

*Case No IV/M.771 -
AMB / Rodutch*

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/07/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.7.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject : Case No IV/M.771 - AMB/Rodutch

Your notification of **21/06/96** pursuant to Article 4 of Council Regulation No 4064/89

1. On 21.06.1996 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation no 4064/89 by which the German insurance undertaking, Aachener und Münchener Beteiligungs-Aktiengesellschaft (AMB), will acquire sole control of the Dutch insurance undertaking, Rodutch Holdings BV (Rodutch).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise any serious doubts as to its compatibility with the Common Market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. AMB is a German undertaking whose principal activities are related to life and non-life insurance in Germany and in other EU countries. AMB is also engaged in the financial services sector and in real estate operations.
4. Rodutch is a holding company which is active in the Dutch life and non-life insurance business. Rodutch conducts its life and non-life insurance businesses in the Netherlands through its subsidiaries, Royal Levensverzekering NV and Royal Nederland Schadeverzekering NV, respectively.

II. CONCENTRATION

5. Prior to the notified operation, Rodutch was jointly controlled by AMB and the British insurance undertaking, Royal Insurance plc (Royal), with shareholdings of 66.66% and 33.33% respectively, through a vehicle holding company, namely European Partners for Insurance Cooperation S.A. (Epic). In spite of AMB's majority shareholding in Epic this latter company was effectively jointly controlled by AMB and Royal since decisions on strategical matters such as the business plan and budget of Epic required the consent of both shareholders.
6. By the present operation AMB and Royal enter into a share sale and purchase agreement according to which AMB will acquire the 33.33% shareholding Royal held in Epic. AMB will therefore become the sole owner of Epic and will therefore acquire sole control of Rodutch, a 100% subsidiary of Epic.
7. The present operation therefore deals with a change from joint control to sole control by AMB on Rodutch through Epic. A change from joint control to sole control is deemed to be a concentration under the Merger Regulation since the quality of decisive influence exercised solely is substantially different from decisive influence exercised jointly, since the latter has to take into account the potentially different interest of the other party or parties concerned.

Therefore the notified operation is a concentration in the sense of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The aggregate worldwide turnover of AMB and Rodutch, calculated in accordance with Article 5(3)b of the Merger Regulation, exceeded in 1995 5 billion ECU (AMB = 8,016 Million ECU; Rodutch = 514 Million ECU). The aggregate community wide turnover of each of the two undertakings amounted the same year to more than 250 Million ECU and the two companies did not achieve more than two thirds of their aggregate community-wide turnover within one and the same Member State. Therefore the concentration has a community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

9. The relevant product markets concerned by the notified operation are life and non-life insurance since the target company, Rodutch, only carries out activities in these product markets.
10. As far as life and non-life insurance are concerned, the Commission has so far consistently considered in previous decisions that geographical reference markets are still, at present, predominantly national in scope in view, inter alia, of the established market structures, the need for adequate distribution channels, fiscal constraints and differing national systems of regulatory supervision.
11. The activities of Rodutch in life and non-life insurance are exclusively limited to the territory of the Netherlands where Rodutch has a total market share of less than 3% (life and non-life insurance combined). Furthermore, Rodutch's market share does not exceed 10% in any segment of the life and non-life insurance sectors within the Netherlands.

12. AMB has significant life and non-life insurance operations in Germany, as well as in other E.U. countries, but does not have any activities in these markets in the Netherlands, except for its shareholding in Rodutch.
13. Therefore, the proposed operation will not give rise to any overlap of activities between AMB and Rodutch and consequently there will be no addition of market shares in the Dutch insurance markets.

V. ANCILLARY RESTRAINTS

14. The parties have requested that Article 7 of the share sale and purchase agreement, which provides that Royal must not compete with Rodutch or any member of the Rodutch Group in the Netherlands for a period not exceeding 2 years after the entering into force of the agreement, be considered as ancillary.
15. The covenant not to compete is directly related and necessary to the concentration as it is intended to vest in AMB as sole shareholder of Rodutch the exclusive right to do business in the Netherlands insurance market through Rodutch with the benefit of the entire goodwill and know-how of Rodutch on this market. Therefore, this provision of Article 7 shall be considered as ancillary to the concentration.

VI. CONCLUSION

16. 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,