Groupama

PRESS RELEASE

Paris, 5 March 2011

Groupama has received the reasoning of the decision by Consob.

In the next days the Group will analyze that reasoning, its implications and the options available to the Group.

The English translation of the reasoning of Consob's decision is attached below.

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[…]

2. Considerations on the applicability of mandatory tender offer rules

The two phases envisaged in the particular structure of the transaction described in the request – one consisting in Groupama's entry into the share capital of the holding company Premafin, as a result of agreements executed with the current majority shareholders, and the other one consisting in the purchase by Groupama, allegedly not agreed upon with the abovementioned shareholders, of a direct equity interest in the share capital of the controlled company Fondiaria-SAI – must be analyzed separately, in order to verify whether the mandatory tender offer rules should apply with respect to such transaction. It should be highlighted that this analysis is carried out on the basis of what is represented by Groupama in the request and further factual elements known as of today.

2.1. Considerations on the purchase of Premafin shares by Groupama

This case concerns a complex transaction contemplating that all Premafin shareholders currently bound by a shareholders' agreement (Ligresti Group) would reduce their stake in Premafin below 50% of the share capital, due to the dilution resulting from the fact that they would not exercise their rights to subscribe new shares in the capital increase; they would anyway keep a stake representing 34.2% of the share capital. Simultaneously, through the sale by the Ligresti Group of the subscription rights to Groupama, the latter would subscribe to the capital increase in a way to acquire a 17.1% stake. Such transaction would be carried out under, and pursuant to, a shareholders' agreement between Ligresti Group and Groupama.

In assessing similarly structured transactions, the Commission has long since abided by the position that the obligation to launch a mandatory tender offer is excluded with respect to both parties when the majority shareholder maintains a dominant position after selling part of its shares to another party who is bound *vis-à-vis* such majority shareholder by a shareholders' agreement (see Consob Communication no. 85385 dated November 16, 2000 and the most recent Consob Communication no. 100064646 dated July 22, 2010).

Such position represents the development of a similar interpretative position, providing that changes to the parties and to the terms of shareholders' agreements concerning listed companies are relevant, with respect to a possible mandatory tender offer, only when they produce a "significant change" in the governance structure within such agreements. Moreover, the Commission has recognized that such significant change occurs only when there is a new shareholder capable of steadily holding a pre-eminent position or of steadily exercising a veto power on the decisions concerning the ordinary course of business of the company (position expressed for the first time in Communications no. 99024712 of March 31, 1999 and no. 99061705 of August 13, 1999 and recently sustained in Communication no. 8085779 of September 17, 2008).

It should also be noted that the Commission has specified that when someone goes from holding the absolute majority stake to holding a stake above 30% of the share capital, combined through a shareholders' agreement with the stake held by a new shareholder that remains below 30%, such circumstance should be evaluated "*in the light of certain general interpretative principles deriving from the rules on purchases of shares made by parties acting in concert […], warning that such rules can be applied to actual situations only after examining the possible different circumstances that may characterize any specific transaction, as, for example, the actual purpose of the parties, the amount of the transferred or purchased interest, the meaning of previous agreements*" (e.g. Communication DCL/DEM/85385 of November 2000)

Therefore, it is necessary to verify whether, in the light of the above mentioned positions of the Commissions, the features of Groupama's planned transaction would be such to produce a significant change in the controlling structure of the issuer compared to the current situation.

In carrying out this analysis it must be first noted that the shareholders' agreement dated October 29, 2010, as supplemented on November 22, 2010, does not replace the previous shareholders' agreement through which the Ligresti Group controls Premafin; the agreement with Groupama is – for all purposes – a new agreement, which stands next to the previous one. From this standpoint, the transaction at issue is different from all of the transactions previously examined by the Commission, in which the Commission has ruled out the existence of an obligation to launch a mandatory tender offer.

In fact, in such cases either a single shareholder controlled the company *de jure* (see Communication no. 85385 dated November 16, 2000; Communication no. 6049043 dated May 31 2006; Communication no. 10064646 dated July 22, 2010), or the new shareholder contributed its shares to a pre-existing shareholders' agreement, possibly modified in a way that did not involve significant changes to the balance of power among the parties (see Communication no. 99024712 dated March 31, 1999; Communication no.99061705 dated August 13, 1999; Communication no. 38036 dated May 18, 2000; Communication no. 2042919 dated June 14, 2002; Communication 7103030 dated November 2007; Communication no.8085779 dated September 17, 2008).

In the case at issue, on the one hand, it would not make sense to investigate to what extent the agreements between Groupama and Ligresti Group can be considered as a "novation" (of prior agreements), since they do not represent changes to a pre-existing shareholders' agreement but rather an entirely new agreement. On the other hand, before the transaction there was no *de jure* controlling shareholder and after the transaction there is no single *de facto* controlling shareholder.

In the light of the above, the impact of the new agreement on the control structure of Premafin appears to be significant. In fact, the control of Premafin is currently jointly shared by four shareholders; each of the parties to the existing shareholders' agreement holds, as of today, a stake below 30%, and none of them can individually *de facto* control the company. Beside such limited concentration in the shareholding structure, the shareholders' agreement dated November 11, 2005 sets forth an obligation that is more a consultation than an actual voting commitment with respect to voting in the shareholders' meeting of Premafin, since the relevant clauses provide that the parties that are not in agreement with the resolutions adopted by the majority of the parties to the shareholders agreement are free to exercise their voting right in the shareholders' meeting of Premafin as they consider more appropriate, being only bound to communicate in writing their intention to so vote during the internal meeting of the parties to the shareholders' agreement.

Therefore, the current parties to the shareholders' agreement are bound among themselves in a weak way, also considering that (i) family ties are not given a specific relevance by the statutory rules defining the notion of control (Article 93 of the Consolidated Financial Act), (ii) the shareholders' agreement dated November 11, 2005 is about to expire (the contemplated expiration date is June 30 2011) and (iii) in light of the changes already occurred (entry of Mr. Vincent Bolloré) and expected to occur (entry of Groupama) in the shareholding structure of Premafin, in addition to the possibility of voting differently from the rest of the Ligresti Group, for a party to the shareholders' agreement there will also be the possibility to come to common decisions with other significant shareholders. Therefore, no analogy can be found between the case at hand and the above mentioned cases, in which the *de jure* control was referable, before the dilution of the relevant stake, to one single party.

Moreover, it must be noted that Groupama, as a result of the transaction, may become the relative majority shareholder of Premafin. Such aspect has not been considered decisive in the past (see Communication no. 8085779 dated September 17, 2008), but in such case the new shareholder would have become a party to a pre-existing shareholders' agreement, which was amended in a not significant way. We have already noted that the entry into a new agreement, as in this case, prevents the application of such line of reasoning, even by way of analogy.

Furthermore, the influence of Groupama on the governance of Premafin that would derive from Groupama's stake is strengthened by the presence in the shareholding of Mr. Vincent Bollorè, holder of a stake above 5%. Mr. Bolloré and Groupama are, in fact, tied by significant corporate relationships, which certainly indicate that they are close to each other: firstly, Groupama has long held an equity stake equal to approximately 4% in the Group controlled by Mr. Bolloré; secondly, Mr. Jean Azéma, general manager of Groupama who has represented the company in defining the transaction contemplated in the request, has long since been a member of the board of directors of the Bolloré Group.

As to the contents of the shareholders' agreement between Groupama and the Ligresti Group, such agreement does not contain certain provisions that are usually included in shareholders' agreements having the same nature and purpose; such absence permits to distinguish this case from the precedents.

Firstly, such shareholders' agreement does not set forth an express statement, which is usually included in similar cases, to the effect that the control of the company is intended to remain with the current controlling shareholders.

Secondly, although the new agreement prevents the members of the Ligresti Group from disposing of their Premafin shares, it does not prevent the parties to the agreement (in particular, Groupama) to increase their stake or to launch a tender offer which, pursuant to art. 123, paragraph 3, of the Consolidated Financial Act, would allow the parties to the agreement not only to be released from the above restriction but also, as for the Ligresti Group, even more significantly, to be no longer subject to the limitations on the disposal of shares set forth in the agreement of 2005.

The foregoing indicates that there is no limit, *de facto*, to the possibility that the new shareholder Groupama, based on the current agreement or as a result of future (but predictable) developments, exercises a role that is more significant than the role that one could believe to exist based only on the stake which would be held by Groupama. Indeed, among the rationales for the transaction, Groupama itself indicates the "*favorable position in the medium or long term in the context of the evolution of the Premafin Group*".

Moreover, the agreements of 29 October and 22 November 2010 contemplate a quite significant element such as the lock-up clause on the Fondiaria-SAI shares held by Premafin for a 2-year term (a prohibition which would be followed, for the subsequent period, by an obligation to consult). Based on the literal wording of the agreement, pursuant to this clause Premafin would be prevented from disposing of Fondiaria-SAI shares regardless of the size of the stake disposed of and, therefore, even with respect to transactions which would not affect in any way the control over Fondiaria-SAI.

The significant broadness of this obligation is confirmed by the purpose of the clause, pursuant to which (in Groupama's words) "*Groupama, in its position of minority investor, will be able to benefit from the value created at the level of Premafin by the hoped turnaround of the profitability of Fondiaria-SAI*": even disposals of

stakes unable to cause the loss of control over Fondiaria-SAI would cause a reduction of the economic benefits deriving from Fondiaria-SAI and to which Premafin would be entitled.

A clause so broad has not been found in any of Consob precedents. For example, it has been examined a case where a shareholders' agreement had the effect to limit the disposal of stakes in its subsidiaries by a listed holding company (see Consob Communication No. 10064646 of 22 July 2010). However, said agreement did not prevent *tout court* the disposal of shares: rather, it set forth a consultation procedure, pursuant to which the disposal could only be delayed, for a term which was in any event less than half of the term of the lock-up examined herein.

The lock-up clauses as envisaged seem able to materially affect the ordinary management of Premafin. Among the assets held by Premafin (which operates as a holding company and does not carry out other significant business activities), the most relevant one is by far represented by the stake in Fondiaria-SAI. Preventing Premafin from carrying out not only a full disposal but also a partial disposal through sales of even limited amounts of shares would be a material limitation of activities that could amount to ordinary management, also having regard to Premafin's corporate object.[1]

Thus, based on the foregoing, first of all the features of the agreement examined herein are different from all of the cases reviewed so far by the Commission. This not only because specific material aspects, such as the above-mentioned lock-up clause, have not been found in any precedents according to the terms submitted by Groupama, but also in light of an overall assessment of the clauses of the agreement and their interactions.

In light of the foregoing, the new agreement seems to have undoubtedly a material impact on the governance of Premafin and, *de facto*, to cause a material change in the control structure of Premafin; thus, it appears to trigger the obligation to launch a joint tender offer on Premafin based on articles 106, paragraph 1, and 109 of the Consolidated Financial Act, since several entities acting in concert would hold a stake above the 30% threshold, without continuity with the preexisting control structure.

Moreover, the above conclusion entails that, based on articles 106, paragraph 3, letter (a) of the Consolidated Financial act and 45 of the Issuers Regulation, a "cascade" mandatory tender offer would be triggered over the direct subsidiary Fondiaria-SAI, since it represents almost the entirety of the assets held by Premafin as of December 31, 2009 (93.7%) as well as the main asset held by Premafin (art. 45, paragraph 3, of the Issuers Regulation).

As for Milano Assicurazioni, the application of the above "cascade" mandatory tender offer rule to the Fondiaria-SAI financial statements as of December 31, 2009 (in order to assess whether the stake held in Milano Assicurazioni is the prevailing asset of Fondiaria-SAI) leads to rule out the triggering of a "cascade" mandatory tender offer on such listed company, since the book value of the stake held in Milano Assicurazioni by Fondiaria-SAI represents 6.6% of the total assets. As for the rule set forth by art. 45, paragraph 3, letter (b) of the Issuers Regulation, such rule presents stronger discretionary features with respect to the assessment of the value assigned to the Milano Assicurazioni stake held by Fondiaria-SAI. Currently, since the Agreement does not expressly refer to the value assigned to the Milano Assicurazioni stake held by Fondiaria-SAI, based on the market value of the stakes it seems possible to confirm that the "cascade" mandatory tender offer on Milano Assicurazioni is not triggered either pursuant to art. 45, paragraph 3, letter (b) of the Issuers Regulation.

[1] See Communication No. 10064646 of July 22, 2010 and Communication No. 2057476 of August 14, 2002, quoted therein.

2.2 Considerations on the acquisition of a direct stake in Fondiaria-SAI by Groupama

2.2.1 With respect to the mandatory tender offer issues raised by a potential acquisition by Groupama of a direct stake in Fondiaria-SAI, in the range of 17/20% of the capital, it must first be noted that the following remarks may result superseded by the considerations set forth above. In any event, we hereby reply to the request submitted to us.

The envisaged scenario entails a concert, pursuant to art. 101-*bis* of the Consolidated Financial Act, between Premafin and Groupama concerning Fondiaria-SAI, in the form of a shareholders' agreement of the kind contemplated by art. 122, paragraph 5, letter (b) of the Consolidated Financial Act, given the undertaking by Premafin not to dispose of its stake in Fondiaria-SAI and not to carry out any transaction resulting in a change of the control structure of Fondiaria-SAI.

In order to assess whether a separate incremental mandatory tender offer would be triggered pursuant to art. 106, paragraph 3, letter (b) of the Consolidated Financial Act by purchases of Fondiaria-SAI shares carried out by Groupama, it must first be determined what the exact size of the Fondiaria-SAI stake currently attributable to Premafin is, taking into account the fact that Fondiaria-SAI currently holds, directly and through subsidiaries, treasury shares equal to 11.554% of the share capital.

In its Communications No. 1059750 and No. 1059755 of 2 August 2001, Consob has examined whether treasury shares should be taken into account for mandatory tender offer purposes, pursuant to art. 106 of the Consolidated Financial Act, specifying *inter alia* that, for purposes of the mandatory tender offer thresholds set forth by art. 106 of the Consolidated Financial Act (including, thus, the incremental mandatory tender offer), the actual percentage incidence of the stake held by the controlling shareholder over the ordinary shareholders' meeting of a listed issuer must be determined by taking into account in the numerator the stake directly and indirectly (through "third party" subsidiaries) held by such shareholder, without adding the treasury shares, and in the denominator 100% of the ordinary share capital less the treasury shares whose voting rights are suspended pursuant to art. 2357-*ter* of the Italian civil code.

Since Fondiaria-SAI holds only 2.571% of treasury shares, while 8.983% of the capital is held by its subsidiaries Milano Assicurazioni and SAI Holding Italia, by applying the rule on treasury shares to the treasury shares held through subsidiaries, the stake attributable to Premafin, as maintained in Groupama's request, would be equal to 47.076% of the Fondiaria-SAI ordinary shares actually entitled to vote.

In this case, Consob's interpretation expressed in the Communication No. DEM/2042919 of June 14, 2002, would apply, pursuant to which "*once the 50% threshold is exceeded through purchases carried out in compliance with art. 46 of the Issuers Regulation (3% in a 12-month period)* [but now 5% based on the new limit subsequently introduced by the Consolidated Financial Act], *the shareholder shall be free to carry out additional share purchases even if this entails that in the same time-period such purchases exceed in the aggregate the above-mentioned percentage*". In practice, by applying the above interpretation to the new incremental mandatory tender offer threshold, a shareholder that has held for more than 12 months a stake that is relevant from a mandatory tender offer perspective and exceeds 45% would be able to purchase shares without restrictions and further limitations.

On the basis of such trend of decisions, as thing stand today and without taking into account the effects of the capital increase of Fondiaria-SAI, which is dealt with below, the acquisition of Fondiaria-SAI shares by

Groupama (prior to the capital increase) would not trigger an incremental mandatory tender offer even if the purchases exceeded the 5% threshold.

2.2.2. One should come to a different conclusion, instead, in the event that, as contemplated in the request, the acquisition of Fondiaria-SAI shares by Groupama took place simultaneously with the effective time of the capital increase resolved upon by Fondiaria-SAI, through the purchase of subscription rights on the market.

The capital increase of Fondiaria-SAI may in fact cause a dilution of Premafin stake, since Premafin has announced its commitment to exercise only a portion of its subscription rights. In that respect, Groupama estimates in its request that, following the capital increase, the Premafin stake may decrease to 36.5% or 38% of the voting capital (thus net of the treasury shares), depending on the discount at which the new Fondiaria-SAI shares will be issued.

In such scenario - as well as, at any rate, in any other situation in which the Premafin stake after the capital increase would be diluted below 45% of the voting rights - any acquisition of shares by Groupama should be limited within the 5% threshold in order not to trigger a mandatory tender offer.

In order to rule out the triggering of an incremental mandatory tender offer also in this last scenario, Groupama in its request maintains that "*Groupama's completion of the Significant Acquisition and Premafin's decrease would be simultaneous and part of one and the same transaction, hence once more there would be no issue of crossing any mandatory tender offer threshold*", and makes reference to Communications No. DIS/98071945 of 8 September 1998, No. DIS/99061705 of 13 August 1999 and No. DEM/2010342 of 14 February 2002 as support for its argument. Hence, we have to assess whether the decrease of the Premafin stake as a result of the dilution produced by the capital increase and the simultaneous (re)increase of the stake, then held jointly by Premafin and Groupama following the purchases of shares made by the latter, can be considered as part of one and the same transaction.

In that respect, we want first to clarify that the concept of "one and the same transaction" cannot be confused or identified with that of "simultaneity" of the transactions, in that the mere fact that two or more transactions take place at the same moment in time does not by itself render such transactions as indivisible components of a single plan. In the above mentioned Consob precedents the existence of a perfect time concurrence between the dilution and the (re)increase of the stake has not been considered sufficient by itself to rule out the application of the incremental mandatory tender offer rules.

The analysis of Consob precedents shows that two or more actions should be considered as one and the same transaction if those actions are devised from the beginning as the necessary steps to produce a final result agreed upon by the parties. The precedents identify a necessary link between the diluting event and the increase of the stake, consisting in the fact that the former is the precondition for the latter, thus creating a scenario in which the dilution constitutes the means chosen by the parties to implement the entry of the new shareholder in the share capital, and to determine the size of such entry, so that the partnership agreement desired and shared by the parties from the beginning can be implemented (express considerations on this point are found in Communication n. 99061705 of 13-8-1999). In the case at hand, on the contrary, it does not seem possible to find those profiles of "unitarity" that in the past have led Consob to exclude the triggering of an incremental mandatory tender offer. In particular, we point out that the entry of Groupama into the share capital of Fondiaria-SAI in the context of the announced capital increase does not represent an implementing step of a wider plan shared with Premafin or the Ligresti group.

Based on the information available to Consob, which is by the way confirmed by the contents of the request, it appears, in fact, that Groupama's intention to purchase a direct stake in Fondiaria-SAI represents a unilateral and autonomous initiative adopted as a response to the intention announced by Premafin not to subscribe to its entire portion of the Fondiaria-SAI capital increase.

On the other hand, such initiative, for its size (acquisition of a stake representing 17/20% of the capital), does not appear consistent with the statements made by Groupama on the rational for its direct investment in Fondiaria-SAI (i.e., the need to offset the dilution of the Premafin stake resulting from the capital increase), since the acquisition of a much smaller stake would be sufficient to that purpose.

Considering all the above, we therefore deem that, to the extent the acquisition of Fondiaria-SAI shares by Groupama occurs simultaneously with the dilution of the Premafin stake below 45% of the voting rights, such acquisition will be subject to the 5% limit set forth by art. 106, par. 3, letter b) of the Consolidated Financial Act and art. 46 of the Issuers Regulation; hence, should that limit be exceeded, a mandatory tender offer would be triggered.

If the acquisition by Groupama occurred outside the capital increase and after the closing thereof, the 5% limit would be even more applicable, since there would be no link with the reduction of the Premafin stake.

3. CONCLUSIONS

In conclusion, based on what is represented in the request and the information currently available, in line with Consob's well-established trend of decisions on the matter of acting in concert, we deem that:

a) following the acquisition by Groupama of the 17.1% stake in Premafin, in the context of the above-mentioned capital increase, the parties to the agreements of 29 October and 22 November 2010 would be subject to the obligation to launch a totalitarian tender offer on Premafin and a "cascade" tender offer on Fondiaria-SAI, since, for the above indicated considerations, in light of the current shareholding of Premafin and the contents of the signed agreements, there would be a significant modification in the control structure of Premafin;

b) to the extent that Groupama acquired Fondiaria-SAI shares simultaneously with, or following, the dilution of the Premafin stake below 45% of the voting capital resulting from the already approved capital increase and Groupama and Premafin were then still acting in concert in relation to Fondiaria-SAI, such acquisition would be subject to the 5% limit set forth by art. 106, par. 3, letter b) of the Consolidated Financial Act and art. 46 of the Issuers Regulation; hence, should that limit be exceeded, a mandatory tender offer would be triggered.

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