

***Case No COMP/M.6053 -
CVC/ APOLLO/ BRIT
INSURANCE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/01/2011

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Brussels, 19.01.2011

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6053 – CVC/ APOLLO/BRIT INSURANCE
Notification of 12 December 2010 pursuant to Article 4 of Council
Regulation No 139/2004¹
Publication in the Official Journal of the European Union No C 340,
15.12.2010, p. 27.**

1. On 6 December 2010, the European Commission received a notification of a proposed concentration by which the undertakings CVC Capital Partners SICAV-FIS S.A., ("CVC", Luxembourg), and Apollo Management L.P. ("Apollo", USA) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Brit Insurance Holdings Ltd ("Brit Insurance", The Netherlands) by way of public bid.

I. THE PARTIES

2. CVC is a group providing investment advice to and/or managing investments on behalf of a range of CVC Funds. Among others, CVC holds controlling interests in AA/Saga, which provides non-life insurance, insurance underwriting services, distribution services and financial services products primarily in the UK. In addition, CVC holds controlling interests in Evonik Industries A.G. ("Evonik"), which is active in speciality chemicals.
3. Apollo is a private equity investment fund that invests in companies involved in numerous businesses throughout the world. Apollo holds Athene Life Re which is active in fixed life insurance annuity policies but has no non-life insurance activities. In addition, Apollo funds controls Momentive Specialty Chemicals, Inc. ("Momentive"), which is also active in speciality chemicals.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

4. Brit Insurance is a general insurance and reinsurance group specialising in commercial insurance, underwriting a diverse portfolio of classes of insurance and reinsurance and offering protection for business worldwide, through a distribution channel centred on brokers and intermediaries.

II. THE OPERATION

5. The proposed transaction involves the acquisition by CVC and Apollo of Brit Insurance Holdings N.V. through a newly-incorporated company – Achilles Netherlands Holdings B.V. ("Achilles"), jointly owned by CVC and Apollo in equal proportions.
6. On 26 October 2010 the board of Achilles and the Independent Directors of Brit Insurance agreed the terms of recommended cash offer to be made by Achilles for Brit Insurance. Upon completion of the transaction, Achilles will hold 100% of Brit Insurance. CVC and Apollo will hold substantially all of the shares in Achilles in equal proportions, with the remainder of the shares held by the management of Brit Insurance.
7. The notifying parties have produced documentation which shows that post-transaction, only CVC and Apollo, each on their own, will be able to block decisions at the board level of Achilles, therefore exercising joint control over it. [...].
8. In light of the above, post-transaction, CVC and Apollo will acquire, through Achilles, joint control over Brit Insurance. As such, the proposed transaction constitutes a concentration within the meaning of article 3(1)b of Regulation 139/2004.

III. EU DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million² (CVC: EUR [...] million, Apollo: EUR [...] million, Brit Insurance: EUR 1 904 million). Each of them has an EU-wide turnover in excess of EUR 250 million (CVC: EUR [...] million, Apollo: EUR [...] million, Brit Insurance: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

IV. COMPETITIVE ASSESSMENT

10. The competitive assessment in this case is divided into two parts, namely for markets which are related to the proposed transaction and markets which are not related to the proposed transaction.

A. Markets related to the proposed transaction

Relevant Markets

11. Brit Insurance is active in commercial insurance services worldwide, in particular in insurance underwriting, non-life insurance underwriting and reinsurance. Other activities such as distribution are also discussed below.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

12. In previous decisions relating to the insurance sector, the European Commission has distinguished between three broad categories of insurance products: life insurance, non-life insurance and reinsurance³. It has also made a distinction between, on the one hand, a product market for insurance and reinsurance production and, on the other hand, a product market for the underwriting and management services to insurers and reinsurers⁴.

a) Insurance underwriting

13. In its previous practice, the Commission accepted that the underwriting of insurance (and reinsurance) risks and the management of policies on behalf of insurers/reinsurers constituted one single product market (distinct from the provision of insurance/reinsurance itself)⁵. It has considered if the market should be subdivided according to types of risks. However, the exact market definition was left open.

14. As regards the geographical scope of the market, the Commission's previous decisions suggest that the geographical dimension of insurance underwriting market is at least EEA-wide⁶.

15. In this case, the exact product and geographic market definitions can be left open because the transaction does not raise any competition concerns irrespective of the precise market definition.

b) Provision of non-life insurance

16. The market for non-life insurance provision is vertically related upstream to the market for non-life insurance underwriting. In previous decisions, it was noted that the different kinds of risks covered by non-life insurance have different characteristics, purposes and premiums to be paid and, therefore, are not substitutable from the customer's perspective. Previous market investigations confirmed that on the supply side, the insurance of different types of risks is quite similar as a majority of insurance companies are active in several types of risks, suggesting some degree of substitutability.

17. As for the geographic market, previous Commission decisions found that competition for non-life insurance takes place primarily at a national level due to a variety of factors such as distribution channels, fiscal constraints etc.

18. As in the case of insurance underwriting, the exact product and geographic market definitions can also be left open as the transaction does not raise any competition concerns irrespective of the precise market definition.

³ See Case No. COMP/M.4284 AXA/Winterthur, Decision 28.08.2006; Case No. COMP/M.4047 Aviva/Ark Life, Decision 20.01.2006; Case No. COMP/M.2676 Sampo/Varma/If Holdings/JV, Decision 18.12.2001; Case No. COMP/M.2400 Dexia/Artesia, Decision 14.06.2001; Case No. COMP/M.2225 Fortis/ASR, Decision 13.12.2000; Case No. COMP/M.1989 Winterthur/Colonial, Decision 09.06.2000; Case No. COMP/M.1886 CGU/Norwich Union, Decision 13.04.2000; Case No. COMP/M.1910 Meritanordbanken/Unidanmark, Decision 10.04.2000; Case No. COMP/M.1816 Churchill Insurance Group/Hig Holdings, Decision 02.02.2000; and Case No. COMP/M.1777 CGU/Hibernian, Decision 18.01.2000.

⁴ COMP/M.3035 – Berkshire Hathaway/Converium/Gaum/JV, para. 19. COMP/M.4808 – CVC/CHARTERHOUSE/PHL/AA/SAGA, paras.29-31,

⁵ COMP/M.3035 – Berkshire Hathaway/Converium/Gaum/JV.

⁶ COMP/M.3035, para. 22-23.

c) Insurance distribution

19. The market for insurance distribution involves procuring insurance cover for individual and corporate customers through different channels, comprising direct writers, tied agents and intermediaries such as banks and brokers⁷. It is vertically related to the downstream market for insurance provision.
20. In previous decisions the Commission has considered whether the market for insurance distribution comprises exclusively all outward (*i.e.* non-owned and third-party) insurance distribution channels (*e.g.* brokers and agents), or if the sales forces and office network of insurance companies (constituting a direct means of sale to end-customers) also fall within the market of insurance distribution⁸. Nonetheless, the definition has always been left open.
21. As for the geographic market, the Commission, in previous decisions, while recognising the national nature of insurance distribution channels, left open the precise definition, in particular the question whether the relevant geographic market is wider than national⁹.
22. The exact product and geographic market definitions can also be left open in the present case, as the transaction does not raise any competition concerns irrespective of the precise market definition.

d) Reinsurance

23. Reinsurance consists in providing insurance cover to another party (the insurer) for part or all of the liability assumed by the latter party under a policy or policies of insurance which it has issued. It is a means of risk management, to transfer risk from the insurer to the reinsurer.
24. The Commission has in the past distinguished the market for reinsurance from those for life insurance and non-life insurance, but left open whether, within the reinsurance market, a further distinction between life and non-life segments should be considered, and whether within the non-life segment, a segmentation according to the class of risk covered should be considered¹⁰.
25. The precise market definition can also be left open in this case since the transaction does not raise competition concerns irrespective of the precise product market definition considered.
26. As regards the geographical scope of the market, it has previously been defined as global by the Commission, due to the need to pool risks on a worldwide basis¹¹. There is no reason in the present case to depart from this practice.

⁷ See Case No. COMP/M.1307, Marsh & McLennan/Sedgwick, para. 8 et seq.

⁸ Case No. COMP/M.4284 AXA/Winterthur, Decision 28.08.2006, at ¶ 15.

⁹ See Cases No. COMP/M.1307, Marsh & McLennan/Sedgwick, para. 20-21; COMP/M.4284, AXA/Winterthur, para. 19-20.

¹⁰ See Cases COMP/M.5925, MetLife/Alico/Delam, para. 13 et seq.; COMP/M.5083, Groupama/OTP Garancia, para. 14.

¹¹ See Cases COMP/M.5925, MetLife/Alico/Delam, para. 15.; COMP/M.5083, Groupama/OTP Garancia, para. 16; COMP/M.4059 Swiss Re/GE Insurance Solutions, para. 11.

Competitive assessment

27. Brit Insurance underwrites non-life insurance and reinsurance, which is distributed through third parties. It generates roughly [...] of its total gross written premiums in the EU. Of those, [...] are generated in the UK. AA/Saga provides non-life insurance underwriting and distribution services primarily in the UK. [...] % of its gross written premiums are generated in the UK and the remainder in Ireland.
28. Moreover, Brit Insurance is active in non-life reinsurance and Athene Life Re (a subsidiary of Apollo) is active in life reinsurance.
29. As regards insurance underwriting, Brit Insurance and AA/Saga (owned by CVC funds) act on different levels of trade and target different types of risks. Brit Insurance mostly underwrites commercial risks related to aerospace, marine, property and terrorism¹², whereas AA/Saga underwrites its own insurance. The notifying parties submit that as a result of these different business models and types of risks, Brit Insurance and AA/Saga do not compete to underwrite for third parties. Their combined market share in the overall insurance underwriting market is very low (less than [0-5] % for Ireland and EEA-wide and less than [0-5] % in the UK) and therefore, any possible horizontal overlaps between the Target and AA/Saga do not raise competition concerns.
30. There is a potential vertical overlap between Brit Insurance's underwriting activities and AA/Saga's provision of non-life insurance. That would be the case if Brit Insurance would start underwriting AA/Saga's insurance products. According to the notifying parties, this has not been the case until now. The market share data included in the notification show that AA/Saga has [5-10] % of the UK non-life insurance provision market as a whole, whereas Brit Insurance's market share in non-life insurance underwriting is around [0-5] %. The respective market shares are less than [0-5] % for Ireland and EEA-wide. In the UK, Brit Insurance underwrites a very limited amount of the non-life insurance products offered by AA/Saga, namely private car and home insurance, where AA/Saga's market shares are estimated to be below [5-10] % and [5-10] % respectively. In light of the above, competition concerns can in principle be excluded.
31. Concerning the market for insurance distribution, a possible vertical link might be considered to exist between Brit Insurance's insurance underwriting offerings and AA/Saga's activities in the distribution of third parties' insurance products. Nonetheless, even taking this approach at the national level (UK), AA/Saga has approximately [5-10] % in non-life insurance distribution and Brit Insurance's market share is around [0-5] %. In light of the above, competition concerns can in principle be excluded.
32. For reinsurance, even considering the broadest product market definition (i.e. comprising the life and non-life segments together, such that Brit Insurance and Athene Life Re would overlap), the transaction will not raise any horizontal concerns. The horizontal overlap identified between them is negligible: in this whole reinsurance market at the worldwide level, both Athene Life Re and Brit Insurance hold market shares below [0-5] %. Since reinsurance is vertically related, upstream, to the insurance underwriting market, these very low market shares mean that any potential vertical foreclosure risk can be excluded (in the event that Brit Insurance did reinsure the few

¹² With some limited personal lines on non-life insurance aimed at customers in the UK (private car and household).

products underwritten and distributed by AA/Saga). In light of the above, competition concerns can in principle be excluded.

II. Markets not related to the proposed transaction

33. The notifying parties have identified two virtual overlaps between the activities of the Apollo and CVC Funds portfolio companies in markets not related (horizontally, vertically and neighbouring) to the proposed transaction, that is outside the area of activity of Brit Insurance.
34. Both of the notifying parties have within their respective portfolios a company producing a broad range of organic and inorganic specialty chemicals: Momentive (Apollo) and Evonik (CVC)¹³.
35. Momentive and Evonik are both active in the area of silicone chemistry, in particular organosilanes and specialty silicone fluids. As the JV will not result in the integration of the parties' activities in relation of silicones, this virtual overlap is only relevant if it leads to the coordination of the competitive behaviour of undertakings that remain independent according to Article 2(4) of the Merger Regulation.
36. The notifying parties argue that: (i) the market shares discussed above would only materialise if Apollo and the CVC Funds were to combine their portfolio companies and assets (which they are not doing) and therefore they stress that these overlaps are ultimately immaterial to the analysis of the notified concentration; (ii) none of these products have any relation to the subject matter of the notified concentration; (iii) none of the information generated by Brit Insurance will have any relation to Momentive's or Evonik's businesses; (iv) the financial performance of Brit Insurance is independent of any actions taken by Momentive and Evonik, and vice versa.
37. In view of the above, it can be concluded that there is no mechanism by which the proposed transaction could increase the likelihood of coordination between the parent companies' non-insurance businesses. It is highly unlikely that the joint ownership of Brit Insurance by the notifying parties will have any impact on their respective incentives to manage Momentive and Evonik on their own, given that the two markets are not upstream, downstream or neighbouring. Therefore, spill-over effects within the meaning of Article 2(4) of the Merger Regulation can be discarded.

V. CONCLUSION

38. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the European Commission,
(Signed)
Joaquín ALMUNIA
Vice-President of the European
Commission

¹³ Momentive and Evonik produce a broad range of organic and inorganic specialty chemicals and are largely focused on different chemicals and applications. Momentive's specialty chemicals activities are focused on thermoset resins. Evonik's specialty chemicals business is much more diverse, covering chemical building blocks, inputs for consumer and health applications, and thermoplastic resins.