

*Case No IV/M.349 -  
AEGON / SCOTTISH  
EQUITABLE*

Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION  
Date: 25.06.1993

*Also available in the CELEX database  
Document No 393M0349*

Brussels, 25.06.1993

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)b DECISION

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.349 - AEGON/Scottish Equitable  
Notification of 19.05.1993 pursuant to Council Regulation (EEC) No. 4064/89

1. On 19 May 1993 Aegon International BV ("AEGON") and Scottish Equitable Life Assurance Society notified an agreement whereby Scottish Equitable Policyholders Trust Limited ("Trustco"), a company incorporated to safeguard the rights of existing policyholders of Scottish Equitable Life Assurance Society and future participating policyholders, and AEGON acquire joint control of Scottish Equitable plc, a newly formed company to which Scottish Equitable Life Assurance Society will transfer its entire undertaking and business.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

#### **I. THE PARTIES**

3. AEGON, a Dutch company controlled by Vereniging AEGON, is active in life and non-life insurance, mortgage finance and property management. The AEGON group conducts its insurance operations mainly in the Netherlands and the United States.

Scottish Equitable Life Assurance Society is a UK mutual company whose principal activity is the transaction of life assurance, pension and annuity business, which is carried out almost entirely in the UK. A mutual company is, in effect, owned by its policyholders.

## II. CONCENTRATION

### (a) Joint control

4. Under the terms of a Joint Venture Agreement dated 20 April 1993 between AEGON and Scottish Equitable Life Assurance Society, the latter has agreed to transfer all its existing business, operations and staff to a newly created company, Scottish Equitable plc. Following the transaction, Scottish Equitable Life Assurance Society will be dissolved. AEGON itself is not transferring any business to Scottish Equitable plc. Scottish Equitable plc will be jointly controlled, via an interposed holding company ("Holdco"), by AEGON and the newly created company Trustco.
5. Trustco will be a company limited by guarantee. Members of the existing non-executive directors of Scottish Equitable Life Assurance Society will be the initial members and directors of Trustco, which will be a non-profit making body and will not carry on any activity other than to safeguard the interests of the policyholders of Scottish Equitable Life Assurance Society and future "participating" or "with-profits" policyholders. The sole function of Trustco, which will itself carry on no business activities, is to retain a degree of control over the activities of the newly-formed Scottish Equitable plc, so as to protect the interests of the members of Scottish Equitable Life Assurance Society, after the latter is dissolved (in the 'Voting Trust Outline' which is annexed to the Joint Venture Agreement it is stated that "Trustco will have no other activity than acting as trustee ...").
6. AEGON will hold 100% of the ordinary share capital of Scottish Equitable plc through Holdco. However, AEGON will hold only 40% of the voting rights at general meetings of Holdco and Scottish Equitable plc, and its share in the "profits" generated by Scottish Equitable plc's "not-with-profits" fund will correspondingly amount to 40% (see below). Trustco will hold 60% of the voting rights, which will be reflected in a transfer of 60% of the "profits" generated by Scottish Equitable plc's "not-with-profits" fund to the "with-profits" fund. The Joint Venture Agreement provides that the percentage of voting rights held by AEGON will increase in accordance with future injections of capital by AEGON (with a corresponding increase in AEGON's share of the "profits" of the "not-with-profits" fund). More specifically it is provided that AEGON will increase its percentage voting rights to 50.1% by 31 December 1999 at the latest. In the intervening period Trustco will reserve the right to appoint the majority of directors to the boards of Holdco and Scottish Equitable plc, until such time as AEGON holds a majority of voting rights, whereupon AEGON will be entitled to appoint a majority to each board.
7. Despite the disparity in ownership and voting rights, Scottish Equitable plc will be jointly controlled by AEGON and Trustco. Certain "Reserved Matters" require a majority of both the Holdco and Scottish Equitable plc boards, with such majority including either two directors nominated by each of AEGON and Trustco or the written approval of both AEGON and Trustco. The "Reserved Matters" are set out in the Joint Venture Agreement and include the approval or amendment of strategic and operational business plans, the appointment or removal of executive directors of Scottish Equitable plc and the Appointed Actuary, entry into new markets or withdrawal from existing markets and any material acquisitions or disposals by Scottish Equitable plc.

8. The transaction therefore represents the acquisition of joint control of Holdco and Scottish Equitable plc by AEGON and Trustco through the blocking position which each of AEGON and Trustco hold in relation to "Reserved Matters".

(b) Concentrative joint venture

9. Scottish Equitable plc, will perform on a lasting basis all the functions of an autonomous economic entity. Scottish Equitable plc will be divided, for accounting and actuarial purposes, into three funds: a shareholders fund, a "not-with-profits" fund, and a "with-profits" fund.
10. The shareholders fund will initially contain the money subscribed by AEGON for the entire initial issued ordinary share capital of Scottish Equitable plc, and will be solely owned by AEGON through its full ownership of Holdco. It will effectively constitute the financial vehicle whereby AEGON will derive economic benefits from the business activities of Scottish Equitable plc.
11. The "not-with-profits" fund will contain the "not-with-profits" business transferred from Scottish Equitable Life Assurance Society. All new "not-with-profits" business will be placed in this fund. As already stated, 40% of the "profits" or financial surpluses generated by this fund, together with management fees or commissions, will be allocated to the shareholders fund, for the sole benefit of AEGON.
12. The "with-profits" fund will contain the "with-profits" business transferred from Scottish Equitable Life Assurance Society and, in the case of new "with-profits" policies, premiums will be paid by new policyholders into the "with-profits" fund. Accruing benefits will be paid from this fund to new and existing policyholders. Sixty percent of the "profits or financial surpluses generated by the "not-with-profits" fund will be allocated to the "with-profits" fund to reflect Trustco's voting interest (see above). AEGON will not participate in the "profits" generated by the "with-profits" fund. However, management fees and commission income earned from the transaction of the "with-profits" business will be transferred to the "not-with-profits" fund. Since AEGON has a 40% interest in the financial surpluses of the "not-with profits" fund, AEGON will in turn derive financial benefits from the transaction of "with-profits" business.
13. In conclusion, Scottish Equitable plc will effectively carry on the current and future business activities of the existing Scottish Equitable Life Assurance Society and will be a full-function, long-lasting, autonomous economic entity under the joint control of AEGON and Trustco.

(c) Absence of coordination

14. The basic function of Trustco is to protect the existing policyholders of Scottish Equitable Life Assurance Society whose policies are to be transferred into the new joint venture. It is not reasonable to assume that Trustco will (re-)enter the market having regard to the fact that all its existing business, operations, staff and assets are to be placed in the joint venture. More specifically, under clause 37(B) of the Joint Venture Agreement neither Trustco nor AEGON (save through its existing UK insurance subsidiary, namely Aegon Financial Services Group (UK) plc (AFSG)) may directly or indirectly compete with the business transferred to the JV. Therefore the

operation does not give rise to the coordination of competitive behaviour between independent undertakings as regards Trustco and the joint venture, nor as between Trustco and AEGON.

15. With respect to possible coordination between the JV and AEGON's existing UK activities, the following facts must be taken into account.

Firstly, AFSG's activities in the life insurance and pension business market are relatively minor compared to the size of the transferred business. The existing premium income turnover of Scottish Equitable is approximately 20 times larger than that of AFSG. Secondly, save for AFSG's existing business, AEGON is subject to a non-competition agreement as described above. Thirdly, AEGON has invested a very substantial amount of money in the JV and future capital injections are envisaged with a minimum commitment that AEGON will increase its percentage voting rights to 50.1% by 31 December 1999, at the latest. Lastly, although there is no formal obligation, one has to take into account the nature of the contractual arrangements with regard to future capital injections by AEGON, the corresponding increase in AEGON's voting rights and the abrogation of the joint agreement required for reserved matters when AEGON's voting rights exceed 80%. Consequently, in the particular circumstances of this case there is no coordination of competitive behaviour between independent undertakings falling within the meaning of Article 3(2) of the Merger Regulation.

16. Therefore the proposed operation constitutes a concentration in accordance with Article 3 of the Regulation.

### **III. COMMUNITY DIMENSION**

17. The combined aggregate worldwide turnover, calculated in accordance with Article 5.3(b) of the Merger Regulation, of AEGON and Scottish Equitable Life Assurance Society exceeded 5 billion ECU in 1992. Both have a Community-wide turnover of more than 250 million ECU but do not achieve more than two-thirds of their Community-wide turnover in one and the same Member State. Therefore the proposed operation has a Community dimension in accordance with Article 1(2) of the Merger Regulation.

### **IV. COMPATIBILITY**

18. Over 99% of Scottish Equitable's existing turnover occurs in the UK, where it is primarily active in the life insurance, individual and group pension business markets.
19. The precise relevant product and geographical reference markets can be left open since, if the narrowest approach is taken considering each of the above type of policies as separate relevant product markets and restricting the geographical reference market to the UK, the increase in UK market share brought about by the concentration is minimal (or non-existent as is the case for group pension business) and the combined market share is below 10% for each. Moreover, there are many strong competitors with comparable or higher market shares.

**V. ANCILLARY RESTRICTIONS**

20. As already mentioned, Clause 37 of the Joint Venture Agreement contains a non-competition clause by which AEGON (except for ASFG) and Trustco undertake not to compete directly or indirectly with Scottish Equitable plc. This clause has to be considered as a restriction ancillary to the concentration, since there are reasonable grounds justifying its necessity for the successful establishment of the JV, and as such is covered by the present decision.

**VI. CONCLUSION**

21. Therefore, the concentration will not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

\*

\* \*

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

For the Commission