "transfer agreements" and "deeds of release", the parties have agreed that a nominee of SBC, its Dutch subsidiary SBC BV, will become liable to fund the debt owed to third parties by the option companies and to fund the amounts owing from the acquired operating companies of SGW to the option companies.

III. CONCENTRATION

6. The acquisition by SBCI of all the investment banking activities of SGW is a concentration, since SBC through SBCI will acquire sole control of the acquired parts of SGW, according to Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of SBC and the acquired parts of SGW, calculated in accordance with Article 5(3)(a) of the Merger Regulation, exceeded 5,000 million ECU in the last financial year (one-tenth of total assets of SBC amounts to 13,089 million ECU, and of acquired parts of SGW amounts to 2,395 million ECU). Both SBC and the acquired parts of SGW have a community-wide turnover in excess of 250 million ECU but do not achieve more than two-thirds of their aggregate community-wide turnover in one and the same Member State. The operation therefore has a Community dimension.

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(1) Business secrets deleted. By the present operation SBC is not acquiring S.G. Warburg Group plc, the ultimate parent company of the Warburg Group and six intermediate holding companies and finance vehicles belonging to the same group. These companies are hereunder collectively designated as the "option companies".

V. COMPATIBILITY

8. The activities of the undertakings concerned are mainly complementary. SBC is a universal bank which is active in retail, private and wholesale banking, as well as in assets management, M&A advice, equity underwriting, debt issues, foreign exchange trading, derivatives trading and securities trading. The acquired parts of SGW have no significant activities in what regards retail, private and wholesale banking, assets management and foreign exchange trading. Therefore the only activities where there is a significant overlap are those related to investment banking activities, in particular M&A advice, equity underwriting, debt underwriting, securities (equity and debt) trading and derivatives.

9. M&A advice (also denominated corporate finance advice) is a services activity which consists in advising companies or public adminstrations. These services include advice on acquisitions/disposals by trade purchases/sales, public bids, privatisation, corporate restructuring, corporate rescues and advice on demergers. Although many M&A transactions are cross-border, it is important to distinguish the activity, which may be international in scope, from the service provided, which is mainly national in scope. The national character of M&A advice services results from a number of factors, such as the need for detailed knowledge of local corporate law and business structures, accounting rules, regulatory regimes and market prices. In practice, the provision of M&A advice services generally requires that the principal advisor should be physically established in the country where the target company is situated(1).

10. SGW is a leading European player in M&A and has activities in several EU countries such as the UK, Germany, France, Italy, Spain, the Netherlands and Sweden, as well as in countries such as the USA, Japan, Hong Kong and Singapore. SBC carries M&A activities in the EU in two countries, UK and Italy, and outside Switzerland and the EU it is also active in particular in Latin America and Eastern European countries.

11. Therefore, the main EU countries in which both SGW and SBC were active in 1994 were the UK and Italy. In the UK SGW had a [...](1) market share of all deals concerning a UK target, and SBC had a market share below one percent. In Italy SBC had a [...](1) market share and SGW's market share was below one percent. For the past three to four years Warburg has been the leading UK and European investment bank.

12. The underwriting of equity and of debt issues, together with M&A advice, constitutes what many consider as the core activity of investment banking. Equity and debt underwriting is related to the primary market, which means the offering of new securities (shares or bonds) to the public. Underwriting means that the investment bank insures (underwrites) the risk of adverse market price fluctuations during the period of distribution by buying the securities, or otherwise undertaking to buy any unsubscribed shares from the issuing corporation at the agreeed issue price and then selling the securities to the public, making its profit on the spread between its buying and selling price. Although the geographic scope of these activities may be national or even narrower in scope as far as SGW and SBC are concerned, these markets appear to be global since major players are competing for major issues all over the world.

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(2) See case no. IV/M.508 - BHF/CCF (II).

(3) Business secret deleted. Between 5 and 10%.

(4) Business secret deleted. Between 1 and 5%.

13. SGW has a stronger position than SBC in international equity underwriting. In 1994, SGW ranked eighth among book runners for all international equity and equity-linked issues worldwide, with a market share of [...][(1)] compared to about [...][(1)] for SBC. Within the EU, for the same year, SGW had a market share of about [...][(1)], compared to less than two percent for SBC for all equity and equity-linked issues.

14. With regard to international debt underwriting, SBC holds a stronger position than SGW. SBC was the book runner in 1994 for 149 debt issues worldwide with a [...][(1)] market share, compared to SGW's 32 debt issues and market share of about [...][(1)]. In the EU SBC was the book runner in 65 debt issues with a [...][(1)] market share, and SGW with 23 issues holds a market share below two percent.

15. Securities trading includes trading and dealing in equity securities and debt securities in the secondary market. These activities mainly concern securities which are listed in a registered stock exchange, and its geographic scope is therefore predominantly national as an operator has to be authorised to act on any national stock exchange.

16. With regard to trading on listed equity securities (this activity is also denominated "equities") both SGW and SBC are active on several stock exchanges within the EU. The only EC or EEA market on which SGW has an estimated market share of more than seven percent is the UK, with [...][(1)] in 1994. SBC estimates that its market share in "equities" is less than five percent in any EC or EEA equity market, and in the UK its market share is below one percent.

17. SGW's debt ("fixed income") trading operations are limited and at the beginning of 1995 it announced its withdrawal from a number of fixed income markets. SGW's operations are limited now to the UK and US Government and Eurosterling bonds, and for any of these segments the parties estimate that the combined SBC/SGW operations do not exceed a five percent market share.

18. A derivative transaction is a bilateral contract or payments exchange agreement whose value derives, as its name implies, from the value of an underlying asset or underlying reference rate or index. Nowadays derivatives transactions cover a broad range of "underlyings" such as interest rates, exchange rates, commodities, equities or other indexes. Derivatives will include, inter alia, interest rate swaps and options, forward rate agreements and futures, stock and index options. In addition to privately negotiated transactions between financial institutions whose scope is global, derivatives also include standardised contracts which are actually traded on organised exchanges, such as LIFFE in the UK, MATIF/MONEP in France or BELFOX in Belgium.

19. With regard to organised exchanges within the EU, in no EU country will the combined market share SGW/SBC exceed 15%. For instance, in each of the two largest exchanges within the EU, LIFFE (UK) and MATIF/MONEP (France), the combined SBC/SGW market share does not exceed eight percent.

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(5) Business secret deleted. Between 4 and 6%.
(6) Business secret deleted. Less than 4%.
(7) Business secret deleted. Between 5 and 10%.
(8) Business secret deleted. Between 3 and 6%.
(9) Business secret deleted. Less than 3%.
(10) Business secret deleted. Between 3 and 6%.
(11) Business secret deleted. Between 7 and 10%.

20. To sum up what is stated in the preceding paragraphs, it can be said that the relevant markets for investment banking activities are still very fragmented within the EU with a number of significant players, both European and from the US, and, in any one of the relevant product/services activities and geographic markets which has been identified above, the combined market share SGW/SBC will not exceed 15%.

21. From a global point of view, the concentration will create a banking group of significant size within Europe, as according to data obtained from a survey carried out in 1994 by the specialised publication "The Banker", after acquisition of the investment banking activities of SGW, SBC will rank sixth among major European banks by core capital and sixteenth by assets.

VI ANCILLARY RESTRAINTS

22. The notifying party has requested that the clauses and agreements described below be considered as ancillary to the concentration.

23. Clause 9 of the Share Purchase Agreement contains a number of provisions concerning the conduct of business of the acquired parts of SGW before full implementation of the deal. These provisions include, inter alia, the following obligations for the seller:

- not to do, or omit to do, any act which might prevent the full implementation of the concentration;
- not to commit any breach of the terms of the "Administration Agreement";
- not to create, allot, issue, acquire, repay or redeem any share or loan capital;
- not to acquire or dispose of any asset and not to make any capital expenditure.

24. Clause 14 of the Share Purchase Agreement stipulates that, before and after completion, neither the seller nor any company of its group shall use or disclose the confidential information it has acquired.

25. The two clauses mentioned in paragraphs 23 and 24 are intended to protect the full value of the acquired assets and therefore, to the extent that they would amount to a restraint of competition, they may be considered as ancillary.

26. It was also requested by the parties that the "funding agreement", the "administration agreement" and the "transfer agreements" and "deeds of release", mentioned in paragraph 5, should also be considered as ancillary. To the extent that these agreements are not considered as an essential part of the concentration, any restriction of competition they may include shall be considered as directly related and necessary to the implementation of the concentration.

VII CONCLUSION

27. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.

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For the above reasons, the Commission has decided not to oppose the notified concentration 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