

***Case No IV/M.1691 -  
AEGON / GUARDIAN  
LIFE***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/09/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28. 09.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sirs,

**Subject : Case No IV/M.1691 – AEGON UK/GRE**

Notification of 30.08.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On August 30, 1999 the Commission received a notification of a proposed acquisition of sole control by AEGON UK plc of the Guardian Life (GL) business, consisting of the companies Guardian Assurance plc, Guardian Linked Life Assurance Limited, Guardian Pensions Management Limited and Guardian Unit Managers Limited.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the Common market or a substantial part of it.

**I. THE PARTIES INVOLVED AND THE OPERATION**

3. AEGON UK plc is a wholly owned subsidiary of AEGON NV providing life assurance, pensions and savings products in the UK through Scottish Equitable. AEGON NV provides a range of non-life, life and pension products as well as other financial service products in the EU.
4. GL is the life assurance business of Guardian Royal Exchange (GRE). It consists of the companies Guardian Assurance plc (GA), Guardian Linked Life Assurance

Limited (GLLA), Guardian Pensions Management Limited (GPM) and Guardian Unit Managers Limited (GUM). GRE is a subsidiary of Sun Life and Provincial Holdings plc (Sun Life) which since May 1999 is majority-owned by the AXA group. GL offers a range of life assurance, pensions and savings products.

5. AEGON UK and Sun Life signed a Purchase Agreement according to which AEGON UK will acquire the entire issued share capital of each of the four companies mentioned above, comprising the GL business. The proposed concentration is an acquisition of sole control within the meaning of Article 3 (1) (b) of the Regulation.

## **II. COMMUNITY DIMENSION**

6. The parties have a combined aggregate worldwide turnover, calculated in accordance with Article 5 (3) (b) of the Regulation in excess of ECU 5,000 million. AEGON UK and GL have each a Community-wide turnover, calculated in accordance with article 5 (3) (b) of the Regulation of more than ECU 250 million. The parties do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a co-operation case under the EEA Agreement pursuant to Article 57 of that Agreement.

## **III. COMPATIBILITY WITH THE COMMON MARKET**

### *Relevant Product Market*

7. The parties have overlapping activities in life assurance and pensions as well as in savings products.
8. The parties indicate that life assurance and pensions can be regarded as similar products since they are both forms of long-term business products involving a premium payment by the insured and a liability on the part of the insurance company which becomes payable many years later. Furthermore, most companies involved in life or long term business will offer life assurance and pensions products together.
9. According to the parties, within both life assurance and pensions products a distinction can be made into products sold to individuals and those arranged for groups. An individual life product would normally be sold to individuals to cover them for risk of death with or without payment of a sum to a particular date. A group life product would be sold to employers to cover such risks as death in service benefits for a group of employees. Personal pensions are arranged for one person whereas group pensions are arrangements for a group of employees or a trustee to provide life assurance and pensions for a group of employees. The employer usually contributes to the fund.
10. Savings products according to the parties include individual savings accounts (ISA) and unit trusts. According to the parties, ISAs are at least partially substitutable by life assurance products, since investments may be made in cash, shares, bonds or life assurance. Unit trusts are pooled investments where investors buy units of a larger fund.

11. The Commission has found that the proposed operation, even on the basis of the narrowest definition, does not raise serious doubts as to its compatibility with the common market or a substantial part of it. For the purposes of the examination of the present case, the product market definition can therefore be left open.

#### *Relevant Geographical Market*

12. The parties claim that the geographical market for life assurances, pensions and savings products is national because the development of these products would be heavily influenced by the national tax laws of the individual Member States. Furthermore, the parties argue that there is a substantial cultural preference for these products in part because of language differences.
13. The Commission has established in previous cases that life assurance markets are becoming more open to inter-community competition, particularly for industrial and commercial policies, as a result of current and future measures to facilitate cross-border selling (see for example Case No. IV/M.627-UAP/Sun Life; Case No. IV/M.512-UAP/Provincial or No. IV/M.1098-Generali/AMB/Athena). Nevertheless, for the products concerned mentioned above, the geographical reference market seems at present to be mainly national in view of the established market structures, the need for adequate distribution channels, fiscal constraints in some cases and differing national systems of regulatory supervision.

#### **IV. COMPETITIVE ASSESSMENT<sup>1</sup>**

14. The only business areas in which AEGON UK and GL are competitors is life assurance, pensions and savings products. The parties' activities overlap only in the UK where the parties' combined market shares will not exceed 15% in any of the possible product markets.
15. In life assurance and pensions AEGON UK's market share in 1997<sup>2</sup> was 3.1%. The share added by GL, who is only ranked number 38 competitor, is 0.7%. The combined shares will therefore be 3.8%. AEGON UK is currently ranked 7<sup>th</sup> largest competitor and will only improve its position by one place as a result of the concentration.
16. In life assurance<sup>3</sup> alone, AEGON UK's share in 1997 was 0.4% and that of GL was around 1%. After the concentration the combined market share of the parties will be 1.4%.
17. In addition, there are a number of important players active on the life assurance market with overall market shares which are considerably higher than even the parties' combined shares: Market leader Prudential has 10.8%, Standard Life has

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<sup>1</sup> Data used for the present analysis was taken from Tillinghast - Towers Perrin Assurance Pocket Handbook 1999 and from the Association of British Insurers.

<sup>2</sup> Data for 1998 is not readily available, however, the parties showed that the market shares do not differ to an appreciable extent from 1997.

<sup>3</sup> Data is only available for the overall premiums including new business of a given year + premium income relating to previous policies started in earlier years.

7.9%, Norwich Union has 4.4% and AXA Sun Life has 4.7%. The market is very fragmented and characterised by a large number of competitors (around 50 groups account for 95% of the total market) with rather low market shares.

18. Finally, even if the life business is further subdivided into individual and group business it can be concluded that the concentration would have no significant impact on the parties' current market position. In group life assurance, there are no overlaps since AEGON UK is not present on that market. In individual life insurance<sup>4</sup>, AEGON UK in 1998 had a 0.6% market share, GL had 0.3%. The parties' combined shares after the concentration will therefore still be below 1%. It has to be noted that figures for the overall premiums (para. 16) and figures for the new business are not directly comparable. The new business only includes premiums from policies started in that year and does not include premiums paid in respect of policies started in earlier years but where the insured has a continuing obligation to pay a monthly or annual premium for the duration of the policy.
19. With regard to pension products, the picture is quite similar. In pensions market products alone<sup>5</sup> AEGON UK had a 1997 market share of 5.5%. GL will only add 0.5%. The parties' combined market share will be 6%.
20. Again, the parties will have to face competition from a number of important competitors. Prudential for example is market leader with a 9.5% share in 1997 in the overall pensions market, followed by Equitable Life with approximately 9%, Standard Life who has around 7%, AXA Sun Life, who has 5.5%, Norwich having 5.4% and Liberty International Pensions with 4.5% as well as from many other players who have less than 4% market shares.
21. Even if the pensions market is further divided into individual and group business<sup>6</sup>, the combined market shares will not exceed 15% for either market segment. In group pensions, AEGON UK in 1998 had a market share of 11.1%, GL had 1.7%. Combined market shares will therefore amount to 12.8%. In individual pensions, AEGON UK in 1998 had a market share of 6.7%, GL will only add 0.3%, that means that combined market shares will amount to 7%. Again it has to be noted that figures for the overall premiums (para. 19) and figures for the new business are not directly comparable since the new business only includes premiums from policies started in that year and does not include premiums paid in respect of policies in earlier years but where the client has a continuing obligation to pay a monthly or annual premium for the duration of the contract.
22. In general, it can be observed that the UK life assurance and pensions business has remained highly fragmented and is characterised by a number of different players who are actively competing. In recent years there were a number of new market entries in the UK, including Marks & Spencer Life, Virgin Life and Direct Line Life, who are exploiting their well known consumer brands in setting up life and pensions

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<sup>4</sup> Data is only available for the new business, including the premium income from the new policies started in the given year, which do not include premiums from policies written in previous years.

<sup>5</sup> See footnote 3

<sup>6</sup> See footnote 4

products. Other potential and real competitors include banks such as Bank of Scotland and Halifax, who have also recently established life business.

23. Finally, in savings products, the Statistics published in the UK Fund Industry 1999 Review and Directory indicate current relatively low rankings of AEGON UK and GL in the supply of savings products. AEGON UK's share of the funds under management in 1998 amounted to 0.46%, GL had a share of 0.51% (rankings number 58 and 54 respectively). Among the main competitors with important market shares are market leader Schroder with 6.5%, M&G with 5.2%, Fidelity with 4.9% and Perpetual with 4.2%.
24. With regard to the above-mentioned considerations, the proposed concentration is not susceptible to present any competitive problems on the markets concerned by the operation.

## **V. ANCILLARY RESTRAINTS**

25. The parties have notified the following provisions as ancillary restraints: In the Trademark Assignment Agreement, Sun Life undertakes to ensure that its [...] business shall cease to use the Guardian Marks in [...] within [...] from the date of the acquisition<sup>7</sup>. In the Trademark Assignment Agreement AEGON UK has committed itself not to use the Guardian Mark in relation to [...] in [...] for [...] following the acquisition. The parties have equally agreed that although AEGON UK is acquiring the Guardian Marks in the UK, Sun Life will be granted an exclusive royalty free licence to use the Guardian Marks in the UK for a period of [...] in relation to general insurance business, whilst it rebrands the general insurance business. The Business and Share Sale Agreement and the Trademark Assignment Agreement also contain clauses imposing certain restrictions on the activities of AEGON UK for a period after completion to protect the tax position of Sun Life.
26. The above-mentioned provisions identified by the parties as "restraints to competition" may be regarded necessary and directly related to the implementation. However, in the Commission's view, these provisions constitute transitional measures in the transfer of the business and related trade marks and do not represent restrictions of competition.
27. The Trademark Assignment Agreement also includes a provision binding AXA, the majority owner of Sun Life, not to exploit its rights<sup>8</sup> to use the Guardian Marks in relation to [...] <sup>9</sup> business in [...], where the AEGON group is active.
28. This clause can be regarded as directly related and necessary for the implementation of the present concentration in so far as it contributes to the transfer of the full value of the GL business to the acquirer. However, such a protection can only be regarded as proportional during a limited transitional period, that is, for three years from the date of the acquisition.

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<sup>7</sup> AEGON UK is acquiring the Guardian Marks in [...], while Sun Life is nevertheless retaining its life assurance business in [...].

<sup>8</sup> Those rights have been conferred upon AXA in a licence agreement in May 1999 when AXA acquired control of Sun Life.

<sup>9</sup> Certain long-term products

## **VI. CONCLUSION**

29. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the Common market. This decision is adopted in application of Article 6 (1) (b) of Council Regulation (EEC) No 4064/89.

For the Commission,