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***Case No COMP/M.6752 - CVC/ CUNNINGHAM LINDSEY
GROUP***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/12/2012

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EUROPEAN COMMISSION

Brussels, 3.12.2012

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6752 - CVC/ CUNNINGHAM LINDSEY
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 6 November 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which CVC Capital Partners SICAV-FIS S.A. and its subsidiaries and affiliates ("CVC", Luxembourg) acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Cunningham Lindsay Group Limited ("Cunningham Lindsey", United States) by way of purchase of shares.

I. THE PARTIES

2. **CVC** (hereinafter "CVC" or the "Notifying party") consists of CVC Capital Partners SICAV-FIS S.A. and its subsidiaries and affiliates. These are privately owned advisory

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.

entities whose activities include providing investment advice to and/or managing investments on behalf of CVC Funds. CVC Funds hold controlling interests in a number of companies in various industries including chemicals, utilities, manufacturing, retailing and distribution, primarily in Europe, the US and the Asia-Pacific region. Two of CVC Funds' Portfolio Companies, AA/Saga and Brit Insurance, are engaged in insurance activities. AA/Saga offers insurance underwriting services and financial services products (e.g. savings accounts, personal loans, and credit card services) in the United Kingdom (UK) and Ireland. Brit Insurance is predominantly active in the UK and Ireland underwriting commercial insurance and non-life reinsurance. As such, both are customers of loss adjusting, claims management and loss consultancy services.

3. **Cunningham Lindsey** is a global provider of insurance loss adjusting, claims management, loss consultancy and property reinstatement services in 61 countries, including the UK and Ireland.
4. CVC and Cunningham Lindsey are together referred to as "the Parties".

II. THE OPERATION AND THE CONCENTRATION

5. Pursuant to an Agreement and plan of merger dated 28 September 2012, CVC shall acquire from the current owners² a shareholding of approximately [...] % in CL Holdings, which is an entity established for the purposes of the proposed transaction. The remaining [...] % shall be held respectively by Fairfax ([...] %), Stone Point ([...] %), Cunningham Lindsey's Management ([...] %) and Allied World Assurance Company Limited ([...] %). CL Holdings will hold 100% of the voting rights of Cunningham Lindsey and each of its subsidiaries.
6. The Board of Directors of CL Holdings shall have broad authority to manage the business and affairs of CL Holdings, including taking actions which determine its strategic commercial behaviour. According to the Shareholders' Agreement, CVC shall have the right to designate five of the nine directors on the Board of Directors of CL Holdings. Decisions of the Board are taken by majority. A limited number of matters shall be authorised at shareholder level. These matters are minority shareholder protection rights, such as amendments to the organisational documents, liquidation and reorganisation of share capital.
7. On the basis of the above it can be concluded that CVC acquires sole control over Cunningham Lindsey. The notified transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

² Currently, Cunningham Lindsey is jointly owned by the following: Stone Point (through three of the funds managed, i.e. Trident Professionals CL Holdings, LLC and Trident CL Holdings, Wentworth Insurance Company Ltd.) with [...] % of the shares, an affiliate of Fairfax Financial Holdings Limited ("Fairfax") holding [...], Management of Cunningham Lindsey holding [...] % and Brera GAB International Holdings LLC [...].

III. EU DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (CVC: EUR [...] million; Cunningham Lindsey: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (CVC: EUR [...] million; Cunningham Lindsey: 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 pursuant to Article 1(2) of Merger Regulation.

IV. ASSESSMENT

IV.1. RELEVANT MARKETS

IV.1.1. PRODUCT MARKET DEFINITION

IV.1.1.1. Upstream market: claim-related services

9. Cunningham Lindsey is active in four insurance claim related markets, namely the provision of loss adjustment services, claims management services, loss consultancy services and property reinstatement services.

IV. 1.1.1.1 Loss adjustment services

10. The Commission has not previously considered a market definition for loss adjustment services. According to the Notifying party, loss adjustment is a service related to the provision of insurance services. It involves attending the insured and inspecting the scene of loss in order to address the fundamental questions of whether the insurer has a liability to pay the insured under the terms of the insurance contract, e.g. how much it will cost the insurer and whether the insurer is able to recover its payment from another party.
11. Most loss adjustment services are handled in-house by insurers or by insurance brokers with a small proportion handled by outsourced service provider. The customers of this service are primarily insurance companies and self-insured corporations.
12. The Notifying party submits that this market is a different product market from all the other services that Cunningham Lindsey provides.
13. The market investigation in this case indicated that from both supply and demand-side substitutability perspective loss adjustment services belong to a separate product market. This is mainly because, according to market participants, these services are provided separately from the other types of claim-related services.

³ Turnover calculated in accordance with Article 5 of the Merger Regulation.

14. In any event, the precise product market definition for loss adjustment services can be left open in this case, since the transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact product market definition.

IV. 1.1.1.2. Claims management services

15. The Commission has not previously considered an appropriate market definition for claims management services. According to the Notifying party claims management services cover the end-to-end management of the property and/or casualty insurance claims process. The services are typically provided for a portfolio of claims and may cover all activities from first notification of loss, through all aspects of claims processing and administration to claim settlement and payment. The customers of this service are primarily insurance companies and self-insured corporations.
16. The majority of claims management is handled in-house by insurers or by brokers in the insurance sector with only a small proportion outsourced to service providers such as Cunningham Lindsey.
17. The Notifying party submits that this market is a different product market from all the other services that Cunningham Lindsey provides.
18. The market investigation strongly indicated that from both a supply and demand-side substitutability perspective claim management services belong to a different product market from the other services provided by Cunningham Lindsey. This is mainly because, according to market participants, these services are provided separately from the other types of claim-related services.
19. In any event, the precise product market definition for claims management services can be left open in this case, since the transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact market definition.

IV. 1.1.1.3. Loss consultancy services

20. With regard to the relevant product market, the Commission has not previously considered an appropriate market definition for loss consultancy services. According to the Notifying party, loss consultancy services include both pre-loss and post-loss consultancy and covers cause and origin investigation, fraud investigation, cost estimates, value appraisals, risk surveys, project management and training.
21. Activities in this area are derived primarily from: (i) referrals from loss adjusting businesses when specific expertise is required in managing a claim (e.g. building consultancy services to prepare scopes of work and estimates for repairing buildings; forensic engineers to identify engineering failures; investigators to identify the origin and cause of fires); (ii) referrals from other loss adjusters; (iii) service agreements with insurers used in association with their own internal assessment or claims process; and (iv) owners or managers of property portfolios (e.g. corporations and governments).
22. The Notifying party submits that this market is a different product market from all the other services that Cunningham Lindsey provides.

23. The market investigation strongly indicated that from both a supply and demand-side substitutability perspective loss consultancy services belong to a different product market from the other services provided by Cunningham Lindsey. This is mainly because, according to market participants, these services are provided separately from the other types of claim-related services.
24. In any event, the precise product market definition for loss consultancy services can be left open in this case, since the transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact market definition.

IV. 1.1.1.4. Property reinstatement services

25. With regard to the relevant product market, the Commission has not previously considered an appropriate market definition for loss adjustment services. Post-loss property reinstatement services are services associated with an insurance claim where the insurance carrier is involved in the repair or replacement of lost or damaged property following an insurance claim.
26. The Notifying party submits that this market is a different product market from all the other services that Cunningham Lindsey provides.
27. The market investigation strongly indicated that from both a supply and demand-side substitutability perspective property reinstatement services belong to a different product market from the other services provided by Cunningham Lindsey. This is mainly because, according to market participants, these services are provided separately from the other types of claim-related services.
28. In any event, the precise product market definition for property reinstatement services can be left open in this case, since the transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact market definition.

IV.1.1.2. Downstream market: insurance sale-related services

29. AA/Saga and Brit Insurance, two CVC's subsidiaries are active in the markets for insurance underwriting and distribution and respectively, insurance underwriting and reinsurance.

IV. 1.1.2.1. Insurance underwriting

30. In a previous case⁴ the Commission has found that i) the underwriting of insurance/reinsurance risks and ii) the management of policies on behalf of insurers/re-insurers constituted one single product market (distinct from the provision of insurance/reinsurance itself). The Commission has also considered whether this market should be further sub-divided on the basis of the risks for which the services are covered. Ultimately, the Commission left open the question of whether the market for the underwriting and management services to insurers and re-insurers should be further sub-divided.

⁴ Commission Decision in Case COMP/M.3035, *Berkshire Hathaway/ Converium/ Gaum/ JV*, OJ C 65, 19.03.2003, p.22.

31. In any event, the precise product market definition for insurance underwriting services can be left open in this case, since the transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact market definition.

IV. 1.1.2.2. Insurance distribution

32. 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 brokers⁵.
33. In previous decisions⁶ 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 distribution. Nonetheless, the definition has always been left open.
34. In any event, the precise product market definition for insurance distribution services can be left open in this case, since the transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact market definition.

IV. 1.1.2.3. Reinsurance

35. 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.
36. 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, segmentation according to the class of risk covered should be considered⁷.
37. In any event, the precise product market definition for reinsurance services can be left open in this case, since the transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact market definition.

IV.1.2. GEOGRAPHIC MARKET DEFINITION

IV.1.2.1. Geographic market for claim-related services

38. The Notifying party submits that the geographic market for all the above claims-related services, *i.e.* loss adjustment, claims management, loss consultancy and property

⁵ Commission Decision in Case COMP/M.1307, *Marsh & McLennan/Sedgwick*, para. 8 et seq, OJ C 372, 02.12.1998, p. 10.

⁶ Commission Decision in Case COMP/M.4284, *AXA/Winterthur*, OJ C239, 04.10.2006, p.19.

⁷ See Commission Decisions in Cases COMP/M.5925, *MetLife/Alico/Delam*, OJ C 256, 23.09.2010, p.2, COMP/M.5083, *Groupama/OTP Garancia*, OJ C 140, 06.06.2008, p.5.

reinstatement should be considered as national. This is because (i) for the provision for each of the services there is a need to maintain nationally located employees who can liaise locally with the clients and undertake site visits to the extent necessary; (ii) the ability to speak local language and local knowledge are required; (iii) business organisation and management of the companies are nationally based.

39. The market investigation in this case indicated that the market for all these services could be national or possibly limited to the Ireland/UK cluster. The market investigation results showed that some providers are also active outside Ireland, mostly in the UK. Most of the providers are seated in Ireland or have a local office. In addition, as regards the internal organisation of these providers, most of them are organised on national basis.
40. In any event, the precise geographic market definition can be left open for the purpose of the present case, as the transaction is unlikely to raise competition concerns irrespective of the precise geographic market definition.

IV.1.2.2. Geographic market for insurance sale-related services

41. As regards the insurance underwriting, the Commission has considered in the past that the market is at least EEA wide, although it left the exact geographic market definition open⁸.
42. For the purpose of this case the Commission can leave the exact geographic market definitions open as the transaction is unlikely to raise competition concerns irrespective of the precise geographic market definition.
43. As far as the insurance distribution is concerned, the Commission, in previous decisions, while recognising the national nature of insurance distribution channels, left open the precise market definition, in particular the question whether the relevant geographic market is wider than national⁹.
44. The exact geographic market definition can also be left open in the present case, as the transaction is unlikely to raise any competition concerns irrespective of the precise market definition.
45. As regards the reinsurance, the Commission has previously defined the geographic market as global, due to the need to pool risks on a worldwide basis¹⁰.
46. In any event, the precise geographic market definition can be left open for the purpose of the present case, as the transaction is unlikely to raise competition concerns irrespective of the precise geographic market definition.

⁸ Commission Decision in Case COMP/M.3035 *Berkshire Hathaway/Converium/ Gaum/JV*, OJ C 65, 19.03.2003, p.22.

⁹ Commission Decisions in Cases COMP/M.1307 *Marsh & McLennan/Sedgwick*, OJ C 372, 02.12.1998, p.10, COMP/M.4284 *AXA/Winterthur*, OJ C 239, 04.10.2006, p.19.

¹⁰ Commission Decisions in Cases COMP/M.5925 *MetLife/Alico/Delam*; OJ C 256, 23.09.2010, p.2, COMP/M.5083 *Groupama/OTP Garancia*, OJ C 140, 06.06.2008, p.5, COMP/M.4059, *Swiss Re/GE Insurance Solutions*, OJ C 127, 31.05.2006, p.21.

IV.2. COMPETITIVE ASSESSMENT

47. The proposed transaction does not give rise to a horizontal overlap as the Parties are active on a different level of insurance related services.
48. However, the Parties' activities overlap vertically. This is because the claim related services provided by Cunningham Linsey are upstream from the insurance related services provided by CVC's subsidiaries, AA/Saga and Brit Insurance. While this vertical overlap arises in a number of EU Member States (Belgium, France, Germany, Hungary, Ireland, Italy, The Netherlands, Spain, Sweden and the UK) the proposed transaction gives rise only to one vertically affected market for the provision of outsourced loss adjustment services in Ireland where Cunningham Lindsey holds a market share of [30-40]%¹¹. In all other relevant markets, the Parties' market shares are either negligible or do not exceed 25% under any plausible market definition.
49. The market investigation in this case revealed that Cunningham Lindsey may be positioned slightly differently in the market for loss adjustment services in Ireland, likely as the second or third player. Indeed, according to the market participants Thorton&Partners and Outsource Services Group are leaders in this market while Cunningham Linsey is only number three. Moreover, the market investigation indicated that the market for the provision of loss adjustment services in Ireland is competitive, characterized by a number of viable competitors including Thorton&Partners, Outsource Services Group and Pro Adjust, and that there are no entry barriers, except for the need for a local presence.
50. As regards the downstream market, the market investigation in this case confirmed that both AA/Saga and Brit Insurance are minor players in the market for insurance underwriting and insurance distribution in Ireland, with market shares well below [10-20]%.
51. On the basis of the above, it can be concluded that given the limited market shares of the Parties and the existence of numerous competitors who will continue to exercise competitive pressure on the merged entity in all relevant markets, the proposed transaction is unlikely to lead to any vertical effects.

V. CONCLUSION

52. 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 Commission
(signed)
Joaquín ALMUNIA
Vice-President*

¹¹ Notifying party's estimate, Form CO.