

***Case No IV/M.601 -
EMPLOYERS
REINSURANCE
CORPORATION /
AACHENER
RÜCKVERSICHERUN
GS - GESELLSCHAFT
AG***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/06/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.06.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No.IV/M.601-EMPLOYERS REINSURANCE CORPORATION/AACHENER
RÜCKVERSICHERUNGS-GESELLSCHAFT AG
Notification of 24 May 1995 pursuant to Council Regulation (EC) No. 4064/89

- 1 On 24 May 1995 Employers Reinsurance Corporation (Employers Reinsurance) notified to the Commission its intended acquisition of the non-group reinsurance business of Aachener Rückversicherungs-Gesellschaft AG (Aachener Rück).
- 2 After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application 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

- 3 Employers Reinsurance is incorporated in the United States of America. Its ultimate parent is the General Electric Company, the head of a large and diversified industrial group. Its principal activity is the transaction of reinsurance business. Other companies in the General Electric group also supply reinsurance.

- 4 Aachener Rück, incorporated in Germany, is ultimately controlled by Aachener und Münchener Beteiligungs AG. Its principal activity is the transaction of reinsurance business.

II THE OPERATION

- 5 Aachener Rück, which conducts both intra-group and non-group reinsurance activities, will transfer to Laurensberg Beteiligungs AG (Laurensberg), one of its subsidiaries, its non-group reinsurance activities and the shares in certain other subsidiary and associated companies engaged in non-group reinsurance business. The transfer will result in the acquisition by Laurensberg of minimal intra-group reinsurance as well. Laurensberg will sell to ERC three of its subsidiaries - Aachen Reinsurance Intermediaries Inc Atlanta (USA), Aachen Holdings Inc Atlanta (USA) and Applewood plc (United Kingdom). None of these companies supplies reinsurance. Aachener Rück will sell Laurensberg to ERC. Laurensberg will acquire the name Aachener Rück.
- 6 The operation accordingly constitutes a concentration within the meaning of article 3(1)b of the Regulation.

III CONCENTRATION OF COMMUNITY DIMENSION

- 7 General Electric Company has a Community-wide turnover⁽¹⁾ in excess of [...] ⁽¹⁾. The business which it will acquire from Aachener Rück has a Community-wide turnover of [...] ⁽²⁾. Accordingly their combined aggregate worldwide turnover exceeds ECU 5000m and each of them has a Community-wide turnover in excess of ECU 250m. But they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
- 8 The operation therefore has a Community dimension within the meaning of Article 1(2) of the Regulation.

IV COMPATIBILITY WITH THE COMMON MARKET

a) Introduction

- 9 Simultaneously with its notification of this operation Employers Reinsurance notified to the Commission its proposed acquisition of Frankona Rückversicherungs AG (Frankona Rück), another reinsurer, from the Gerling insurance group. ⁽¹⁾ The assessment made in this decision takes into account the effect of that proposed acquisition.

b) Relevant product market

⁽¹⁾ Turnover in paragraph 7 is calculated according to Article 5(3)(b) of the Regulation.

⁽²⁾ Deleted; business secret.

⁽³⁾ IV/M.600 - Employers Reinsurance Corporation/Frankona Rückversicherungs AG

- 10 Reinsurance is a particular form of insurance. Its purpose is to spread risks between insurers. The reinsurer accepts either the whole or part of the direct risk insured by another insurer and thereby provides the primary insurer with the ability to increase the amount of insurance which he underwrites and to diversify his risk over time and geographic area. 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 required. For these reasons the Commission has concluded in earlier decisions⁽¹⁾ that it is necessary to distinguish between reinsurance and direct insurance.
- 11 Reinsurance can be divided into two sectors - life and non-life. The non-life sector can be further sub-divided into the following principal categories - liability, motor, accident/sickness, fire, marine, aviation and other. Although some reinsurers specialise in particular types of cover, there is no reason apart from expertise why a reinsurer should not readily enter the market in any sector; there is thus a high level of supply-side substitutability. Since even on the narrowest market definition no competition difficulties arise the question whether the reinsurance market should be sub-divided can be left open.

c) Relevant geographic market

- 12 Since reinsurance products are traded between industry specialists and not sold to the general public, controls by national authorities over the conduct of pure reinsurance tend to be much less extensive than those over direct insurance. This, together with the fact that reinsurance business can be conducted without the necessity of maintaining a large distribution force, tends to indicate that the market has a global character. The existence of a world market is also evidenced by the presence of international broking firms which mediate reinsurance on a worldwide scale. Within the European Union freedom of establishment to provide reinsurance services was enacted by Directive EEC 225/64. The Commission has in earlier decisions⁽¹⁾ considered the reinsurance market to be international or global.

d) Competitive assessment

- 13 In 1994 the three largest reinsurers in the world were Munich Re ([...]⁽¹⁾ of the market), Swiss Re ([...]⁽⁶⁾) and General Re ([...]⁽¹⁾⁽¹⁾). General Electric occupied the fourth position ([...]⁽⁷⁾), Frankona Rück the seventh position ([...]⁽⁷⁾) and the business acquired by Employers Reinsurance from Aachener Rück the eighteenth position ([...]⁽⁷⁾). The effect of this operation and of the acquisition by Employers Reinsurance of Aachener Rück is that General Electric displaces General Re from the third position ([...]⁽⁷⁾). The remainder of the market is highly fragmented, only five suppliers having a share above [...]⁽⁷⁾. As this indicates, barriers to entry are low.

⁽⁴⁾ IV/M.433 - ERC/NRG Victory; IV/M.491 General Re/Kölnische Re

⁽⁵⁾ IV/M.433 - ERC/NRG Victory; IV/M.491 General Re/Kölnische Re

⁽⁶⁾ Deleted; business secret: 5-10 per cent.

⁽⁷⁾ Deleted; business secret: 0-5 per cent.

⁽⁸⁾ Including Kölnische Rück, which General Re acquired in 1994 (case IV/M.491 - General Re/Kölnische Rück).

- 14 In 1994 the world market shares of the parties to the two operations for life (including health and disability) reinsurance were - General Electric [...] ⁽⁷⁾, Frankona Rück [...] ⁽⁷⁾ and the business acquired by Employers Reinsurance from Aachener Rück [...] ⁽⁷⁾. Their shares for non-life reinsurance were - General Electric [...] ⁽⁷⁾, Frankona Rück [...] ⁽⁷⁾ and the business acquired by Employers Reinsurance from Aachener Rück [...] ⁽⁷⁾. In none of the categories liability, motor, accident/sickness, fire and other did their combined market shares exceed [...] ⁽¹⁾. Frankona has established a strong reputation as a supplier of aviation [insurance] ⁽¹⁾. However in both marine and aviation a comparison of the premiums received by the parties to the two operations in 1994 indicates that the increase in market shares resulting from the operation is not significant.
- 15 Accordingly the operation, even when it is considered together with the acquisition by Employers Reinsurance of Frankona Rück, does not create or enhance a dominant position.

V ANCILLARY RESTRAINTS

- 16 Employers Reinsurance has requested that certain restrictions be considered as ancillary to the concentration.
- Aachener Rück agrees that pending completion it will conduct the business which it transfers to Employers Reinsurance only in the normal and ordinary course of business.
 - Aachener Rück agrees not to use certain names containing the word "Aachen" or "Aachener", similar names and trade marks or designs currently used by the business transferred.
 - Aachener Rück agrees that it will not for 10 years disclose or use business secrets relating exclusively to the business transferred.
 - Subject to standard exceptions as to investment Aachener Rück and Aachener und Münchener Beteiligungs agree for [...] ⁽¹⁾ not to compete with the business transferred.
 - Laurensberg grants to Aachener Rück intellectual property licences necessary for Aachener Rück to conduct the intra-group reinsurance business which it retains.
 - Aachener Rück agrees to offer exclusively to Laurensberg at original conditions between 1996 and 2002 retrocession contracts in respect of intra-group business with Aachener und Münchener Beteiligungs. These contracts form part of the reinsurance business which Employers Reinsurance acquire under the operation.
- 17 In so far as these provisions amount to restrictions they are necessary to guarantee the transfer to Employers Reinsurance of the full value of the assets which they purchase or the preservation for Aachener Rück of the full value of the assets which it retains or are

⁽⁹⁾ Deleted; business secret: 10-15 per cent.

⁽¹⁰⁾ Correction: read reinsurance

⁽¹¹⁾ Deleted; business secret: 0-5 years

otherwise directly related to and necessary for the successful implementation of the concentration. They can therefore be treated as ancillary to the concentration.

VI CONCLUSION

- 18 For the foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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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,