EN

Case No COMP/M.1453 - AXA / GRE

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08. 04. 1999

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject : Case No. IV/M.1453 – AXA/GRE
Notification of 18 February 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 18 February, 1999 the Commission received the notification of an operation by which AXA will take over the UK based insurance company «Guardian Royal Exchange» (GRE) by way of a public tender offer for the ordinary shares in GRE.

2. After examination of the notification, and taking into account the undertakings submitted by the parties, 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.

I. THE PARTIES

3. AXA is an international group active in the provision of insurance and related financial services.

4. GRE is an UK based international insurance company providing life and general insurance including particularly health insurance and related services.

II. THE OPERATION

5. AXA will acquire sole control of the whole of GRE, including the companies controlled by GRE with the exception of GRE's US activities. The operation will be

effected by way of a recommended offer by SunLife and Provincial Holdings, AXA's 72% owned subsidiary in the UK. The public offer was announced on 1 February 1999. The proposed operation constitutes a concentration according to Article 3 (1) b of the ECMR.

III. COMMUNITY DIMENSION

6. The combined aggregate world-wide turnover of AXA and GRE calculated in accordance with Article 5 (3) lit. b) of Regulation No. 4064/89, exceeds 5 000 million EUR. AXA's and GRE's combined worldwide gross premiums are 64,73 billion EUR. Both AXA and GRE have a Community-wide turnover in excess of 250 million EUR, 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, but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

Relevant product and geographic markets

Asset management

7. Asset management services include the creation, establishment and marketing of retail pooled funds (mutual funds, unit trusts, investment trusts and open ended investment companies), and the provision of portfolio management services to pension funds, institutions, international organisations and private investors (see case No. IV/M. 1067-Meryll Lynch/Mercury). However, it is not necessary to delineate the relevant product market further because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

8. The Commission in previous cases has considered that the market for asset management services was global in scope (see case No. IV/M.1043-B.A.T./Zurich). It is however not necessary to delineate further the relevant geographic market for asset management because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Life and non-life insurance

9. Both life and non-life insurance from the demand side can be divided, in principle, into as many product markets as there are risks covered because their characteristics, premiums and purposes are distinct and there is typically no substitutability for the consumer between the different risks insured (see for example case No. IV/M.1082-Allianz/AGF). With the exception of reassurance and insurance of certain large risks, the geographical dimension of the market in life and non-life insurance business is generally defined on a national basis, due to the need for adequate distribution channels; established market structures; fiscal constraints and differing regulatory systems (see for example case IV/M.759-Sun Alliance/Royal Insurance).

10. The present concentration would have a competitive impact in Luxembourg. Insurance in Luxembourg presents certain specific features, which indicate that this

Member State is a distinct geographic market, in line with the general approach followed by the Commission in previous cases. In particular, the two main domestic insurers have still strong presences in Luxembourg, and are not significantly active in any other country. Some foreign companies established in other neighbouring countries have also set up branches or subsidiaries especially for the Luxembourg market. Furthermore market players mentioned the difficulty of entering this market, and the investigations provided indications of strong customer loyalty. In view of this evidence, it can be concluded that Luxembourg is likely to constitute a separate geographic market, which can be distinguished from the neighbouring countries.

11. The competitive analysis therefore focusses on the territory of Luxembourg. In this respect, it should be noted that the Luxembourg national authorities exercise their legislative powers to regulate the insurance markets. For example, brokers are not yet allowed to operate in Luxembourg on non life insurance for individuals, in contrast to neighbouring countries. Therefore, for the purposes of the present decision and, bearing in mind particularly the regulatory actions of the Member State, the insurance markets of Luxembourg are considered to constitute a substantial part of the Common Market.

Assessment

Asset management

12. AXA is present in asset management through a number of subsidiaries in several member states of the EEA and in Asia. GRE is active in asset management through its subsidiary Guardian Asset Management. Its market share on the global market is negligible. Combined shares will be well below 5%. Even at national level, there are no indications that the operation would have any significant impact. Therefore, the proposed deal will not affect competition on the any market for asset management.

Life and non-life insurance

13. The parties have overlapping activities in life and non-life insurance in UK, France, Germany and Luxembourg.

United Kingdom

14. The UK life insurance market can be divided into three segments: regular premium life insurance, investment and pensions. Regular premium life products comprise protection policies, permanent health insurance policies and savings policies. Investment policies are savings based products and can be bonds or annuities. Pensions can be divided into personal pensions and executive pensions for small groups of executives. According to the ABI Statistical Bulletin, the total UK life insurance market amounted to EUR 9,521 million in 1997. AXA’s gross premium income amounted to EUR 558.1 million in 1997, corresponding to an overall market share of around [less than 10%]. GRE is not a significant player in the UK life insurance market, its market shares being less than 1% in any segment. AXA’s sales from the acquisition of GRE will contribute to a marginal increase in share but will not be enough to improve AXA’s ranking in any segment of the UK life insurance market: In all three market segments mentioned AXA/GRE will remain the fourth largest competitor with an average market share of [less than 10%]. The respective

market leaders have an average market share of around [10-15%]. The UK life market can be considered competitive due to several factors, for example; the growing competition exercised by fund managers and direct sales providers; and the growth of electronic commerce. Competitors indicated that the UK life insurance market remains fragmented and therefore estimate that competitive pressures will keep prices at current levels.

15. After the concentration, AXA/GRE will be the third largest property and casualty (P&C) insurer in the UK with an overall [less than 10%] market share. Overlaps occur in relation to the parties' activities in general insurance, motor insurance, property insurance and accident and health insurance. The only market, however, in which combined shares will exceed 15% is the overall accident and health insurance market where GRE is particularly strong following its acquisition of PPP in 1998[1]. There, the parties' shares will amount to approximately [between 10% and 20%]. Nevertheless, the increment in shares through AXA will be very modest (far less than 1%) and the parties will continue to face strong competition from market leader Bupa with a share of [between 10% and 20%] and other significant players such as Royal and Sun Alliance, Norwich Union and Cornhill. Market entry barriers are low and further new entrants are expected, given that the necessary underwriting skills are readily available and regulatory approvals are applied on an equal basis to existing insurers and new entrants.

Germany

16. The proposed concentration will result in an improvement of the domestic ranking position of AXA/Colonia in life insurance from No. 6 to No. 5. Nevertheless, the effects of the concentration will be limited because the average increment in market shares will only be around 1%. Combined shares will amount to [less than 10%]. There are strong competitors present such as Allianz, Generali/AMB or Ergo. The German life insurance market, the largest in Europe, is presently still highly fragmented. The market leader Allianz has only [between 10% and 20%].

17. In non-life insurance the parties have overlaps in Germany in motor insurance, general civil liability and household insurance. AXA/Colonia, at present No. 4 P&C insurer, will become the second player. Market share increment, however, in all markets will be limited to 1-1.5%. Similar to the situation in life insurance, there will be no negative impact on competition since a number of important competitors like Allianz, Gerling or Ergo are active on the market.

France

18. The AXA Group is already the second largest player on the French life insurance market, with a market share of around [between 10% and 20%]. The market leader is CNP. The concentration will not have any harmful consequence for the French life market since the increment in market shares caused by GRE will be negligible (far less than 1%) and since a number of significant international players are active on the market like for example AGF, GAN or AIG.

[1] see Commission decision of 16 February 1998, GRE/PPP; Case No. IV/M.1090

19. In the non-life sector the parties will have combined shares exceeding 15% in motor insurance, property insurance, general civil liability and construction insurance. In motor insurance, property insurance and general civil liability AXA is already market leader but there is unlikely to be any effect on competition since GRE is hardly present on these markets and will only add between 0.05-0.2% of shares to AXA's current stake. In addition, there are other important international competitors active on the market, like for example Allianz/AGF or Groupama/Gan. In construction insurance there will be an increment of [less than 5%] through GRE, meaning combined shares of around [between 20% and 30%]. However, there is no negative impact on competition likely to arise from the proposed deal since there will be considerable competitive pressure from the next competitor SMABTP with [between 20% and 30%]. Moreover, […] since the French construction insurance market has suffered a major crisis in the 90s and is recovering only slowly.

Luxembourg

Market situation

20. In Luxembourg, where AXA is active in life and non-life insurance via AXA Luxembourg, GRE does not have a subsidiary but holds a 34.8% interest in the leading insurer Le Foyer Finance Compagnie Luxembourgeoise S.A (Le Foyer). Another 34.8% in Le Foyer are held by the so-called «Groupe L», a bloc consisting of several individuals. 14.4% are held by another Luxembourg company, Luxempart, in which again Le Foyer holds 33%. The remaining stakes are held by miscellaneous shareholders.

21. First, it has to be considered whether AXA, after the acquisition of GRE's shares in Le Foyer, would exercise control over the company. The parties argue that the participation of GRE in Le Foyer is not strategic but a pure financial interest. However, […]. The parties further point out that GRE has only 4 representatives in the managing board whereas Groupe L has 7 members. They further say that the shareholder representing Le Foyer's 33% stake in Luxempart is a member of Groupe L. The parties thus conclude that GRE and Groupe L do not exercise joint control over Le Foyer but that the company is solely controlled by Groupe L[2].

22. The shareholders agreement between GRE and Groupe L does not contain commitments concerning the co-operation of the two companies. However, the agreement is based on the principle that each of them should have an equivalent stake in Le Foyer. This principle is implemented by a pre-emption clause providing that, before selling stakes in Le Foyer, each of the two companies has to offer them first to the other. Furthermore, stakes acquired from third parties have to be divided among GRE and Groupe L. These provisions are aimed at ensuring an ongoing proportional representation of both parties of the shareholders agreement.

23. In addition, there is a Memorandum of Understanding concluded in 1984 between GRE and Groupe L which provides for an equivalent representation of both GRE and Groupe L in the management bodies of Le Foyer, a common policy to be adopted by

[2] For sake of completeness it should, however, be mentioned that the president of Le Foyer considers the company to be jointly controlled by GRE and Groupe L.

the two companies and a non-competition clause binding GRE in Luxembourg and Belgium. The parties argue that this memorandum has never been implemented. Nevertheless there is no doubt that the memorandum can at any time be implemented between Groupe L and the new shareholder. In any event, it is highly probable that AXA, due to its competitive position, would take a different approach towards its stake in Le Foyer than GRE did. Whereas GRE does not have direct insurance activities in Luxembourg, AXA has important market shares in several insurance markets and is currently the only significant challenger of the two market leaders Le Foyer and La Luxembourgeoise.

24. In view of the mechanism described above it cannot be concluded at this stage, that GRE have no possibility to exercise a decisive influence over Le Foyer. Moreover, the same facts suggest that AXA would be in a position, which would allow it to jointly control Le Foyer. But even if the question of control is left open, it is evident that the take-over of GRE’s shares and voting rights in Le Foyer by AXA would produce important structural links between the first and third competitor. AXA will have an important financial interest in Le Foyer. In addition, it will be represented in the management bodies of its rival, and thus involved in the strategic business decisions of the later. This situation will provide strong incentives for AXA not to attack the market position of the first player.

25. Therefore it has to be considered whether the links between AXA and Le Foyer produced by the present concentration could have an adverse impact on effective competition in the Luxembourg life and non-life insurance markets.

Life insurance

26. In life insurance in Luxembourg, AXA according to the ACA (association des companies d’assurance) has a market share of [between 10% and 20%], Le Foyer has [between 10% and 20%]. Together AXA and Le Foyer would therefore achieve combined shares of over [between 30% and 40%]. The second player, La Luxembourgeoise, has [between 10% and 20%]. Smaller life insurers consider that the two biggest life insurers would have a permanent competitive advantage over the remaining competitors regarding commercial synergies, investments and portfolio.

27. The concentration is, however, unlikely to effect consumers’ choice in the home market since there are around 20 life insurers active in Luxembourg. The life insurance market is still very fragmented. The next competitors, AGF/Assubel, Generalife and Swisslife each still have around [between 5% and 15%] market share, Fortis has [less than 10%] and La Baloise [less than 5%]. Competitive pressure will therefore prevent the parties from acting independently from consumers and competitors.

Non-life insurance

28. In Luxembourg, there are currently three major players active in <u>non-life insurance:</u> market leader throughout all segments is always Le Foyer with an average market share of [between 35% and 45%], the second player being La Luxembourgeoise with an average share of [between 20% and 30%]. Both companies are national players and already account for over 60% of the overall national non-life insurance market. The only international insurer with important market shares is AXA with an average share of [between 10% and 20%].

	Le Foyer	**La Luxembourg.**	**AXA**
Motor insurance	[30%-40%]	[30%-40%]	[10%-20%]
Casualty insurance	[30%-40%]	[20%-30%]	[20%-30%]
Property insurance	[30%-40%]	[20%-30%]	[10%-20%]
General civil liability	[40%-50%]	[10%-20%]	[10%-20%]
Litigation insurance	[25%-35%]	[15%-25%]	[10%-20%]
Motor breakdown insurance	[40%-50%]	[15%-25%]	[20%-30%]

29. The structural links between AXA and Le Foyer resulting from the concentration will eliminate or at least considerably reduce competition between AXA and Le Foyer. This conclusion has been confirmed by competitors in particular for motor breakdown insurance where AXA and Le Foyer together have [60%-70%] of the market.

	Le Foyer	**AXA**	**AXA/Le Foyer**	**La Luxembourg.**
Motor breakdown insurance	[40%-50%]	[20%-30%]	[**60%-70%**]	[15%-25%]

30. In the Luxembourg non-life business there are two leading players, Le Foyer and La Luxembourgeoise which hold 60% of the market. AXA has so far been their only important challenger. Due to the links produced by the concentration between AXA and Le Foyer, AXA is likely to have considerably less interest to assume this role any longer. Given that the remaining players' market shares are 10-20 times smaller than those of the two national leaders, they would not be in a position to exercise a comparable competitive pressure.

31. In general, the concentration will result in a situation where there are two strong and fully independent market players left, whilst the first and third player are closely linked. In the new situation, there is a risk that those players will have a strong interest to restrain from competing with each other and thus that competition between the three leading companies may be slowed down to a large extent. This concern has been issued by competitors in particular regarding motor insurance, casualty and property insurance where AXA, Le Foyer and La Luxembourgoise on an average account for 70-80% of the total market. Due to the absence of comparable competitors it cannot be excluded that they might impose their market decisions on the remaining players or lift prices for consumers.

	Le Foyer	AXA	La Luxemb.	AXA/Foyer La Luxemb.	Next competitor
Motor insurance	[30%-40%]	[10%-20%]	[30%-40%]	[**70%-85%**]	[less than 10%]
Casualty insurance	[30%-40%]	[10%-20%]	[20%-30%]	[**60%-70%**]	[7%-12%]
Property insurance	[30%-40%]	[10%-20%]	[20%-30%]	[**70%-80%**]	[7%-12%]

32. The strong market position of the leading players and the structural links between two leading players have to be viewed in the context of the general competitive situation on the Luxembourg non-life market. According to competitors, the number of players is in constant decline. 5 years ago, there were still 12 insurance companies active on the Luxembourg market, now there are only 8 (7 after the present concentration). When it comes to the dimension of publicity and marketing offensives, the two leading players according to competitors will face only limited competition from other market players. It cannot be assumed that brokers stimulate competition among market participants since, in Luxembourg, brokerage is still not permitted for the insurance of individuals. Finally, no major new market entries can be expected since Luxembourg is a very small market with 420.000 inhabitants and limited local demand.

V. CONCLUSION

33. The Luxembourg market already at present is highly concentrated with only three significant players. After the operation there will be strong structural links between the number one and number three. It is highly unlikely that the presence of existing competitors will disturb the balance since their respective share is considerably smaller than those of the leading players. Given the size and the degree of maturity of the local non-life market significant new market entries are not to be expected. Therefore it is the Commission's conclusion that the operation, in its notified form, would raise serious doubts as to the creation or strengthening of a single or joint dominant position between the market leaders in several non-life insurance markets.

VI. UNDERTAKINGS SUBMITTED BY THE PARTIES

Content of the undertakings

34. In order to resolve the competitive concerns of the Commission, AXA has proposed two alternative remedies. The first alternative would consist in the [sale of …%] of GRE's shares in Le Foyer to buyers, which are not directly or indirectly connected to AXA.[…]. All existing personal links between GRE and Le Foyer or between companies controlled by them […][3].

35. As an alternative to the [sale of …%] of GRE's shares in Le Foyer, AXA has proposed to divest [certain of] its portfolios […].

Assessment

36. With the [sale of …%] of its stake in Le Foyer AXA would remain a fully fledged competitor to the market leader. After […] all personal links[1] between the companies there will be no incentive for AXA to refrain from competition. AXA would maintain its role as a credible competitor of the two leading players Le Foyer and La Luxembourgeoise.

[3] In substance, the members of the Board of Directors nominated by GRE will resign upon replacement by an individual, approved by the Commission, who is not employed by AXA.

37. The divestiture of [certain of] AXA's insurance portfolios would present an equivalent remedy to the Commission's concerns provided inter alia that the businesses are sold to one or more competitor(s) who would be credible challengers of the two leading players.

38. In the light of the foregoing, the Commission concludes that the undertakings submitted by AXA represents a sufficient remedy to eliminate any concern as regards the effect of the remaining structural link between AXA and Le Foyer. The proposed commitments will either eliminate this link and thus any risk that AXA could exercise decisive influence over Le Foyer as a result of the concentration, or ensure in any event the maintenance of a strong independent competitor to the market leaders.

VII. FINAL CONCLUSION

39. Consequently, the Commission concludes that, subject to full compliance with the commitments made by AXA, as set out in its letter to the Commission of 22 March 1999, the proposed concentration will not create or strengthen a dominant position, as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.

40. For the above reasons, and subject to the full compliance with the commitments made by AXA, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6 (1) b of Council Regulation (EEC) No 4064/89 (as amended by Council Regulation No 1310/97).

For the Commission,