

*Case No IV/M.949 -  
MEDERIC /  
URRPIMMEC / CRI /  
MUNICH RE*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 002/07/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.07.1997

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M. 949 - MEDERIC/URRPIMMEC/CRI/MUNICH RE

Notification of 30.05.1997 pursuant to Article 4 of Council Regulation (EEC)  
No 4064/89

1. On 30 May 1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings: Médéric Prévoyance ("MEDERIC"), l'Union des Régimes de Retraites et de Prestations en Cas d'Invalidité et de Maladie des Industries Métallurgiques, Mécaniques, Electriques et Connexes ("URRPIMMEC"), CRI Prévoyance ("CRI") and Münchener Rückversicherungs-Gesellschaft ("MUNICH RE") acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control over Prévoyance Re ("PREVOYANCE RE"), a joint venture company to be founded.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) 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.

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<sup>1</sup> OJ No L 395 of 30.12.1989; Corrigendum: OJ No L 257 of 21.09.1990, p. 13.

## **I. THE PARTIES**

3. MEDERIC, URRPIMMEC and CRI are “Institutions dePrévoyance” governed by the French Code of Social Security, and they provide accident, health and life insurance. MEDERIC is also active in the field of administration of collective funds and of all operations of a collective character as defined in the French Code of Social Security.
4. MUNICH RE is a German company which provides reinsurance services throughout the world.

## **II. THE OPERATION**

5. MEDERIC, URRPIMMEC, CRI and MUNICH RE intend to establish a joint venture company, PREVOYANCE RE which will be active in the field of reinsurance, primarily in France.

## **III. COMMUNITY DIMENSION**

6. The combined aggregate worldwide turnover of the parties exceeds ECU 5,000 million (MEDERIC about ECU 324 million, URRPIMMEC about ECU 152 million, CRI about ECU 109 million and MUNICH RE about ECU 15,471 million ). Each of two of the undertakings concerned has a Community-wide turnover in excess of ECU 250 million (MEDERIC about ECU 324 million, and MUNICH RE about ECU 12,046 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **IV. CONCENTRATION**

### **Joint Control**

7. MUNICH RE will hold 34% of the shares inPREVOYANCE RE, and MEDERIC, URRPIMMEC and CRI will hold the remaining 66% through a holding company to be formed for this purpose and to be named Prévoyance et Réassurances S. A. (“PER”). MUNICH RE will be entitled to propose six (i.e. 25%) of the twenty-four members of the supervisory board, and decisions will be taken by simple majority. However, a number of strategic commercial decisions will require a majority of 75% plus one vote , for the approval of the annual budget, for the nomination of members and the president of the board of directors and for the designation of general directors. In addition, the Shareholders’ Agreement provides that certain operations will not be carried out without the prior consent of MUNICH RE, [...] . Therefore, despite the minority shareholding of MUNICH RE, and its minority representation at the supervisory board, MUNICH RE will be in the position to exercise decisive influence on the joint venture company jointly with PER..

### **Autonomous economic entity**

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<sup>2</sup> deleted for business secret

8. PREVOYANCE RE is a newly-created company with a life expectancy defined in its statutes of 99 years. It is to be active in the field of reinsurance, and particularly the reinsurance of the following risks - life, sickness, accident and unemployment. It will be primarily active in France, where it is expected to seek its main customers from 'institutions de prévoyance' and other mutual-type organisations. It is proposed, according to the shareholders' agreement, that PREVOYANCE RE will recruit and retain its own specialised staff, including an actuary, and that it will have its own Board, on which all shareholders will be represented, and an independent management structure capable of taking decisions on all everyday matters. It is also proposed that the parents will provide PREVOYANCE RE with initial capital of FF 1m, to be increased to FF 100 m within 3 months of the date on which PER is registered.
9. To enable PREVOYANCE RE to commence operations in the market as soon as possible after its formation, it is proposed that MUNICH RE will supply it, for an initial period, with certain specialised services, namely reinsurance know-how and technical assistance (eg for product development, formation of premium structures etc). In exchange for these services, PREVOYANCE RE is to be required to retrocede a proportion of its reinsurance business to MUNICH RE. This proportion is initially set at [...%]<sup>3</sup>, reducing to [...%]<sup>4</sup> when the amount ceded by PREVOYANCE RE reaches [FF ...]<sup>5</sup>, but subject to an overall minimum amount of [FF...]<sup>6</sup>. According to PREVOYANCE RE's business plan the level of turnover at which the proportion to be retroceded reduces to [...%]<sup>7</sup> is likely to be reached within between [... ]<sup>8</sup> and [...]<sup>9</sup> years of the commencement of operations. Without prejudice to the question of whether the requirement for retrocessions should or should not be considered as ancillary to the concentration, such arrangements do not prevent the joint venture from being capable of playing an active role in the reinsurance market. Accordingly, and in the light of its other characteristics as described above, PREVOYANCE RE should be regarded as an autonomous economic entity for the purposes of regulation 4064/89.

#### **Coordination of competitive behaviour**

10. Only one of the joint venture's parent companies - MUNICH RE - is engaged in reinsurance, while other parents, represented within PER, are active in insurance. The Commission has taken the view in a number of previous cases (see below) that reinsurance is a separate product market. Accordingly the operation will not lead to coordination of competitive behaviour between the parent companies.

## **V. COMPETITIVE ASSESSMENT**

### **A. Relevant product market**

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<sup>3</sup> deleted for business secret

<sup>4</sup> deleted for business secret

<sup>5</sup> deleted for business secret

<sup>6</sup> deleted for business secret

<sup>7</sup> deleted for business secret

<sup>8</sup> less than 10 years

<sup>9</sup> less than 10 years

11. PREVOYANCE RE will provide reinsurance cover. Among the parties to this concentration, only MUNICH RE is active in the reinsurance market. 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<sup>10</sup> that it is necessary to distinguish between reinsurance and direct insurance.
12. 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 reinsurance should be sub-divided can be left open.

#### **B. Relevant geographic market**

13. Since reinsurance products are traded between industry specialists and not sold to the general public, controls by national authorities over the conduct of reinsurance tend to be much less extensive than those over direct insurance. This, together with the fact that reinsurance business can be readily conducted across national borders (e.g. by telephone), 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<sup>11</sup> considered the reinsurance market to be international or global.

#### **C. Assessment**

14. PREVOYANCE RE will be active in the field of reinsurance primarily in France. As it is a newly created joint-venture without transfer of activities from the Parties, its turnover is zero. MUNICH RE is the only one of the parties to this concentration providing reinsurance services. MUNICH RE is the largest reinsurer worldwide in terms of premiums issued, however its share of the market is about[...%]<sup>12</sup> and there are other significant competitors. In France, MUNICH RE achieves less than [...%]<sup>13</sup> of its worldwide activities, in terms of gross premiums received. The joint

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<sup>10</sup> IV/M. 433 (ERC/NRG Victory); IV/M. 491 (General Re/Kolnische Re); IV/M. 600 (Employers Reinsurance/FrankonaRückversicherungs AG); IV/M. 601 (Employers Reinsurance/Aachener Rückversicherungs-Gesellschafts AG); IV/M. 828 (Schweizer Rück/Mercantile & General Reinsurance Company)

<sup>11</sup> see footnote 10

<sup>12</sup> deleted for business secret : less than 20%

<sup>13</sup> deleted for business secret : between 1 and 10%

venture is unlikely to add significantly to MUNICH RE's position in the worldwide market. Therefore, the proposed operation would not create or strengthen any dominant position in the Common Market.

## **VI. ANCILLARY RESTRICTIONS**

15. The Parties submit as ancillary restrictions two provisions of the Shareholders' Agreement. Firstly, Article 2 of the Shareholders' Agreement provides that it is not envisaged that PREVOYANCE RE will pursue its activities outside France in direct competition with MUNICH RE. The geographical scope of the joint venture's activities will not be extended without the prior consent of MUNICH RE.
16. The Commission considers that such prohibitions on competition may be acceptable provided their duration and geographical field of application do not exceed what is reasonably necessary for the implementation of the concentration. In the present case, it would not be acceptable for PREVOYANCE RE to be prevented from extending its activities outside France, in the world-wide market for reinsurance, without limited duration, and until such time as one of the parents agrees otherwise. Therefore, the restriction contained in this article 2 is not deemed to meet with the conditions required to consider it as necessary to the implementation of the present joint venture, and thus is not considered to be an ancillary restraint.
17. Secondly, Article 3 of the Shareholders' Agreement provides that MUNICH RE will make available to PREVOYANCE RE its know-how and technical assistance according to modalities attached to the Agreement. In return, PREVOYANCE RE will have to compensate MUNICH RE for the supply of services by retroceding [...%]<sup>14</sup> of its reinsurance business, although the exact percentage may vary (retrocessions of [...%]<sup>15</sup> with a minimum of [FF ...]<sup>16</sup> ) according to the nature and volume of the business. As a result, although the amount of retrocession may reduce as the joint venture develops, PREVOYANCE RE will be obliged to purchase services from MUNICH RE and to pay for them by retroceding business which it might otherwise wish to place with other companies. The Parties, when questioned about such a provision, considered that it was necessary for PREVOYANCE RE to be granted access to MUNICH RE 's basic knowledge concerning the reinsurance business, especially during its start-up phase, and that the compensation will correspond to the support provided. In addition, they argue that, in business with a high risk exposure, i.e. with a high potential for negative results in a given period of time, it is not uncommon to retrocede in order not to endanger the capital base.
18. The Commission can accept that, given the nature of the market in question, a parent can provide services in return for which the joint venture retrocedes a part of its activities.. However, as acknowledged by the Parties, such relationships should last only for a certain start-up period. But no duration is indicated in the Shareholders' Agreement , nor in other arrangements between the Parties, and no option is given to PREVOYANCE RE to retrocede the specified amount to third companies, according

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<sup>14</sup> deleted for business secret

<sup>15</sup> deleted for business secret

<sup>16</sup> deleted for business secret

to its own retrocession policy. Consequently, the restriction contained in this article 2 is not deemed to meet with the conditions required to consider it as necessary to the implementation of the present joint venture, and thus is not considered to be an ancillary restraint.

## **V. CONCLUSION**

19. 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 (EEC) No 4064/89.

For the Commission,