EN

Case No COMP/M.3894 - UNICREDITO / HVB

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 18/10/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.10.2005

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: **Case No COMP/M.3894 - Unicredito / HVB**
Notification of 13/09/2005 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 13/09/2005, 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 Unicredito Italiano S.p.A. ("UCI", Italy) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Bayerische Hypo-und Vereinsbank AG ("HVB", Germany) by way of public bid announced on 12/06/2005.

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.

I. THE PARTIES

3. **UCI** is an international bank based in Italy and listed on the Milan stock exchange. It offers a wide range of banking and financial services in several European countries,

1 OJ L 24, 29.1.2004 p. 1.

including retail and corporate banking services as well as investment banking and asset management services.

4. **HVB** is an international bank based in Germany and listed on several stock exchanges in Germany and in other European countries. It also offers a wide range of banking and financial services in several European countries, including retail and corporate banking services as well as investment banking and asset management services.

II. THE OPERATION

5. In June 2005, UCI and HVB reached an agreement for the integration of their respective banking businesses. Following this agreement, UCI launched on 26/08/2005 a public exchange share-for-share offer for the whole share capital of HVB, subject to a minimum acceptance level of 65%. This offer will trigger two bids for the whole share capital of HVB's Austrian and Polish subsidiaries Bank Austria Creditanstalt ("BA-CA") and Bank BPH SA ("BPH")[2].

III. CONCENTRATION

6. If successful, UCI's exchange offer will allow it to acquire sole control of HVB. It therefore constitutes a concentration within the meaning of Art. 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion [UCI 20,203 EUR million and HVB 21,821 EUR million][3]. Each of UCI and HVB have a Community-wide turnover in excess of EUR 250 million [UCI 18,930 EUR million and HVB 20,851 EUR million], but they 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.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

8. The parties consider that that there are a number of product markets relevant for the purpose of the assessment of the current transaction. These are retail banking, corporate banking, factoring, financial market services, investment banking and asset management. In addition, the Commission has assessed the impact the operation may have on payment clearing services.

Retail banking

9. Banking services provided to household customers include products such as deposits and account services (current accounts, saving accounts, cash deposits and cheque collection etc.); payment services including ATM services, payment card issuing,

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2 HVB already holds approximately 77.5% of the shares of BA-CA and, through BA-CA, approximately 71% of the shares of BPH.

3 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

credit transfer, direct debit, standing orders and cheques; lending (personal loans, consumer credit, overdraft facilities, mortgages etc.); and investment products such as mutual funds, pension funds and securities brokerage and custody services (management of custody accounts and processing of corporate actions such as dividend distribution). In many cases, banks are also active in distributing certain insurance products to their customers. The Commission has in previous decisions considered some of these such as deposits, lending, mortgage loans, payment transactions, credit card issuing, custody accounts and distribution of mutual funds as separate product markets[4].

10. The parties submit that although technically each retail banking product is distinct and there is no direct substitutability between certain groups of banking products (e.g. loans and deposits), the division between others are less clear (e.g. deposits and mutual funds) and that these products are often sold as a whole.

11. As regards *deposits*, the parties argue that defining a distinct market for retail deposits might be too narrow to correctly capture the competitive situation in this part of the retail market. For example, if term deposits lose their attractiveness, they submit that retail customers would switch to invest in funds and life insurance products. Thus, banks are forced to benchmark the interest paid for deposits against product offers relating to mutual funds. The parties therefore suggest that to fully capture competitive interdependence in this market segment, one should consider a market segment for the provision of investment solutions for individual savings, which includes deposits and mutual funds. The parties submit that the *distribution of mutual funds* shares many characteristics with the distribution of other retail banking products because a large portion of the demand for mutual funds originates from retail banking customers. However, the distribution of mutual funds is according to the parties largely interconnected with other particularities of the asset management business (which is clearly separate from retail banking).

12. As regards *lending* the parties submit that the lending segment comprises all products which meet the customers' demand for the provision of credit, irrespective of the use, i.e. including mortgage loans.

13. As regards *card issuing* the parties submit that for the purpose of considering the competitive situation in the countries concerned in the present case, it can be left open whether debit and charge cards (also termed deferred-debit cards) must be distinguished from credit cards. The latter provide the possibility of rolling over all or part of an outstanding balance into the next invoice period subject to the payment of interest on the sum outstanding. Notwithstanding this specificity, the parties nonetheless believe that in the context of the present case certain similarities between credit card and other forms of payment, in particular payment cards, should be noted.

14. Irrespective of the above, the parties submit that all such segments are only product groups belonging to an overall retail banking market. In particular, they argue that this is the case because from a demand side customers generally seek a "retail banking package" although customers may request certain retail banking products from other sources. This would mean that full service suppliers, like the parties, have to match

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4 See for example case n° COMP/M.2567 - Nordbanken/Postgirot, drawing on earlier cases.

competitive offers for packages offered by other full service suppliers as well as the specific offers from specialised suppliers.

15. Virtually all customers demand a current account and all banks offer such a product. The investigation has confirmed that current accounts are a core product, which allows banks to cross-sell other products, verify credit capacity and to some extent gauge financial needs. However, some other products - notably mortgage loans - may play a role in inducing customers to switch their current account from other banks and thus similarly open the way to cross-selling. The type of products sought by the customer will depend on the need of the customer in question.

16. The Commission's investigation has shown that "full-service banks" tend to provide a similar package of services to household customers although smaller "niche" banks and, in some instances, non-bank providers specialise in certain product offerings or have a more limited choice of products. Some respondents have therefore agreed with the parties' view that there is a wider retail banking market including a "basket" of products. In particular, products such as deposits, payment cards, overdrafts, personal loans and other services linked to the current accounts such as credit transfers, direct debit and cheques could be considered part of the same market. Others have, however, argued that the different purposes and the distinctive features of deposits, loans, mortgages, credit card issuing etc. mean that they should be considered distinct product markets. One bank may be the leader in a specific product, but have relatively low market shares in other retail products: typical examples are mutual funds and mortgages. The investigation has also shown that such products are bought and priced in isolation. In particular concerning mortgages, due to the size of the transaction and the fact that such products are bought on a more "one-off" nature, customers choose the supplier on the basis of price regardless of what undertaking may provide them with general banking services. In addition, alternative distribution channels and distribution intermediaries may make the conditions of competition substantially different for certain products.

17. For the purpose of the current decision it is, however, not necessary to conclude on the relevant market definition since no competition concerns arise irrespective of product market definition (see further below).

Corporate banking

18. Corporate banking comprises a broad range of banking services offered to general corporate clients (that is to say, excluding other financial institutions). In previous decisions, the Commission has found that, given their specific characteristics and use, products such as e.g. deposits, lending (with a potential sub-segment for real-estate financing), payment transactions, documentary credits and international payments may constitute distinct product markets[5]. The market investigation has also underlined the importance of cash collection services to certain customers.

5 See for example M. 2567 Nordbanken/Postgirot.

19. The Commission has, in previous cases, also found that it may be appropriate to distinguish between services offered to small- and medium-sized enterprises (SMEs) and large corporate customers[6].

20. The parties have submitted that products for corporate clients, as with retail products for individual clients, cannot easily or meaningfully be split into separate relevant product markets. Products are usually based on the specific corporate customer's needs and are generally offered in connection with a corporate account. Supply to corporate customers is generally more tailor-made from a wider range of banking services to meet the client's particular need. The parties further submit that no meaningful distinction can be made between the supply of corporate banking services to SME on the one hand and large corporate customers on the other hand since products to both categories of customers follow the same fundamental principles and a variety of approaches are in fact used to segment markets, both by individual banks and in national statistics.

21. However, the market investigation has shown that while banks offer a package of services to their corporate clients, large corporate customers tend to use different banks for different products to ensure a competitive offer, avoid supplier lock-in and satisfy specific needs.

22. The market investigation into banking needs of SMEs revealed that most banks in the affected countries are just starting to offer special packages of products designed specifically for this market segment. Unlike for large corporate customers, packages for SMEs are not tailor-made to the specific needs of each customer. SMEs, by the nature of their business and size, are not on the same level of sophistication as corporate customers.

23. In particular, in contrast with large corporate clients, SMEs tend to use only one bank for all their needs. SMEs are also more likely to stay with the bank and very unlikely to use foreign banks. The market investigation has shown that although changing a bank may be inexpensive in terms of direct costs, the indirect costs associated with such a change can be substantial and may be sufficient to prevent SMEs from considering such a move even if prices rise.

24. Secondly, SMEs, due to their small assets and limited scale of activities tend to be viewed as higher risk clients than large corporate customers. In such an environment, having a good long-term relationship with a local branch manager helps many SMEs to obtain loans and credits. If they decide to change bank, they may lose their credit history and this special relationship. According to the market investigation, this is the principal reason deterring SMEs from changing bank in the countries concerned.

25. Unlike large corporate customers, who primarily value the portfolio of products, reputation or innovative products of the bank, SMEs focus essentially on prices and “friendliness” of a bank towards SMEs. According to the result of the market investigation, decisive elements for SME when choosing a bank are (i) an easy and speedy process for obtaining loans and credits, (ii) understanding the challenges and difficulties involved in starting up a small enterprise, (iii) prices and proximity of the local branch.

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6 Notably M.2567 Nordbanken/Postgirot.

26. Overall, it can be said that the market for SMEs is a growing market with substantial prospects for further development as confirmed by the Commission's investigation.

27. In respect of what the parties have labelled "foreign trade finance", the Commission, in case M.2567 Nordbanken/Postgirot, identified separate product markets for international payments and documentary credits. It was left open whether letters of credit, collection and guarantees should be considered as one single or separate product markets and whether a distinction should be made between SMEs and larger corporate customers.

28. For the purpose of the current decision it is, however, not necessary to conclude on the relevant product market definition as concerns corporate banking, and in particular as regards the class of customers served, since no competition concerns arise irrespective of product market definition (see further below).

Factoring

29. Factoring comprises the purchase of all kinds of receivables from businesses, thereby providing customers with added liquidity. In this respect, it includes the ongoing purchase of short-term trade accounts receivable by a factoring company as well as the individual well-directed purchase of a customer's receivables for particular refinancing purposes. In case n° COMP/M.1661 Crédit Lyonnais/Allianz-Euler/JV, factoring was distinguished from credit insurance and it was left open whether the market could be subdivided. In the present case, this can also be left open, since no competition concerns arise irrespective of product market definition.

Financial market services

30. Financial market services are provided to institutional investors, corporate and retail clients who lack direct access to financial markets or otherwise value the intermediary services provided by a bank. Strictly speaking, this class of services consists of an offer of transactions to clients which may or may not require the bank in its turn to carry out transactions on financial markets, since in certain instances it may be able to internalize the transaction, that is, cross it on their own books with an opposite transaction of another client. Banks also intervene extensively on financial markets for their own purposes. A bank's operations on financial markets, even if carried out on behalf of a specific client, involve it in a customer relationship vis-à-vis a trading platform provider rather than in the supply of services and so should be distinguished from its activities brokering such services for clients.

31. The Commission has previously found that services such as trading in securities and derivatives, foreign exchange and money market instruments can be considered part of financial market services. The parties submit, on the basis of supply-side considerations, that such segments are all part of an overall financial market services market. In some previous cases, however, the Commission has looked more specifically at primary dealing in government bonds[7] and at brokerage services for specific asset classes as possibly separate markets[8].

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7 Case n° IV/M.343 - Société Générale de Belgique/Générale de Banque

8 Case n° IV/M.596 - Mitsubishi Bank/Bank of Tokyo

32. For the purpose of the current decision it is, however, not necessary to conclude on the relevant market definition since no competition concerns arise irrespective of product market definition.

Investment banking

33. Investment banking includes products such as merger and acquisitions advice, initial public offering advice and arranging new issues of stocks and bonds. The parties submit that these services differ quite significantly from each other and it is not very likely that they are sought as a package from customers. Nevertheless, an investment bank or affiliate of a universal bank will offer all these services, and there is, according to the parties, a high degree of supply-side substitutability. Therefore, the parties submit that there is no need to differentiate between particular investment banking services in order to accurately evaluate the competitive conditions in the market.

34. For the purpose of the current decision it is not necessary to conclude on the relevant market definition since no competition concerns arise irrespective of product market definition.

Asset management

35. Asset management concerns the provision of investment advice and often also the implementation of this advice. Besides specific advice to individual customers, these services may include the creation and managing of mutual funds which are then marketed on an "off-the-shelf" basis, largely to retail clients, and the provision of portfolio management services for institutional investors. In the latter case, the definition of the investment strategy will, as a rule, be based on the individual requirements of the customer. In most Member States, mutual funds are constituted under either the law of contract or under trust law and, thus, do not have legal personality. The parties consider that there is a market for asset management, including the "manufacture" of mutual funds for retail clients and of tailor-made funds for corporate and institutional customers, as well as portfolio management for private investors, pension funds and institutions. Asset management may also include the provision of custody services related to the assets under management.

36. For the purpose of the current decision it is not necessary to conclude on the product market definition since, irrespective of market definition, no competition concerns arise.

37. It has been suggested during the market test that there may, in some cases, exist a separate market within the area of custody services or asset management which concerns provision of depository services for mutual and pension funds. These services, provided to fund managers in accordance with the relevant national legislation, basically include custody services (e.g. collection of dividends, coupons etc.), settlement services and certain control functions prescribed by national law for the benefit of the depositor relating to the activities of the asset manager. It was argued by the parties that these services are part of the wider market for custody services, which are provided either to individual investors or to mutual and pension funds. However, it is not necessary to decide on the exact definition of the market as the transaction does not lead to competition concerns under any alternative market definition.

Payment clearing services

38. In case COMP/M.2567 Nordbanken/Postgirot, the Commission looked into the market for supply of net clearing services to domestic payment systems, therein referred to as the supply of giro payment systems services. In the present case, a similar market can also be identified, which can be appropriately labelled as the market for net clearing systems for low-value domestic credit transfer and direct debit. This interbank market, which constitutes an essential input for the provision of payment services from and to customers of other banks, is served by a monopoly provider in Poland in which both UCI and BPH have a stake through their domestic subsidiaries.

39. It is, however, not necessary to conclude on the market definition in this case because the proposed concentration does not raise serious doubts irrespective of how the market is defined.

B. Relevant geographic markets

40. The parties submit that the relevant geographic markets are either national or wider in scope, depending on the product in question. They consider that the retail banking market is still national in scope. As regards corporate banking they consider such markets at least national in scope, whilst some sectors have already developed a more international dimension. As regards financial market services, investment banking and asset management, such markets in the parties' view are wider than national, possibly EU-wide or worldwide depending on the product in question.

41. The Commission has stated in previous cases that with regard to *retail banking* services the relevant geographic market is national in scope due to the competitive conditions within individual Member States and due also to the importance of a network of branches. With regard to *corporate banking* services, and particular services to SMEs, the Commission has generally taken the view that product segments will continue to be required and supplied at national level. However, some elements of corporate banking may have a more international dimension, in particular for large corporate customers[9]. The results of the investigation in this case have also confirmed this view.

42. The Commission has previously found that the geographic market for *factoring* may be national in scope. The market considered for payment clearing services in this case is national in scope since it concerns only domestic payments. As regard *financial market services* the Commission has found in previous decisions that the relevant geographic market may be either national or international in scope[10]. In *asset management* and *investment banking* there are similarly precedents for either view depending on the specificities of the case at hand[11].

43. However, whether the relevant geographic markets are considered to be national or international need not be finally decided in the present case because, on the basis of the assessment set out below, on any of the alternative market definitions considered the

9 See for example case M.2567 Nordbanken/Postgirot.

10 National scope of some markets was found for example in M.213, M.343, M.597 and M.2158 and international scope in M. 596, M.642, M.983 and M.1029

11 For example M. 357; M.611; M.1043; M.1453; M.2131

concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

C. Assessment

44. The parties' activities mainly overlap in the Czech Republic, the Slovak Republic and Poland. They do not give rise to any affected markets in other EU member states.

Czech Republic

45. The proposed concentration will combine the fourth and eighth largest banks in terms of total assets in the Czech Republic, respectively HVB Bank Czech Republic, owned by HVB, and Živnostenská banka, owned by UCI. The merged entity would still be the fourth largest bank with combined total assets as of 2004 amounting to 6,225 million EUR and with a total of 66 branches. The merged entity would thus remain a second-tier bank with a substantial gap in terms of both total assets and number of branches to the three first-tier banks in the Czech Republic[12]. Furthermore, both the first-tier banks and a number of second-tier banks are also owned by large foreign banking groups and have thus sufficient experience, expertise and financial means to compete effectively with the merged bank in all segments of commercial banking.

46. Both parties offer a full range of commercial bank services and are active in all regions of the Czech Republic. Their combined market share does not, however, exceed 15% in any of the identified relevant markets with the exception of a possible narrower market for depository services provided to mutual and pension funds.

Depository services provided to mutual and pension funds

47. The combined market share of the parties in the market for depository services provided to mutual and pension funds calculated on the basis of assets under depository would reach around [50-60]% (Živnostenská banka [20-30]% and HVB Bank Czech Republic [20-30]%). However, there are several factors relevant to this specific market which exclude competition concerns despite this high market share.

48. Firstly, there is only a limited number of highly sophisticated customers – asset managers of pension and mutual funds[13]. Therefore, the market shares might change significantly even if only one fund (in particular one of the larger funds) decided to change its depository bank. Indeed, the market share of HVB Bank Czech Republic in this market was only [0-10]% up to July 2005, when a large pension fund manager switched to HVB from another bank and thereby increased HVB's market share by more than [15-25] percentage points. Therefore, the market share figures do not in themselves indicate existence of market power as they could change dramatically due to only a few customers switching. Finally, there are no significant barriers to

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12 These first-tier banks with their total assets and number of branches in 2004 are as follows: ČSOB (total assets 20,133 million EUR and 210 branches), Česká spořitelna (total assets 19 054 million EUR and 664 branches) and Komerční banka (total assets 15 110 million EUR and 335 branches).

13 According to the parties' information, there was as of December 2004 only 11 pension funds asset managers and 11 mutual funds managers demanding depository services in the Czech Republic

switching, whether legal, economic or practical, as is illustrated by the recent change of depository by one major pension fund referred to above.

49. Secondly, there are important competitors providing depository services to funds, including the three first-tier banks and subsidiaries of other well-known banking groups such as Citibank, ING or Deutsche Bank. Moreover, some of these banks (including all the first-tier banks), although they do not currently have significant non-captive activities in this market, do provide these services in-house to large fund managers affiliated to their groups. They would thus easily be able to offer the same services to third parties on a commercial basis if they wished to do so. Therefore, even after the merger a sufficient number of strong and experienced alternative providers of depository services would be available to fund managers in the event that the merged entity attempted to increase its prices.

50. On the basis of the above considerations, it can be concluded that the transaction does not lead to competition concerns in any of the possible relevant markets in the Czech Republic.

Slovak Republic

51. The proposed concentration will combine the fifth and sixth largest banks in the Slovak market in terms of total assets, respectively HVB Bank Slovakia, owned by HVB, and Unibanka, owned by UCI. The merged entity would become the fourth largest bank with combined total assets as of end 2004 amounting to 2 908 million EUR and with in total 96 branches. The merged entity would thus still remain substantially behind the three largest banks in terms of both total assets and number of branches[14]. Furthermore, two of the three largest banks and a number of smaller banks are also owned by large foreign banking groups and have thus sufficient expertise, experience and financial means to compete effectively with the merged bank in all segments of commercial banking.

52. Both parties offer a full range of commercial bank services (apart from leasing services and some segments of investment banking) and are active in all regions of the Slovak Republic. Their combined market share, however, does not exceed 15% in any of the identified relevant markets with the exception of the possible narrower market for depository services provided to mutual and pension funds. However, the combined market share of the parties in this market would only amount to around [15-25]% and there will remain a number of sufficiently strong competitors (such as CSOB with an estimated market share amounting to [25-35]% or Istrobanka with [25-35]%).

53. On the basis of the above, it can be concluded that the transaction does not lead to competition concerns in any of the possible relevant markets in the Slovak Republic.

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[14] These three first largest banks with their total assets and number of branches in 2004 are as follows: Slovenská sporiteľňa (total assets 6 068 million EUR and 333 branches), VUB (total assets 5 682 million EUR and 234 branches) and Tatra Banka (total assets 4 322 million EUR and 110 branches).

Poland

54. It is in Poland that the impact of the merger is potentially greatest, since the proposed concentration will combine the second and third largest banks in the Polish market, Pekao, owned by UCI, and BPH, owned by HVB, thereby creating the leading player in terms of assets (21% of all banking assets) and more-or-less tied leader in terms of branch network. The current market leader is the majority state-owned PKO BP (PKO), which will remain in first place on some other measures.

55. The Polish banking market displays a fairly low degree of concentration with the 5 leading banks accounting for around 50% of total banking assets. State participation in the Polish banking sector has decreased in recent years and now PKO, which was partially privatised in 2004, and Bank Gospodarki Żywnościowej (BGŻ) remain the only major banks currently controlled by the state. Alongside the privatisation of Polish banks, smaller private banks were taken over by foreign investors and today 8 of the 10 larger Polish banks are part of foreign financial services groups and more than 60% of the equity of the large Polish banks is held by foreign investors[15].

<u>Retail banking</u>

56. As regards services to household customers, the proposed merger would create the second-largest player with an average market share of approximately 20% in the sector overall. PKO will remain the top retail bank with an overall market share of around 30%. PKO will also remain the leading player on a number of individual markets such as deposits, loans, mortgages, and issuing of debit, charge and credit cards. As can be seen from the table below, post-merger the parties would become the second or third largest bank with market shares in the region of 16% to 26% within each of these segments. The parties would only become the largest player for two retail banking products: custody accounts ([15-25]%) and the distribution of mutual funds ([35-45]% [16]).

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[15] These include KBC, ING, Citibank and Allied Bank of Scotland.

[16] Value of mutual funds sold to end customers in 2004.

Table 1: National market shares retail banking, percent[17]

Service	UCI	HVB	Combined	PKO	ING	BZ WBK	BRE	Citibank	Others
Deposits	[10-20]	[5-15]	[15-25]	[25-35]	[0-10]	[0-10]	[0-10]	[0-10]	[25-35]
Loans	[5-15]	[5-15]	[15-25]	[20-30]	[0-10]	[0-10]	[0-10]	[0-10]	[40-50]
Mortgages	[5-15]	[10-20]	[20-30]	[30-40]	[0-10]	[0-10]	[0-10]	0	[25-35]
Debit and charge card issuing	[10-20]	[5-15]	[20-30]	[30-40]	[5-15]	[0-10]	[0-10]	[0-10]	[15-25]
Credit card issuing	[0-10]	[10-20]	[10-20]	[10-20]	[0-10]	[5-15]	[0-10]	[20-30]	[20-30]
Custody accounts	[10-20]	[0-10]	[15-25]	[10-20]	[0-10]	[5-15]	[0-10]	[0-10]	[35-45]
Distribution of mutual funds	[30-40]	[0-10]	[35-45]	[5-15]	[5-15]	[5-15]	[5-15]	[0-10]	[10-20]

57. All these markets to households are interlinked since they are all distributed through the same branch offices, and, where available, telephone and internet banking facilities. Given the significant costs attached to running a large branch network, banks also have great incentives to cross-sell as many different products as possible through the branches.

58. Competition for services such as deposits, loans, mortgages and card issuing takes place mainly at the distribution level. With the exception of custody services and mutual funds, the merged entity will become the second largest player after the market leader PKO (and Citibank for credit card issuing). All the other major universal banks are active in this area. In addition, a number of smaller commercial banks and a large number of cooperative banks offer a number of these services. Thus, even though the proposed transaction will increase the parties' combined market shares in these segments, they will continue to face strong competition from PKO and others and it can be concluded that the proposed concentration would not raise serious doubts as to its compatibility with the common market. As regards custody services the parties' market share is not significant and, as for other retail products, they are faced with a number of strong competitors. Only the distribution of mutual funds requires closer analysis (see below).

59. A third party indicated to the Commission that Pekao has a strong position in foreign currency deposits. The combined entity on the basis of value of deposits at end 2004 would have held [40-50]% of all such deposits. The Commission's analysis has

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17 Basis: for deposits, value of deposits at end 2004; for loans and mortgages, value of gross loans at end 2004; for card issuing, by number of active cards at end 2004; for custody accounts and mutual funds, value of customer assets at end 2004.

however shown that this share is not indicative of any particular market strength in a hypothetical market for such deposits. There is no obstacle for other banks to offer this product if it is demanded by their customers and customers could easily switch to PLN deposits if the parties tried to exercise market power by increasing fees or reducing interest rates.

60. Conversely, in respect of foreign-currency denominated mortgages, although it has a residual share of [0-10]% , Pekao no longer offers this product in which BPH has a [20-30]% share. Again, on both the supply and demand side this product can be considered to be substitutable, for the majority of customers, with mortgage loans denominated in national currency, the choice depending only on the interest rate and other conditions offered and the willingness of the customer to bear the foreign exchange risk (which typically reduces the amount that banks will be willing to lend).

Distribution of mutual funds

61. Currently Pekao (UCI), through the Pioneer brand, is the leading player in the mutual funds market in Poland with a market share of around [30-40]% followed by ING Bank Śląski [18] ([5-15]%), BRE Bank[19] ([5-15]%), and PKO ([5-15]%). HVB has a market share of around [0-10]%, which would rank it as number 7 in this market. Pioneer is a wholly owned subsidiary of UCI.

62. The attractiveness of mutual funds in Poland is partly cyclical, as interest rates have declined in recent years whilst the domestic stock market has prospered. The market investigation has shown that Pekao's relatively strong position in this sector is a result of a deliberate early strategy chosen by the bank of encouraging its customers to channel their savings into mutual fund investments rather than alternative investment products such as treasury bonds or savings accounts.

63. The ratio of Pekao customer assets in mutual funds, at about [25-35]% of all deposits (the latter have declined as a result), is very high even by international standards and may therefore be considered at or close to saturation point. There is arguably scope through the merger for additional selling to BPH customers, but this is small in comparison to the scope that other banks have to expand the market by more aggressive marketing to their own customer base. PKO, for example, despite having [25-35]% of all retail deposits, currently has only a [5-15]% share of the mutual fund market, and has concluded a strategic alliance with Credit Suisse First Boston for distribution of the latter's funds. The same is true of the other major banks, which all have their own retail network and which are mostly owned by foreign banks with significant expertise in this area. As the market expands, the parties' relative share, is therefore likely to decline.

64. Whilst the vast majority of mutual funds are currently sold through bank branches to existing customers, it should also be noted that there is scope in the future for, and indeed already evidence of, new entry by established international fund managers with

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18 ING Bank Śląski is the 5th largest bank in Poland. It is controlled by ING Bank N.V. It operates around 330 branches. Its strength is in household and corporate deposits.

19 BRE is the 6th largest bank in Poland. It is owned by German Commerzbank AG. Its core business is corporate banking, investment banking and trade finance. It has a more limited retail presence with 23 regional branches.

a distribution strategy based on direct sales, selling through intermediaries (independent brokers), or relying on banks (such as Citibank) who sell a wide range of third party funds.

65. The mutual fund industry in Poland, moreover, is very underdeveloped by EU standards, representing on the parties' figures a mere 0.2% of the EU total; there is thus considerable scope for future growth.

66. Overall, the Commission considers that, whilst the distribution of mutual funds may constitute a market the scope of which may, in addition, be national, the parties' combined market share as measured by the value of assets under management is not such as to affect the future development of the industry or allow them to raise prices. The principal reasons why there are no concerns are that the parties do not exercise sufficient power over distribution to influence the access of rival funds to the market; that there are no significant obstacles to entry for any of the major EU fund managers, many of which have already achieved significant economies of scale and brand recognition for their funds; and that the market retains significant growth potential.

67. The issue of fund creation and management is addressed under asset management below.

Corporate banking

68. Similar to the retail banking market the proposed merger would give the merged entity a combined average market share of around [15-25]% in the corporate banking markets. The other main competitors have market shares of 5% to 10%.

Table 2: National market shares corporate banking (SME percentage in brackets)[20]

Service	UCI	HVB	Combined	PKO	ING	BZ WBK	BRE	Citi	Others
Deposits	[5-15] ([10-20])	[5-15] ([5-15])	[15-25] ([25-35])	[5-15] ([10-20])	[5-15] ([0-10])	[0-10] (-)	[0-10] ([0-10])	[5-15] ([0-10])	[35-45] ([40-50])
Loans	[10-20] ([0-10])	[5-15] ([0-10])	[20-30] ([5-15])	[5-15] ([0-10])	[0-10] ([0-10])	[0-10] (-)	[0-10] ([0-10])	[0-10] ([0-10])	[35-45] ([65-75])
Real estate financing	[10-20]	[15-25]	[25-35]	[5-15]	[0-10]	[5-15]	[5-15]	0	[35-45]
Foreign trade finance	[5-15]	[0-10]	[10-20]	[0-10]	[5-15]	-	[5-15]	[10-20]	[40-50]

69. The only corporate banking market in which the parties would reach a market share above 30% is in real estate project financing, in which they would reach a combined market share of [25-35]% (UCI [10-20]% and HVB [15-25]%). However, the market share estimate for real estate project financing does not take into account financing in Poland provided by foreign banks and other foreign financial institutions. If such institutions were to be included their market share would, according to the parties, be significantly reduced.

20 Basis: for deposits, value of deposits at end 2004; for loans and real estate financing, value of gross loans at end 2004; for foreign trade finance, all international payments. For the purpose of the current case, SMEs were defined as companies with turnover less than 10 mln PLN.

70. Whilst documentary credits might be considered a market in its own right, the Commission's investigation suggests that the parties' share in this market is broadly in line with their overall share of foreign trade financing and hence does not raise significant concerns.

71. The answers received from the market investigation confirm that almost all corporate customers consulted consider that they would continue to have a choice of banks after the merger and that the parties would not be able to increase prices.

72. Thus, on basis of the information at hand it does not appear that the proposed transaction would significantly impede effective competition for the provision of corporate banking services in general or for any relevant subdivision of these services.

Factoring

73. In respect of factoring, although the parties achieve a combined share of [25-35]% of the overall market, they have pointed to significant differences in the type of service offered by Pekao and BPH. This would mean that the addition of market shares would be without incremental effect on competition and prices. It also needs to be borne in mind that this product is little used presently in Poland compared to other member states. There remain important alternative providers including Citibank Handlowy and BRE with a market share of [10-20]% each and there is potential for other banks to contest the market.

Financial market services

74. In respect of securities trading, the parties will achieve a joint market share of [15-25]% based on the value of securities traded on the Warsaw Stock Exchange. Looking merely at bond trading, the parties will achieve a combined share in trading turnover on the Warsaw stock exchange of [35-45]% . Since, however, most bonds are held to maturity, this is not necessarily a good guide to the volume of brokerage business. Moreover, the increment due to BPH is small ([0-10]%). The parties are also respectively in first and second place as regards primary government bond dealing. In this market, however, the strong countervailing power of the only supplier - the government - and the number of licensed primary dealers is sufficient to ensure that the combined entity will not be able to exercise market power.

75. The only other possible product market within financial market services in which the parties will reach above 30% is foreign exchange transactions ([30-40]%). This, however, is a competitive business offered by all major banks and it does not seem reasonable to suppose that the parties could exercise market power here either. Important competitors are Citibank Handlowy with a market share of [10-20]% and BRE with a market share of [5-15]% .

Investment banking

76. The parties' combined national share of the market for initial public offerings and bond issuance is around [10-20]% in each case, assessed on the basis of the value of the instruments issued. In addition, it is likely that this market is, at least in part, international in scope. Therefore, the notified concentration does not raise serious doubts in this area.

Asset management

77. The parties' share in the manufacture and management of mutual funds in Poland, on the basis of assets under management at end 2004, would be [35-45]% , of which [30-40]% is due to Pekao (UCI) and [0-10]% due to BPH. This figure reflects the share the parties have achieved in distribution, as discussed above, especially as relates to Pekao which primarily distributes its own funds. It is thus largely driven by the factors mentioned in respect of distribution, and likely to diminish in relative terms as other banks achieve greater market penetration.

78. This market might be partly national and partly international in scope. It appears that Polish investors currently show a strong preference for funds investing exclusively in Polish securities, although this is not entirely certain since figures on the distribution of passported UCITS funds have not been identified. This part of the market might be national in scope. However, Pekao's share of exclusively Polish funds is somewhat lower than its overall market share - [20-30]% by value - and therefore, on this basis alone, does not raise substantial concerns even if combined with the integrality of BPH's offering. At the international or EU level, the parties' combined market share is sufficiently small that the combination will not result in any market power.

79. Figures from the parties, confirmed by independent sources, also show that there are a large number of Polish funds, which, however, are on average less capitalized than those of Pekao. Out of approximately 150 funds, about 80% will not be managed by the combined bank. This presence on the fund management market shows that it remains fully contestable and there is no reason why these competitors should not be able to grow their market share and compete for business on the basis of the returns they are able to offer. In this respect, the combination does not appear to alter the competitive dynamics.

80. Irrespective of the market definition, therefore, the notified transaction does not give rise to competition concerns in this area.

81. The parties' presence in other asset management services, such as pension funds, is sufficiently low that they do not need to be considered.

82. Both parties are also active in the possible narrower market for depository services to pension and mutual funds. However, their combined market share in this market would only amount to around [15-25]% and they would face competition from other strong players, in particular Citibank Handlowy which currently has more than [55-65]% market share. Therefore, the transaction does not lead to competition concerns in this possible relevant market.

Payment clearing services

83. The Commission also looked into the effects of the transaction on the ownership structure and incentives of the Polish National Clearing House for low-value credit transfers and direct debit, Krajowa Izba Rozliczeniowa (KIR). KIR is owned by a number of the major banks. After the merger, the parties will become the biggest shareholder of KIR with an ownership share of 34.44%. However, it will only have one representative on the supervisory board and the applicable bylaws and governance arrangements ensure that the parties' combined minority stake in this firm would not allow them to influence its behaviour in such a way as to reinforce their joint position in downstream banking markets.

Distribution of banking products

84. As acknowledged by the parties, distribution of many banking products to all but the largest corporates and institutional customers is mainly based on a branch network. The branch network is also the "gateway" to cross-selling a number of product offerings. In particular, more complex offerings such as mutual funds, loans and insurance and pensions are normally (at least initially) sold via branch networks rather than via the telephone or Internet. Even for the largest corporate customers, the branch network may play an important role in respect of services such as cash collection. The largest bank in terms of branch network is currently PKO, followed by Pekao and BPH[21]. As a result of the merger UCI and BPH would become slightly larger than PKO.

85. In view of this, the Commission has looked further into the distribution issues and determined that the combination of the branch networks of the parties will not lead to a significant reduction of choice in individual regions of the country. The market investigation has confirmed that at the level of each of the Polish voivodships (regions), competition from branches of all the main rival banks would remain strong. In addition, there are more than 600 cooperative banks serving local areas throughout the country.

VI. CONCLUSION

86. 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

[21] PKO has 1 238 branches compared to 782 for Pekao and 465 for BPH.