

***Case No COMP/M.6848 -
AEGON / SANTANDER /
SANTANDER VIDA /
SANTANDER
GENERALES***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/04/2013

***In electronic form on the EUR-Lex website under document
number 32013M6848***



EUROPEAN COMMISSION

Brussels, 29/4/2013
C(2013) 2597

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

Subject: Case No COMP/M.6848 – AEGON / SANTANDER / SANTANDER VIDA / SANTANDER GENERALES
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

- (1) On 27 March 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertaking Aegon Spain Holding B.V. ("Aegon Spain"), ultimately controlled by Aegon N.V. (the "Aegon", the Netherlands) and Santander Seguros y Reaseguros, Compañía Aseguradora, S.A. ("Santander Seguros", Spain), ultimately controlled by Banco Santander SA ("Banco Santander", Spain), jointly referred to as "the Notifying Parties", acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control over Santander Vida and Santander Generales by way of purchase of shares (the "proposed transaction")².
- (2) The Notifying Parties together with Santander Vida and Santander Generales are referred to as "the Parties".

¹ OJ L 24, 29.1.2004, p. 1. 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.

² Publication in the Official Journal of the European Union No C 102, 09.04.2013, p.4.

1. THE PARTIES

- (3) Aegon Spain is active in the life insurance and non-life insurance (including accident and health insurance) sectors in Spain. Aegon Spain belongs to Aegon Group of insurance companies headed by the parent company, Aegon N.V. Aegon Group's activities include asset management, insurance, pension and related products. Aegon Group is active worldwide, mainly in the United States, the Netherlands and the United Kingdom. Aegon Spain also participates in certain banc-assurance joint venture agreements with other Spanish savings banks.³
- (4) Santander Seguros is active in the life and non-life insurance markets and insurance distribution in Spain. It belongs to Santander Group, which is ultimately controlled by Banco Santander, active in commercial banking, retail banking, corporate banking, investment banking, asset management and treasury in Spain, the United Kingdom, some other European countries as well as in North and South America.
- (5) Santander Vida and Santander Generales (jointly referred to as the "JVs") will be active in the Spanish life and non-life insurance markets respectively.

2. THE OPERATION

- (6) On [...], the Notifying Parties signed a Sale and Purchase Agreement ("SPA") whereby Aegon Spain acquired 51% of the share capital of the JVs. The JVs were previously solely controlled by Santander Seguros. The Notifying Parties also signed an Alliance and Shareholders' agreement ("SHA"), to regulate their relationship as shareholders of the JVs.
- (7) In parallel, the Notifying Parties signed a number of agreements relevant for the operation of the JVs, namely:
 - (a) an Insurance Distribution Agency Agreement ("Agency Agreement") signed on the same day between the JVs and Santander Mediación Operador de Banca Seguros Vinculado, S.A. ("Santander Mediación") concerning the distribution of life and non-life insurance products of Santander Vida and Santander Generales through the commercial networks of Banco Santander, Banco Español de Crédito, S.A. ("Banesto"), Openbank, S.A. (Openbank") and Banco Banif, S.A. ("Banif"); and
 - (b) "Portofolio Assignment Agreements" whereby Santander Seguros assigned to Santander Vida and Santander Generales part of their insurance business.

3. THE CONCENTRATION

3.1 Joint control

- (8) The Notifying Parties submit that they will have joint control over the JVs. SHA provides that the decisions at the JVs' Shareholders' Meetings will require the favourable vote of absolute majority of the represented share capital.

³ See for example Cases M.6594 - *"Aegon / Liberbank / Liberbank Vida"*, M.6223 - *"Aegon / Banca Civica / Cajaburgos Vida"*, M.6110 - *"Aegon / Unnim / Caixasabadell Vida"*.

- (9) The JVs' Boards of Directors will each have eight Directors; Aegon Spain and Santander Seguros will each appoint half of the Board's members. The chairman of the Board of Directors will be appointed by Aegon and will have a casting vote; the decisions of the Board will require absolute majority of the directors present or represented.
- (10) The adoption of strategic decisions will require, depending on the type of the decision, a majority of two thirds of either the voting share capital or the Board of Directors. Indeed:
- i. a minimum majority of two thirds of the voting share capital will be necessary to approve resolutions concerning certain important corporate matters reserved for the Shareholders' Meeting, such as the business plan, the strategic plan, the annual budget, credit facilities, important contracts, as well as certain investments; and
 - ii. the favourable vote of at least two thirds of the directors that make up the Board of Directors (the Chairman not having a casting vote) is required for the approval of strategic decisions such as the business plan, the strategic plan, the annual budget, credit facilities, important contracts, as well as certain investments.
- (11) As a result, the Notifying Parties will have the ability to determine the strategic commercial behaviour of the JVs and to jointly exercise decisive influence over them. It follows that the Notifying Parties will jointly control the JVs.

3.2 Full Functionality

- (12) In order to constitute a concentration within the meaning of Article 3 (4) the Merger Regulation, a joint venture must perform on a lasting basis all the functions of an autonomous economic entity.
- (13) In the present case, the parent companies will assign all necessary assets and contracts to the JVs so that they carry out the business in an autonomous manner. Specifically, the JVs' day-to-day operations will be conducted by their own General Managers and the JVs will hire their own employees which will develop their respective business according to the business plans set out by the JVs. The JVs will also comply, in their own name, with all the solvency requirements imposed by the 2004 Spanish Insurance Act.
- (14) The JVs, through the Agency Agreement signed with Santander Mediacion, will rely on the banking distribution network of Santander Group. Alternatively, non-bank distribution channels for the JVs' products are in principle available, but, distribution through a bank network remains in this case crucial for the success of the bancassurance business. Santander Mediacion will act as an agent for the JVs and will be remunerated for the distribution of the JVs' products in the form of a commission, on market conditions.
- (15) It is not foreseen that the JVs will sell any products to the parent companies and the services the parent companies will provide Santander Vida and Santander Generales will be remunerated on an arm's length basis.

- (16) In light of the above, it can therefore be concluded that the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

4. EU DIMENSION

- (17) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ in 2012 (EUR 19 526 million for Aegon Group, EUR 82 296 million for Santander Group). Each of them has an EU-wide turnover in excess of EUR 250 million (EUR [...] million for Aegon Group, EUR [...] million for Santander Group). In addition, the notifying parties do not achieve more than two-thirds of their EU-wide turnover within one and the same Member State.
- (18) The notified operation therefore has an EU dimension within the meaning of Article 1 (2) of the Merger Regulation.

5. COMPETITIVE ASSESSMENT

- (19) The Parties' activities overlap mainly horizontally on several market segments of life and non-life insurance. However, the proposed transaction gives rise to only two horizontally affected market segments in relation to the life insurance market: (i) investment products market in Spain, and (ii) life insurance for individuals in Spain.⁵

5.1 Product Market Definition

- (20) In previous decisions relating to the insurance sector, the Commission has distinguished between three large categories of insurance product markets: life insurance, non-life insurance and reinsurance.⁶

5.1.1 Life insurance

- (21) As regards the life insurance market, the Commission has considered in the past the following subsegmentations, namely (i) pure protection products, (ii) pension products and (iii) investments products. The Commission has further considered the distinction based on category of customers between life insurance products addressed to individuals and to groups.⁷
- (22) The Notifying Parties submit that the life insurance market could be analysed as a single product market.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p.1).

⁵ The term "affected market" is used here, in line with the Commission Notice on a simplified procedure for treatment of certain concentrations under the Council Regulation (EC) 139/2004, to indicate markets on which the Notifying Parties' combined market share in 2012 is i) in the same product and geographical market (horizontal relationships) 15% or more or ii) in product markets which are upstream or downstream from one another (vertical relationships) 25% or more. See point 5(1)(c) of the aforementioned notice.

⁶ Case No. COMP/M.4284 – AXA / Winterthur, Case No COMP/M.6053 – CVC / Apollo / Brit Insurance; COMP/M.6217 - Baloise Holding / Nateus / Nateus Life.

⁷ Case No. COMP/M.6521 - Talanx International / Meiji Yasuda Life Insurance / Warta; Case No.COMP/M.5075 Vienna Insurance Group / EBV; and Case No. COMP/M.4701 Generali / PPF Insurance business.

- (23) In any event, the exact product market definition in relation to life insurance can be left open in this case, as the proposed transaction does not raise competition concerns irrespective of the precise product market definition.

5.1.2 Non-life insurance

- (24) Regarding non-life insurance products, the Commission has in the past generally considered a distinction between the following segments: (i) accident and sickness; (ii) motor vehicle; (iii) property; (iv) marine, aviation and transport ("MAT"); (v) liability; (vi) credit and suretyship; and (vii) travel, while the exact product market definitions has been left open.⁸
- (25) The Commission has in a number of decisions acknowledged that there is a degree of supply-side substitutability in the non-life insurance segment as the conditions for insurance of different types of risks are similar and most large insurance companies are active in multiple risk types of policies.⁹
- (26) However, the Commission has considered that there is limited substitutability between the different categories of policy offered from the point of view of insured customers, although it is frequent that in the same policy different risks are covered. As the non-life insurance products are not necessarily substitutable from the demand side, the market could potentially be divided into as many products as there are different risks.¹⁰
- (27) In any event, the exact product market definition in relation to non-life insurance can be left open in this case, as the proposed transaction does not raise competition concerns irrespective of the precise product market definition.

5.1.3 Reinsurance

- (28) The Commission has in the past distinguished the market for reinsurance from those for life and non-life insurance and defined the reinsurance services market as market for providing insurance cover to another party (the insurer) for part or all of the liability assumed by it under a policy or policies of insurance which it has issued.¹¹ However, the Commission has so far left open the question whether reinsurance constitutes a single relevant product market or whether it should be further subdivided into life and non-life segments.¹²
- (29) In any event, the exact product market definition in relation to reinsurance can be left open in this case, as the proposed transaction does not raise competition concerns irrespective of the precise product market definition.

⁸ Case No. COMP/M.6521 - *Talanx International / Meiji Yasuda Life Insurance / Warta*, Case No COMP/M.4284 – *AXA / Winterthur*; COMP/M.4701 – *Generali / PPF Insurance Business*.

⁹ Case No COMP/M.4713 – *Aviva / Hamilton*.

¹⁰ COMP/M.4284 – *AXA / Winterthur*.

¹¹ Case No COMP/M.4284 – *AXA / Winterthur*.

¹² Case No COMP/M.5083 - *Groupama/OTP Garancia*, Case No COMP/M.6053 – *CVC / Apollo / BritInsurance*.

5.2 Geographic Market Definitions

5.2.1 Life insurance

- (30) The Commission in its previous decisions has considered the geographic market for life insurance and its segments to be national in scope due to differing regulatory frameworks, differing distribution structures and established brands. However, the exact product market definition has been left open.¹³
- (31) The Notifying Parties agree that the life insurance has a national dimension but submit that the consolidation of the freedom to provide services in the European Union and the harmonization of the legislation between Member States could ultimately even lead to a market definition wider than national.
- (32) In any event, the exact geographic market definition in relation to life insurance can be left open in this case, as the proposed transaction does not raise competition concerns irrespective of the precise geographic market definition.

5.2.2 Non-life insurance

- (33) With regard to the geographic scope of non-life insurance market and its various subsegments, the Commission has generally considered these markets as national,¹⁴ with the exception (i) of large commercial risks, such as the insurance of aerospace risks, which is most likely to be at least EEA-wide in scope¹⁵ and, (ii) with respect to MAT¹⁶ insurance,¹⁷ which is likely to be wider than national for large/multinational corporate customers and large risks respectively. However, the Commission finally left the exact scope of the geographic market open.
- (34) The Notifying Parties consider that the non-life insurance market is national in scope and underline the fact that the consolidation of the freedom to provide services could lead to a wider market definition in the future.
- (35) In any event, the exact geographic market definition in relation to non-life insurance can be left open in this case, as the proposed transaction does not raise competition concerns irrespective of the precise geographic market definition.

5.2.3 Reinsurance

- (36) As regards reinsurance, the Commission has previously defined this market to be global due to the need to pool risks on a worldwide basis.¹⁸ The Notifying Parties accept the Commission's approach.

¹³ Cases No. COMP/M.6521 - *Talanx International / Meiji Yasuda Life Insurance / Warta*, No COMP/M.5075 - *Vienna Insurance Group / EBV*; Case No COMP/M.5057 - *Aviva / UBI Vita*.

¹⁴ Case No COMP/M.4284 *AXA / Winterthur*.

¹⁵ Case No COMP/M.5010 - *Berkshire Hathaway / Munich RE / GAUM*.

¹⁶ Marine, Aviation and Transport.

¹⁷ Case No COMP/M.2676 *Sampo / Varma Sampo / If Holding / JV*, Case No COMP/M.4284 *AXA/Winterthur*, COMP/M.1082 - *Allianz / AGF*; Case No COMP/M.3556 *FORTIS / BCP*, Case No COMP/M.5010 - *Berkshire Hathaway / Munich RE / GAUM*.

¹⁸ Case No COMP/M.5925 *MetLife / Alico / Delam*; Case No COMP/M.5083, *Groupama / OTP Garancia*; Case No COMP/M.4059 *Swiss Re / GE Insurance Solutions*; Case No COMP/M.6053 - *CVC / Apollo / Brit Insurance*.

- (37) In any event, the exact geographic market definition in relation to reinsurance can be left open in this case, as the proposed transaction does not raise competition concerns irrespective of the precise geographic market definition.

5.3 Competitive Assessment

- (38) The sole affected market as a result of the proposed transaction is the life insurance market in Spain and some of its subsegments. Specifically, the Notifying Parties' combined market shares exceed 15% on the investment products market ([10-20]% in 2012) and on the market for life insurance for individuals ([10-20]% in 2012).
- (39) In addition, limited horizontal overlaps occur in Poland in relation to the life insurance and non-life insurance production markets (less than 10%). There are also limited horizontal and vertical overlaps in the Netherlands where Aegon Group is active in insurance production and distribution and Santander has limited presence at the distribution level.
- (40) While there are also limited vertical overlaps between the Notifying Parties' activities in the United Kingdom where Aegon Group is active in the area of insurance production whereas the Santander Group is present at the insurance distribution level, no vertically affected market would arise as a result of the proposed transaction.
- (41) Finally, a minor horizontal overlap occurs on the reinsurance market at the EEA level which does not give rise to an affected market (less than 5%).

The market for life insurance in Spain

- (42) The Parties' combined market share would remain below 15% on the life insurance market with the following exceptions: (i) Spanish investment products market ([10-20]% combined market share, with an increment of [0-5]% in 2012)¹⁹ and (ii) Spanish life insurance products for individuals ([10-20]% combined market share, with an increment of [0-5]% in 2012).
- (43) On these segments, the combined market shares and the increments remain limited. Moreover, Santander Vida will face competition from Grupo Caixa, the market leader in the Spanish life insurance market ([10-20]% market share in 2012), and many other local and international (but locally active) players ([60-70] % aggregated market share in 2012). Indeed, in Spain, Grupo Caixa held a market share of [20-30]% in the investment products market in 2012 and [10-20]% in the life insurance products for individuals in 2012. The other market players held an aggregated market share of [60-70]% in the Spanish investment products market in 2012, among which Mapfre ([10-20]%), BBVA Seguros ([5-10]%), Ibercaja ([0-5]%) and [60-70]% in the Spanish life insurance products for individuals in 2012, among which Mapfre ([5-10]%), BBVA Seguros ([5-10]%) and Aviva ([5-10]%).
- (44) The Notifying Parties submit that barriers to entry into this market are rather limited, in particular due to low customer switching costs, lack of brand loyalty, relatively easy access to distribution network, and increasing market transparency. They also

¹⁹ "Increment" here and elsewhere in this decision refers to an increase to the market share previously held by Santander alone.

emphasised the fact that at least three companies entered the market in the last five years.²⁰

- (45) Taking into consideration the level of the combined market shares (below 20% in all market segments) and the number and the strength of the other competitors active in the market, the proposed transaction is unlikely to raise serious doubts as to its compatibility with the internal market as far as Spanish life insurance market or any of its subsegments are concerned.

6. CONCLUSION

- (46) 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

²⁰ Permaat, Aseq Vida and Murimar Bankinter, all of them active in both investment products and life insurance products for individuals.