

***Case No COMP/M.5728 -
CREDIT AGRICOLE/
SOCIETE GENERALE
ASSET MANAGEMENT***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/2009

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EUROPEAN COMMISSION

Brussels, 22/12/2009

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5728 – Crédit Agricole/ Société Générale Asset Management
Notification of 18.11.2009 pursuant to Article 4 of Council Regulation No 139/2004¹**

1. On the 18th of November 2009, the 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 Crédit Agricole Group ("CAG", France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the majority of activities of the undertaking Société Générale Asset Management ("SGAM", France), as well as the undertaking Etoile Gestion ("EG", France) and 20% of the undertaking The TCW Group, Inc. ("TCW", United States).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. Crédit Agricole Group, the notifying Party, is one of the main banking groups in France. CAG is present across the entire spectrum of banking and finance activities. It has a network of branches worldwide and serves both retail and corporate customers. CAG is present in 70 countries. In the field of asset management, CAG is mainly active through its subsidiaries CAAM Group and BFT Gestion, which offer a wide range of products to retail investors, institutions, corporate accounts and third-party distributors. CAAM Group is active in more than 20 countries worldwide.
4. Société Générale Asset Management is currently controlled by Société Générale ("SG"), which is a financial services group based in France. SG is active in three key businesses, namely retail banking and financial services, global investment management and services, and corporate and investment banking. SGAM is SG's subsidiary offering several asset management services, namely the creation and management of mutual funds and the provision of portfolio management services.
5. CAG and SG are collectively termed, for the purposes of this Decision, the "Parties".

II. THE OPERATION

6. The concentration consists in the acquisition of sole control by CAG of the majority of the European and Asian activities of Société Générale Asset Management² and a 20% interest in SGAM's asset management subsidiary in the United States, the TCW Group Inc. (the target assets are together referred to hereafter as "SGAM"). Excluded from the scope of the acquisition are the non-"traditional" or "alternative" asset management activities of Société Générale Asset Management in Europe³, as well as its asset management businesses in China and Korea and SG's retail distribution network for these products.
7. The SGAM assets are to be pooled into a holding company⁴ together with the majority of the asset management business of CAG (the "Holding Company"). CAG will hold 75% of the Holding Company and SG the remaining 25%. As minority shareholder, SG will have no veto rights conferring it decisive influence over the Holding Company under the terms of Article 3 of the EC Merger Regulation.
8. As a result of the transaction, CAG would exercise sole control over the target assets of SGAM. The proposed transaction therefore constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

The distribution arrangements

9. Both CAG and SG have also entered into a number of distribution agreements with the Holding Company. The two distribution agreements with SG (hereafter the "SG Distribution Agreements") provide the Holding Company long term, quasi-exclusive access to SG's retail distribution network (including Credit du Nord but excluding its

² This will include therefore, for example, Étoile Gestion, currently held by Crédit du Nord.

³ This excludes, for example, Lyxor Asset Management.

⁴ It has been named Amundi Group.

private banking network)⁵. The products of the combined undertaking will thus be distributed *inter alia* through the retail networks of both Crédit Agricole (which includes LCL) and Société Générale.

10. As regards duration, the distribution agreements will be entered into for an initial period of [...] years, renewable for a further [...] years. However, the Shareholder Agreement sets out [...].
11. Under the SG Distribution Agreements, SG will undertake to procure asset management products (excluding formula funds) from the holding company for at least [...]% of assets under management held by retail distribution clients⁶, subject to certain obligations and limited exceptions. The exceptions are (i) if the Holding Company is unable to supply a new type of product required by the SG network, but in this case only whilst this inability lasts, i.e., once the Holding Company is in a position to supply it SG will cease marketing such third party products (article 3.1 of both distribution agreements) (ii) if the Holding Company's products do not meet certain performance criteria, and (iii) for formula funds, where SG will maintain production through Lyxor, and where SG distribution network is only obliged to procure its requirements for these products on [...].
12. Whilst the prices for the products distributed through the SG networks will be set by agreement between SG and the Holding Company, the SG Distribution Agreements allow SG, should it so wish, to reduce the amount of the fee components that corresponds to the remuneration of its distribution role (i.e., entry fees, exit fees where applicable, and the portion of the management fees which is transferred to the distributor on an ongoing basis by way of retrocession). These arrangements on fees are described by the notifying Party as a "fundamental principle" of the agreement from SG's perspective.

Position of the notifying Party on the SG Distribution Agreements

13. The notifying Party considers that the SG Distribution Agreements do not give CAG control over the SG retail network⁷. Nonetheless, these agreements are considered by the notifying Party to be a key component of the transaction as it considers access to SG's distribution network to be critical for the success of the transaction, and suggesting that these Agreements should be considered ancillary to the concentration agreements, that is "directly related and necessary to" the transaction in the sense of Article 6(1)(b) of the Merger Regulation.
14. To support this claim, CAG points to the significance of the SG Distribution Agreements in the overall value of SGAM, reflected in the price paid including the SG ownership interest in the Holding Company.
15. Equally, CAG indicates that it is "critical" for SG to have "long term" access to a supplier of asset management products following the divestiture of SGAM. CAG also argues that the ongoing relationship with the distribution network of SG provided for in the SG Distribution Agreements goes beyond a typical distribution agreement as it also has certain characteristics of a production outsourcing and specialisation agreement,

⁵ Considered to be for clients with net worth above €1 million.

⁶ Article 4.1 of both of the SG Distribution Agreements.

⁷ Paragraphs 12 and 42 of the notification.

since SG will "retain the ability to design and distribute exclusive, differentiated asset management products".

Analysis of the SG Distribution Agreements

16. The Commission agrees with the notifying party's position that the SG Distribution Agreements do not enable the Holding Company to control the management, resources or commercial policy of SG's retail distribution networks, that therefore the Agreements may not be said to lead to an acquisition of control over the SG retail distribution, and that therefore there is no concentration at the distribution level. It is also clear that the SG Distribution Agreements cannot be considered part of the main object of the concentration, which is the acquisition of sole control by CAG over the production assets of SGAM.
17. In this context, the Commission observes that the SG Distribution Agreements clearly fall outside the scope of the principles set out in the Commission Notice on restrictions directly related and necessary to concentrations (the "Notice")⁸.
18. The SG Distribution Agreements clearly limit SG's ability and incentive to offer third party asset management products to its retail clients.
19. Whilst the SG Distribution Agreements may be considered economically related to the concentration as they refer to the retail distribution of the production assets subject to the concentration, the issue as to whether they are strictly necessary in the sense of the Notice in order to ensure continuity of supply for a transitional period needs to be assessed bearing in mind both the scope and duration of the Agreements.
20. As regards the duration of the SG Distribution Agreements, [...] the parties will, in all likelihood, renew the agreements after the initial [...] year contractual term for at least a further [...] year period. Further evidence of the intention of the parties that these distribution arrangements stay in place for at least a [...] year period may be found in a number of internal documents of Crédit Agricole preparing the transaction⁹.
21. The notifying Party has not pointed to any exceptional circumstances that may justify such a long duration of the Agreements, [...] exceeds the five year maximum period foreseen in the Notice¹⁰. Such a period goes clearly beyond any transitory period that might be required either for the replacement of the current relationship of dependency of SG on SGAM's products or for CAG to develop distribution channels for the SGAM products in addition to the SG retail distribution network, which in any case might remain accessible to it on a non-exclusive basis.
22. Furthermore, the scope of the Agreements is very wide, resulting in their having a quasi-exclusive nature (referred to by CAG in the notification as a "preferred-supplier" status). The [...] % purchasing requirement for the SG retail distribution networks has the effect of severely restricting the commercial freedom of SG to sell third party asset management products to its retail customers, as well as similarly substantially foreclosing the SG retail distribution network to such third party suppliers. Indeed, the Notice clearly states at paragraph 34 that purchase and supply obligations providing for "exclusivity or conferring preferred-supplier or preferred-purchaser status, are not necessary to the implementation of the concentration."

8 OJ C 56, 5.3.2005 p. 24.

9 [...]

10 Paragraph 33 of the Commission Notice on restrictions directly related and necessary to concentrations cited above.

23. In conclusion, the wide scope and long duration of the SG Distribution Agreements mean that they go significantly beyond what would be reasonably necessary to ensure a transitory period of continuity of distribution (for CAG) and supply (for SG) after a break-up of SGAM from the SG group.
24. Therefore, as provided for in paragraph 7 of the Notice, the SG Distribution Agreements cannot be considered directly related and necessary to the implementation of the concentration and are therefore not covered by this Decision. Consequently such Agreements remain subject to Articles 101 and 102 TFEU (formerly 81 and 82 of the EC Treaty) without prejudice to their compatibility or otherwise with said Articles.
25. Notwithstanding that the scope of the present Decision does not cover the SG Distribution Agreements, these arrangements nonetheless need to be taken into consideration when assessing the competitive effects of the transaction.

III. COMMUNITY DIMENSION

26. Whilst, the Parties' combined worldwide turnover was approximately EUR 85 billion and each of the parties had a turnover in the EU of more than €250 million in 2008 (thereby exceeding the thresholds under Article 1(2)(a) and (b) of the Merger Regulation), the Parties each achieved more than two-thirds of their EU turnover in one and the same Member State, namely France.
27. As the transaction was capable of being reviewed under the national competition laws of at least three Member States, namely France, [Czech Republic, Ireland and Italy, the Parties requested on May 7th 2009, by means of a reasoned submission pursuant to Article 4(5) of the Merger Regulation, that the concentration be examined by the Commission. As no Member State competent to examine the concentration under its national competition law expressed disagreement as regards the request to refer the case, the concentration was deemed to have a Community dimension.

IV. COMPETITIVE ASSESSMENT

28. The Parties have argued in the notification that asset management comprises the creation, establishment and marketing of retail pooled funds ("collective investment schemes") as well as portfolio management services to pension funds, institutions, international organizations and private investors. Collective investment schemes have the characteristic that the client's assets are a share of all those collectively managed by the asset manager, whereas in portfolio management the client delegates to the asset manager the task of making investment choices and performing operational activities in connection with its investment portfolio.
29. According to the Parties, the differences between the various types of asset management are not sufficient to conclude that they constitute separate markets.
30. The Commission has in the past left open the question whether the retail and institutional segments of asset management constitute separate product markets.
31. The market investigation in the present case has, however, shown that, as far as the French market is concerned, a distinction needs to be drawn between asset management for institutional clients (and potentially also for high net worth private clients) and retail collective investment schemes, as the conditions of competition are dissimilar between

these two segments. Although such a conclusion might be drawn based on a variety of considerations such as the need to build distribution networks and brands, it can in any case be concluded definitively for the purposes of the present case as regards the French market that these constitute separate segments on the basis of the situation of limited access to French retail distribution as further described below, as a result of which supply-side substitution does not exercise a sufficient and timely constraint in the retail segment, and all the more so in the short term¹¹.

32. The competitive assessment can accordingly be carried out based on the broad separate segments for institutional and retail clients. Within each of these segments certain further distinctions may also be drawn as detailed below.

A. Asset Management for Institutional Clients

Relevant product market

33. Institutional clients can be defined as entities such as pension funds, banks or insurance companies that purchase asset management products and services, for investment purposes, directly from asset management companies rather than via a non-specialized intermediary such as a retail bank. Such clients use portfolio management services but also may invest directly in collective investment scheme products such as mutual funds. For the purpose of this decision, both portfolio management services and collective investment schemes sold to institutional clients can be considered to form part of an overall product market for asset management for institutional clients.
34. General corporate clients and in particular SMEs are not considered to be institutional clients in this sense, since they are provided with asset management products and services not directly by the asset management company itself but through general corporate banking networks which act as distributors. Such clients are therefore considered as part of the retail segment and discussed further in section B below.
35. In recent decisions, the Commission has considered the possibility of further segmenting the institutional asset management market based upon a distinction between active and passive asset management¹². Active asset management consists of strategies applied by the investment manager with the goal of outperforming a benchmark, for instance an index, while passive asset management merely seeks to replicate the performance of an index.¹³ Passive asset management services rely much more on technology and as a consequence normally have lower management fees than active asset management services.¹⁴
36. The transaction at hand primarily concerns the service of active asset management which is the only segment in which the merging parties' activities overlap since SG's Lyxor subsidiary, which is specialized in passive asset management, will remain outside the scope of the planned transaction.

11 Commission Notice on the definition of the relevant market for the purposes of Community competition law, OJ C372 of 9 December 1997, pp. 5ff., paragraph 20.

12 COMP/M.5580 Blackrock/BGI, para 10, 13; COMP/M.5341 Allianz / Cominvest

13 COMP/M.5580 Blackrock/BGI.

14 COMP/M. 5341, Allianz/Cominvest; COMP/M.5580 Blackrock/BGI.

37. The notifying Party considers that active asset management and passive asset management are simply different techniques and do not constitute separate markets. Furthermore, this Party argues that active and passive asset management have the same customer base because the same customers procure both actively and passively managed products. Finally, the majority of the providers of asset management services have, in the view of the notifying Party, the skills and the necessary IT equipment to provide both services.
38. As mentioned above, however, the price level, in terms of entry and management fees, differs significantly between the two segments. Moreover, as the market investigation in previous decisions indicated¹⁵, the conditions of competition differ between these two services and, for instance, switching between passive and active asset management does not seem to be easy for the service providers in view of, for instance, the differing skill sets needed, technology requirements and the importance of economies of scale in passive products.¹⁶
39. However, the exact product market definition in this respect can be left open since the concentration does not raise serious doubts as to its compatibility with the common market on any of the alternative market definitions considered.

Relevant geographic market

40. Asset management has previously been looked at on the basis of either a national or an EEA-wide or even wider scope. The Commission, however, has not concluded on the geographically relevant asset management market for institutional investors.¹⁷
41. The market investigation in recent cases, as well as in the present case, has provided support for the view of the parties that the market for institutional clients may be wider than national, as these clients are often willing and able to procure asset management products and services beyond their national borders in order to invest.
42. However, for the purpose of the present decision it is not necessary to conclude on the exact geographic scope of the asset management market for institutional investors because the transaction does not raise serious doubts as to its compatibility with the common market under any alternative market definition.

Competition assessment

43. Both Parties are providers of asset management services for institutional clients. According to the notification, they would achieve a combined market share of just below [0-5]% on the overall asset management market for institutional clients if an EEA-wide market was considered and even less (about [0-5]%) on a global scale, in terms of total assets under management ("AuM").¹⁸ With respect to France, the Parties submit for 2008 a combined

15 COMP/M. 5341, Allianz/Cominvest; COMP/M.5580 Blackrock/BGI.

16 COMP/M.5580 Blackrock/BGI.

17 COMP/M.5580 Blackrock/BGI; COMP/M.3894 Unicredito/HVB; COMP/M.4844 Fortis/ABN Amro Assets; COMP/M. 5341, Allianz/Cominvest.

18 Notwithstanding the fact that AUM presents a balance sheet item rather than a flow measure and therefore may not entirely represent the volume of business in any given year, it is used for the purposes of this decision as a practical approximation given that the market situation in France has been relatively stable over recent years and also because of the practical difficulty in establishing asset inflows on a gross annual basis.

share of about [10-20]%¹⁹ of the total assets under management invested in by France-based institutions (€54 billion). This calculation is based on the total volume of AuM in France minus the volume of assets invested in by French private individuals excluding of the captive asset management²⁰, i.e. the assets that are managed intra-group within French financial institutions, as is the case, for instance, of the assets of Prédica, CAG's own insurance company, which are managed by CAAM.

44. The Parties are the market leaders in France, followed by Natixis, the asset management subsidiary of the Groupe Banques Populaires and Caisses d'Epargne ("BPCE"), Axa, BNP Paribas and the Banque Postale²¹.
45. The Parties' market shares according to their own estimates would be higher ([20-30]%) if only the segment of active asset management was considered. However, in view of the market shares and, more importantly, the characteristics of the asset management market for institutional investors, that are described in more detail in the next paragraph, the market investigation confirmed that the concentration was unlikely to significantly impede effective competition on either the overall asset management market or the active asset management segment.
46. Even if France is considered to be the relevant geographic market, it has to be borne in mind that institutional investors, taking into account their volume of assets under management, have a high degree of bargaining power. Such investors are also well-informed buyers with the ability to benchmark the performance of the merged entity against its competitors. Consequently, institutional investors can not only negotiate fees but also other conditions of the investments and management in question. Furthermore, institutional investors do not depend on retail distributors but have the means to directly access asset managers including non-French service providers. Therefore, should the parties increase fees or lower performance standards following the merger, the market investigation indicated that institutional investors always have the possibility to negotiate better terms with other French suppliers or to look cross-border for alternatives.
47. In view of the above, it can be concluded that the transaction will not result in serious doubts as to its compatibility with the common market and the EEA Agreement as regards asset management for institutional clients, or any segment thereof.

B. Asset Management for Retail Clients

Relevant product market

48. Based on the Commission's decisional precedents, the Parties provided, in the notification, separate information on assets under management for retail clients. The Parties nonetheless argued that three further distinctions were not appropriate, namely (i) between mutual funds sold on a standalone basis to private clients and mutual funds sold within a life insurance envelope (*assurance-vie en unités de compte*, AVUC); (ii) between mutual funds distributed through the general retail network and funds distributed through private banking channels and (iii) between mutual funds sold to private customers on the one

19 No change in comparison with 2007.

20 The exclusion of captive production is in line with the Commission's practice when calculating market volume and shares.

21 Comparative data for all market participants are based on volumes that include captive asset management.

hand and funds sold to corporate retail clients on the other. The market investigation cast, however, considerable doubt on each of these three assertions of the Parties.

Mutual funds sold within a life insurance envelope

49. In its decision in case M.5075 Vienna Insurance Group/EBV, looking at the market from the insurance angle, the Commission concluded that, in the context of the Austrian market, and contrary to the arguments brought by the Parties to that case, life insurance products belonged to a separate relevant product market to investment products managed by and sold through banks. In that instance, it was noted that life insurance had in the past been analyzed on the basis of three distinct segments, namely risk products, pension products and investment products. The need to further distinguish in the context of that case between pension and investment products was left open.
50. In the context of the present case, and concerning the potential distinction between pension and investment products it is concluded that, within life insurance, pension products do not need to be distinguished from investment products since there is no general framework for the use of life insurance for pension purposes in France and that the fiscal advantages linked to investments in life insurance accrue fully after a period of eight years and independent of the absolute age of the policyholder.
51. Concerning the distinction between life insurance products and other products managed and sold through banks, in the Commission's decision in case M.5075, the conclusion that life insurance products constituted a separate relevant market from products proposed by banks was based on the fiscal treatment of such products, risk coverage elements within them, and partly guaranteed investment incomes²².
52. In the present case, the Parties pointed to a number of specificities of the French situation which, in their view, would justify coming to other conclusions than in the earlier Austrian case and including life insurance products within the relevant market as regards France. They noted in particular that it was often the same funds that were sold within a life insurance envelope as those sold on a standalone basis (held in ordinary safekeeping accounts, *comptes-titres ordinaires*, CTO) and those sold through an alternative fiscal envelope known as an equity savings plan (*plan d'épargne en actions*, PEA). Within either of these envelopes, investors can substitute funds, albeit only amongst those proposed by the asset manager with whom the envelope is held.
53. The market investigation nonetheless showed that even in the absence of investment guarantees and the consequent absence of any exposure on the part of the insurance company to the event of the death of the policyholder²³, AVUC is clearly distinct from the demand side owing to its very different treatment under capital gains and inheritance taxes. The fiscal advantages inherent to AVUC pertain principally to the situation in which the policyholder dies during the lifetime of the investment, in which case the value of the investment is free of inheritance duties up to a threshold of 152.500€, and this regardless of the degree of relationship, if any, to the named beneficiary of the policy²⁴. On the other hand, the fiscal advantages of PEA are greater, and mature earlier, in the event of survival;

22 M.5075 VIG/EBV, para 28

23 Whilst such guarantees may on occasion be a part of the insurance contract, it was indicated that frequently AVUC was sold with no guarantee of this type.

24 Investment duties in France are otherwise progressive in the degree of relatedness to the deceased.

in the event of death, however, the value of the investment passes into the general estate of the deceased and is subject to general inheritance duties as well as French rules relating to the protection of the financial interests of legal heirs according to which the deceased is limited in his or her ability to dispose of his or her estate by testament.

54. The market investigation clearly confirmed that, from the demand side, investing in mutual funds through an AVUC policy was not substitutable with the PEA/CTO route, with most competitors considering it a separate market and almost all pointing to its very different fiscal implications.
55. The Commission nonetheless examined whether the market might be broadened to include AVUC in virtue of supply-side substitution since insurers do, albeit only on a limited to marginal basis, provide non-insurance funds (whilst all the major banks also offer funds with a life insurance envelope).
56. The market investigation indicated that such a broader definition of the relevant market on the basis of supply-side substitution was not appropriate on the facts of the present case, since insurers could not rapidly enter the PEA/CTO market due to the fact that they are foreclosed access to bank distribution channels and appear not or only marginally to distribute non-insurance funds themselves (except through captive insurance banks like Axa Banque which have a very small banking market share), whereas bank distribution channels constitute of the order of 90% of all mass market distribution of mutual funds in France outside of those sold under insurance envelopes.
57. The inclusion of otherwise of AVUC within the retail mutual fund market in France can nonetheless be left open for the purposes of the present case since, notwithstanding the somewhat stronger position of the Parties on a market defined to exclude AVUC, serious doubts do not arise as to the compatibility of the notified transaction with the common market on either alternative market definition.

Money market funds

58. Although they may be constituted with the legal form of a mutual fund (that is, as a unit trust or as an incorporated fund), money market funds constitute relatively short-term investment vehicles and are largely used by investors for optimizing working capital, i.e. for cash management purposes as they are short-term, low volatility and low risk investment instruments.
59. The Parties have recognized that the vast majority of sales of mutual funds to retail corporate customers consists of money market funds and also that only a minority of individual investors purchase money market funds²⁵. The possible recognition of a separate market for money market funds therefore essentially coincides with all mutual funds sold, through the retail banking network, to corporate investors and a subset of those sold to individual investors.
60. The Parties themselves recognized, in the course of the procedure, that money market funds were arguably more closely related in competition terms to other instant-access

²⁵ According to the Parties approximately only 25% of individual clients purchasing mutual funds purchase money market funds, although the Banque de France has a somewhat higher estimate of around one-third in terms of AuM, excluding AVUC.

and short term savings instruments such as savings accounts and treasury bonds than they were to other types of mutual fund.

61. It would also appear for this reason that money market funds rarely if ever enter into the composition of investments held within one of the fiscal envelopes, either AVUC or PEA.
62. Notwithstanding the fact that French investors hold significant amounts in money market funds and that some of these funds are held for investment periods exceeding one year, the market investigation nonetheless overwhelmingly confirmed that money market funds should be considered in a separate market due to the fact that they address very different investment needs. In this regard, the duration of holdings in money-market funds viewed ex-post is of less relevance than the lack, ex-ante, on the part of the investor, of an investment horizon for the corresponding assets sufficient to justify their investment in mutual funds carrying a longer-term return profile and more significant entry costs. Money market funds therefore constitute instruments used for the management by investors of more liquid assets.
63. From the supply side, it may also be noted that the range of providers of money market funds is smaller than of other mutual funds owing to the fact that insurers and boutique fund managers are present only to a very limited extent in the market and could not easily enter it with a competitive offering.
64. It can be concluded that money market funds should be considered to fall within a separate relevant market from other mutual funds.
65. The further definition of the relevant market for money market funds should be considered on the basis of two possible segmentations, namely (i) between such funds sold to corporate investors and such funds sold to retail investors and (ii) between money market funds and other short-term savings instruments.
66. As regards a distinction between private and corporate customers, it can be observed that the Commission has in the past systematically made a general distinction between retail and corporate banking for merger control purposes²⁶. It can accordingly be assumed as a starting point for analysis that from the demand and distribution perspective these constitute separate segments, even if from a production standpoint they are similar.
67. As regards the possible inclusion of other savings instruments within the relevant market, it can be observed that, as regards the present case, such alternative products will continue to be distributed by Société Générale in full autonomy as they are not affected by the current transaction and therefore, to the extent that they were deemed to fall within the relevant market, the competitive assessment would necessarily result in a lower level of potential concerns as a result of the transaction than if a market for money market funds alone were identified. Accordingly, the competitive analysis below may be based on the segment of money market funds alone since, even on this basis, the notified transaction does not give rise to serious doubts as to its compatibility with the common market.

26 See case COMP/M.4844 Fortis/ABN AMRO Assets, paragraph 12 and cases cited there.

Closed funds and funds sold through private banking channels

68. The notified transaction also raises the question of the inclusion or otherwise in the relevant retail market for mutual funds of closed funds and funds sold through private banking channels.
69. Closed funds are funds which, although they may be held by private individuals, are tailor-made for a small group of investors and not distributed through retail channels²⁷. Such funds are not open to the subscription of new capital by persons unknown to the nominative shareholders. Owing to the amounts involved and the specific terms of the mandate, such funds are more closely related to institutional funds, and their distribution is dissimilar from mass market retail funds as a result of which the arguments relating to a lack of supply-side substitutability may not apply.
70. It may also be noted that the private banking clients of Société Générale are anyway outside the scope of exclusivity of the SG Distribution Agreements, such clients having access to private banking services from a threshold of [...] in assets under management. Accordingly, no concentration occurs as a result of the notified transaction in regard to this segment of the market.
71. In previous decisions, the Commission has tended towards recognizing the existence of a distinct market for private banking, without, however, concluding on the matter. Thus at paragraph 36 of the Commission's Decision in case M.4844 Fortis/ABN AMRO Assets, a clear distinction is drawn between "mass market retail products" and those distributed through private banking channels²⁸. Nonetheless, the motivation in terms of the market definition has been on the added value services provided by private banking rather than a distribution view.
72. In the present case, the Parties point out that there is no single threshold at which individuals have access to private banking, which varies according to the commercial policy of each bank. There is similarly no universal definition of the scope of private banking services. The Parties argue that in France there has been a trend towards broader access to private banking in recent years.
73. It nonetheless remains the case that there is clearly a very large group of individuals ("mass market") which has no access to private banking channels and is therefore unable to prevail of the commercial conditions for mutual funds offered through such channels. For this reason it is appropriate to consider the effects of the concentration on the mass market segment separately.
74. Whilst the Parties both have their own private banking subsidiaries, this is not the case for a number of their retail banking competitors, with only BNP Paribas significantly positioned on this channel.
75. For this reason, it can be concluded that the exclusion of private banking distribution from the overall market, at whatever threshold such services were defined, would not result in a higher market share for the Parties.

27 This is not the same as so-called "closed-end funds", which are in any case a minor phenomenon in the French retail market (outside of real estate funds).

28 See also COMP/M.5341 Allianz/Cominvest at footnote 7

76. Moreover, in relation to mass market distribution, as already pointed out, the predominance of the banking channel and of captive distribution whereby each major bank distributes almost exclusively the asset management products of its affiliate asset management company makes it unnecessary to make a distinction, as regards the mass market, between production and distribution, with only a competitive fringe of third party independent distributors²⁹. In regards to this fringe, the notified transaction is without relevant competitive effect, such that it is unnecessary to determine whether distribution through private banking channels constitutes a separate market within the mutual fund segment or whether it is to be considered together with other third party distributors to which private banking customers also have access.
77. It follows that the question of whether or not the relevant market in the present case should be restricted to exclude distribution through private banking channels can be left open since, regardless of the market definition adopted, the notified transaction does not give rise to serious doubts as to its compatibility with the common market.

Workplace savings schemes

78. One specificity of the French market is the existence of so-called Fonds Communs de Placement d' [Entreprise] ("FCPE") which are workplace savings schemes under which mutual funds are distributed to final individual customers via their employer. They constitute a (discretionary) component of the remuneration of employees who obtain fiscal advantages for this investment. The final customer is thus the employee although the choice of the provider of such mutual funds is made by the employer.
79. FCPEs constitute a significant part of the total assets under management held by private households and may be considered to form part of the retirement planning provisions of the individuals concerned, although in common with other French retail investment envelopes their fiscal benefits mature over a relatively limited period of time and typically well in advance of statutory retirement.
80. The market investigation indicated that once such a fund had been selected by an individual's employer, the fiscal incentive to invest the relevant revenues in it was such as to exclude, in the vast majority of cases, consideration of alternative investment vehicles. Moreover, such funds are not distributed through the same channels as other retail funds but rather the employer constitutes, in a sense, the channel of distribution. Even if such funds are ultimately held by private individuals, the relevant commercial relationship appears to be between the asset manager and the employer³⁰.
81. FCPEs, therefore, are mutual fund envelopes that combine elements of retail and corporate distribution. This raises the question of whether FCPEs should be analysed as a separate product market. Finally, however, this question can be left open since, regardless of the market definition, the concentration does not raise serious doubts as to its compatibility with the common market.

Conclusions on the relevant market definition

29 This is also acknowledged by the Parties at paragraph 102 of the notification where they deem a separation between production and distribution to be "artificial" in the context of the transaction at hand.

30 This does not exclude the possibility that employees are collectively involved, through their representative bodies, in the selection of the asset managers to be retained for workplace savings schemes.

82. In conclusion, a market can be identified for open retail mutual funds sold to private customers, excluding money market funds and workplace savings schemes (FCPE). The question of whether or not to include funds sold under a life insurance envelope and funds (other than closed funds) sold through private banking channels within this market can be left open.
83. The notified transaction also needs to be assessed in regard to its impact on the market for money market funds sold respectively to corporate and private customers through retail banking networks. It nonetheless can be left open whether or not this market includes other savings products offered by banks.

Relevant geographic market

84. Due to the importance of distribution in the market definition, the market for retail mutual funds as well as for money market funds inherits the geographic scope of the retail banking market and is therefore national in scope³¹. This approach is accepted by the Parties³².

Competition assessment

(a) Retail mutual funds

85. In regard to retail mutual funds, the French market is characterized by predominance of the banking channel, which currently still accounts for at least 90% of distribution if funds distributed under an insurance envelope are excluded. This has been fully confirmed by the market investigation and is in contrast to some other Member States where distribution through independent financial advisors and through on-line platforms has achieved a higher share of the overall market and in certain cases an open distribution architecture is mandated by law.
86. In addition to this, the five large French retail banks all (prior to the transaction) have their own asset management subsidiary and distribute almost exclusively products of this subsidiary. In the case of the Parties this figure is around [...] % for both CAG and SG.
87. Subsequent to the transaction, it is intended by the Parties that SG should still distribute a similar proportion of products of the merged entity. It is accordingly appropriate to consider that the vertically integrated model will, to all extents and purposes, persist following the merger albeit by means of contractual rather than ownership relations, as CAG will not acquire control over the SG retail distribution network.
88. On this basis, the Commission is called upon to assess the limit scenario which is that market position of the combined production entity post-merger will correspond to the combined market shares of each entity pre-merger, on the assumption that the access of products of the merged entity to the distribution network of SG will be, or is at least intended by the Parties to be, essentially similar to that which prevailed when SGAM was part of SG.

31 See for instance case COMP/M.5363 Santander/Bradford and Bingley Assets at paragraph 17 and a number of earlier precedents.

32 Paragraph 105 of the notification.

89. This notwithstanding, it should be recognized that the notified transaction does not entail a complete merger at the distribution level. Insofar as the distribution level retains autonomy to set prices in relation to the distribution margin, and as explained earlier (see recital 12 above), the transaction does not entail a harmonization of practices in this regard.

Market shares

90. In the notification, the Parties provided a combined market share of [20-30]% including life insurance funds (AVUC), and [30-40]% excluding such funds³³. This market share was based on data collected by the *Banque de France* (the French central bank) for its "Protide" database³⁴.

91. The Protide database (second and third column in the table below) makes a distinction between money market and other funds and accordingly the Parties' data can be cited from this source with this distinction included. However, the Protide database does include closed funds as well as funds sold through private banking channels.

92. The Commission's own market investigation based on the replies of competitors provided a best estimate of the combined share of the Parties of slightly under [30-40]% with or without AVUC included (first two columns, confidential information obtained by the Commission during the market investigation has been replaced by ranges):

33 This is also excludes SCPIs which are collective investment vehicles investing in real estate.

34 Owing to concerns relating to confidentiality, the Commission was unable to obtain from the *Banque de France* figures for competitors on an identifiable basis.

Table: Market shares of main players in the various possible segments at 31 December 2008

	With AVUC		Standalone		Protide data		Protide and FFSA	
CAG	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%
SGAM	[...]	[10-20]%	[...]	[5-10]%	[...]	[0-10]%	[...]	[0-10]%
Combined	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[20-30]%
Axa		0-5%		0-5%				
Natixis (BPCE)		5-10%		5-10%				
BNPP		20-30%		10-20%				
Poste		5-10%		5-10%				
HSBC		0-5%		0-5%				
Groupama		0-5%		0-5%				
Dexia		0-5%		0-5%				
Allianz		0-5%		0-5%				
CM		5-10%		5-10%				
Others		5-10%		10-20%				
SG Lyxor		0-5%		0-5%				
<i>Total</i>	[...]	100,0%	[...]	100,0%	[...]		[...]	

Note: The first two columns on the left regards data obtained from the market investigation and include SCPIs, and exclude in both cases both closed funds and money market funds. The third column refers to Protide database Secteur 14 data that refers to standalone funds held by individuals, without SCPIs and AVUCs. The last column includes AVUCs (source: French insurance association FFSA) to the Protide data.

93. SCPIs (real estate mutual funds) are not included in the Protide database. The figures in the market investigation do however include these funds. These are funds that are subject to different rules and tax regimes and are regulated by the Institut de l'Épargne Immobilière et Foncière, which also collects data on these funds. Ultimately it may be left open whether to include such funds, as on the one hand, the AuM held in such funds are marginal (less than 10% of the Protide database figures in the table above), and on the other the Parties' hold significantly less AuM in this segment relative to mutual funds in the strict sense.
94. Should money market funds be included, the market share picture would not change substantially and the competitive assessment would remain identical. The same applies to considering money market funds separately, and even considering only retail individual customers for money market funds, where the Parties' market shares would be significantly lower.
95. The overall picture which emerges from the transaction is, accordingly, a concentration from five to four main players on the French retail mutual fund market with the prospect for the consumer of a corresponding reduction in choice, even if the Parties have argued that any such reduction (if they were to concede it) would be offset by efficiencies resulting from the concentration. In this context, the Parties' banking reach is extensive, with around 35 million customers, i.e. well over half the French bankable population already having accounts with one or other of the Parties.
96. The Commission received in the course of the investigation a number of representations by third party fund managers regarding the difficulty of access to the French mass market, a difficulty they feared would only be accentuated as a result of the transaction.
97. Whilst there remains a competitive fringe made up of funds distributed through fund supermarkets, direct banks and independent financial advisors, most of which funds

appear to do considerably better in terms of ranking by third-party organizations than the funds of the Parties themselves, there remains in the market considerable uncertainty as to the capacity of these alternative distribution channels to expand their market share and thereby serve to increase the presence and brand recognition on the market of funds produced by other entities than the main five, and post-merger four, asset management subsidiaries of the major banks.

98. It appears that the penetration of these smaller players is also impeded by the importance of brand to the choice of the retail investor. The market investigation showed almost unanimously – hereby directly contradicting the claims of the Parties – that brand was a important factor in investor choice and also that the distributor's brand was as important as that of the producer. The Parties have strong brands in both production and distribution, particularly suited (or at least perceived to be particularly suited) to the core investment needs of middle market and mass wealthy investors in relation to retirement planning and other capital building needs
99. There are nonetheless fewer barriers to expansion of the established players, namely BPCE (Natixis), La Banque Postale and BNP Paribas, all of which have an important retail footprint and significant share of voice, and may therefore compete for the investment needs of the Parties' clients.
100. Insofar as competition is partly based on investment returns, insurer-branded and independent funds constitute at least a benchmark competitive constraint. The Parties' funds do not seem to be the closest competitors in terms of performance expressed in public rankings which the Commission was able to verify during its market investigation; however, the nature of competition in the industry could not be fully verified and may equally be on other variables such as price (entry/exit/management fees), perceived security, flexibility, scope of fund offering, trading facilities etc.
101. In relation to the variable of price, it can be observed that the reference entry and management fees will be established by the merged entity and SG for the SG distribution retail network. The entry price serves fully to remunerate the distributor and according to the Parties may be discounted by the latter depending on its commercial policy, so that competition could still exist on the distribution margin component of price.
102. Distributors also perceive ongoing commissions representing a fraction of the management fee, on a basis which varies between the Parties but is typically on average more than half (and varies in function of the value of the assets under management in the fund, requiring therefore a non-trivial calculation to be performed). The amount of these commissions is subject in the present case, [...].
103. In regard to such management commissions, the Parties also retain different commercial conditions and they may forego a part of such commissions if they deem this desirable in order to increase sales.
104. Given that the combined market share of the Parties remains under [30-40]%, the existence of three remaining competitor retail banks in France and of the fringe competitors (insurers and fund supermarkets), the fact that the merger does not include SG's retail distribution network and that the latter retains the possibility to compete on price, the Commission has therefore come, on balance, to the conclusion that the

transaction does not raise serious doubts as to its compatibility with the common market.

105. An important element in the Commission's conclusions is constituted by the consideration that the distribution agreement entered into by the Parties, the precise effects of which have been difficult for the Commission to determine, is in any case, as set out above, not a necessary part of the transaction in the sense of the ECMR and therefore falls outside the scope of the Commission's assessment under the ECMR and of the present clearance decision pursuant to article 6(1)(b) thereof. Accordingly, the question of the compatibility or otherwise of the said agreement with Article 101 TFEU remains open.
106. Potential coordinated effects in this market in relation to fund subscription and/or management fees were not raised in the market investigation. The evidence available to the Commission also provided no indications of a potential concern in this regard, since a wide range in the pricing of ostensibly similar funds could be observed.

(b) FCPEs

107. If FCPEs, i.e. French workplace savings, were considered to form part of the market of retail mutual funds, the above presented competition assessment would not change. In such a scenario, according to the Commission's own market investigation, the parties would achieve a slightly higher market share ([30-40]%) which, however, still remains moderate. More importantly, the other factors discussed above also apply to a market which includes FCPEs.
108. The picture changes if FCPEs are analysed separately. First, according to the Commission's own investigation, the combined market shares of the parties on the FCPE market segment are somewhat higher (40-45%). Secondly, according to the Commission's information FCPEs are almost exclusively provided by the large French banks, whereas other financial service providers and non-domestic banks do not seem to be active in this segment and smaller French banks only to a very limited extent.
109. This market structure may perhaps be explained by the consideration that employers – in cooperation with employees and their representatives - as the direct customers of the fiscally advantageous FCPEs, buy these funds from the larger banks that offer these specific asset management services as part of their overall corporate banking activities.
110. Notwithstanding the somewhat higher combined market share, it needs to be considered that many employers are responsible for making decisions on the investment of relatively large volumes of assets, as a result of which they can be presumed to have a degree of bargaining power. Employers are also better informed buyers than individual retail clients which enables them better to compare the performance of competitors. Even though it is not clear whether the market is effectively open to providers outside France due to the specific fiscal treatment of FCPEs, French corporate clients can negotiate fees and other contractual terms and also switch, in case of an under-performance of their asset manager, to competitors.
111. It can therefore be concluded that the notified transaction does not raise serious doubts as to its compatibility with the common market on a hypothetical French market for workplace savings schemes.

C. Vertical relationships

112. CAG is active, through its subsidiary CACEIS, on two markets that are vertically related to asset management, namely custody services and fund administration.

113. In addition, CAG has joint control, together with BNPP, over Fund Channel, a logistic platform for the distribution of mutual funds vertically linked to the Parties' asset management and mutual fund distribution activities.

Relevant product market

Custody services

114. Custody services comprise the settlement, safekeeping and reporting of customers' marketable securities. In previous cases the Commission has indicated that a market for custody services within the asset management segment might be considered, and has left open the question of whether custody services could be further subdivided into (i) global custody services to investment institutions and (ii) domestic or local custody services, and within this segment (a) institutional custody services, (b) sub-custody services³⁵ and (c) retail custody services.³⁶

115. The precise market definition can be left open in this case as it does not affect the conclusions of the competitive assessment of the transaction with regard to vertical links.

Fund administration

116. Fund administration services include the accounting and analysis of the performance of portfolios of financial instruments. In previous cases the Commission has considered this activity to be one market.³⁷

117. The precise market definition can be left open in this case as it does not affect the conclusions of the competitive assessment of the transaction with regard to vertical links.

Logistic platforms for the distribution of mutual funds

118. Asset managers can distribute mutual funds through the networks of their own group, through bilateral distribution agreements or through distribution platforms such as Fund Channel. Distribution platforms are intermediaries between asset managers and distributors of mutual funds.

119. The services rendered by distribution platforms such as Fund Channel are the calculation, collection and payment of distribution commissions and the management of the contractual relationship between asset managers and the distributors. As mentioned above, the calculation of the retrocession component of the management fee due to distributors according to French market practice is relatively complex, since it requires, *inter alia*, recalculation of the value of assets under management in the various funds

35 M.3781 Crédit Agricole / Caisse d' Epargne / JV, recitals 11 and 20.

36 M.5384 BNP Paribas / Fortis, recital 60, or M.4844 Fortis / ABN AMRO Assets, recital 69.

37 M. 3781 Crédit Agricole / Caisse d' Epargne / JV, recital 21.

sold by a given distributor to clients on a regular basis in order to determine the due which is typically calculated on an *ad valorem* basis.

120. The Commission examined the possible existence of a product market for logistic platforms for the distribution of mutual funds in case COMP/M.5517 BNPPIP / CAAM / Fund Channel³⁸ but ultimately left the market definition open and decided the case in simplified procedure.

121. The precise market definition can also be left open in this case as it does not affect the conclusions of the competitive assessment of the transaction with regard to vertical links.

Relevant geographic market

Custody services

122. The Commission has in previous cases left open whether the exact geographic scope for the provision of custodian services is global, European-wide or national.³⁹

123. The precise market definition can also be left open in this case as it does not affect the conclusions of the competitive assessment of the transaction with regard to vertical links.

Fund administration

124. The Commission has in previous cases considered and left open whether the geographic market of fund administration is worldwide or national in scope.⁴⁰

125. The precise market definition can also be left open in this case as it does not affect the conclusions of the competitive assessment of the transaction with regard to vertical links.

Logistic platforms for the distribution of mutual funds

126. In BNPPIP / CAAM / Fund Channel the notifying party submitted that the relevant geographic market should be considered to be EEA-wide. The notifying party argued that distribution platforms play an interface role between asset managers and mutual fund distributors and that both of these operators act on a European level. The Commission left the market definition open.

127. The precise market definition can also be left open in this case as it does not affect the conclusions of the competitive assessment of the transaction with regard to vertical links.

38 M.5517 BNPPIP / CAAM / Fund Channel.

39 M. 3781 Crédit Agricole / Caisse d' Epargne / JV.

40 M. 3781 Crédit Agricole / Caisse d' Epargne / JV, recital 22.

Competition assessment

128. The transaction does not give rise to any vertically affected markets for custody and fund administration services if the relevant geographic markets are considered to be global or EEA-wide in scope.
129. Vertically affected markets for custody and fund administration services would only arise in France if the relevant geographic markets were considered to be national in scope. In that case, CAG's market shares in custody and fund administration services would be around [20-30]%.
130. However, the market investigation has not uncovered any significant concerns relating to input or customer foreclosure as a result of the vertical link between the custody and fund administration services provided by CAG (through CACEIS) and the asset management activities to be provided by the merged entity following the transaction.
131. In addition, according to the Securities Services Agreement concluded between CAG and SG as part of the transaction (*Accord Relatif aux Métiers Titres*),⁴¹ [...]. In this way, the transaction will not lead to a change in demand for fund administration and custody services by SGAM, once it has been combined with the CAAM Group in the Holding Company, to CAG in the provision of such services by CACEIS.
132. With regard to the distribution platform Fund Channel, vertically affected markets arise in France given the Parties' significant market shares on the asset management and fund distribution markets. This may also be the case in virtue of the role played by Fund Channel in the distribution of French retail mutual funds and hence its market share on a hypothetical French market, although reliable estimates hereof were not available to the Commission in the course of the procedure.
133. During the market investigation a few competitors expressed concerns that, as a result of the concentration, the Holding Company as well as a strong competitor, BNP Paribas, will be linked to the Fund Channel distribution platform thereby enjoying a strong negotiation position in their dealings with third party asset managers; consequently there was a concern that Fund Channel will have access to two of the largest asset managers and that the different commissions currently applied to asset managers might be subject to a uniform increase.
134. However, the notifying Party has submitted a number of arguments as to why the vertical link between the Parties and Fund Channel in the asset management and distribution markets should not raise serious competition concerns. Firstly, Fund Channel is only a logistic platform not involved in selecting the funds to be distributed by distributors or in the decision by the asset manager as to which of its funds should be distributed with the services of Fund Channel. Also, Fund Channel's clients, that is, distributors, are free to choose the extent to which they use Fund Channel's services for any or all of the third party funds that they distribute. Further, the use of Fund Channel by asset managers and distributors is non-exclusive and voluntary. Likewise, Fund Channel does not entirely replace the commercial relationship between its clients and asset managers: although asset managers contract directly with Fund Channel rather

41 Article 1.

than with the distributors to administer the payment of commissions, the commercial relationship remains between the asset manager and the relevant distributors. Finally, Fund Channel does not currently give any preferential rights or treatment to either CAG or BNPP, treating its parents in the same way as any of its other customers.

135. On the basis of these arguments, which also underpinned the Commission's clearance decision in case COMP/M.5517, the Commission is satisfied that Fund Channel will operate and continue to operate in the future as a neutral distribution platform as indicated by the notifying Party, therefore without any impact on competition at the fund management or distribution level.

V. CONCLUSION

136. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission