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Case No COMP/M.4284 - AXA / WINTERTHUR

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

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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.4284 - AXA/WINTERTHUR
Notification of 20 July 2006 pursuant to Article 4 of Council Regulation No 139/2004[1]

I. INTRODUCTION

1. On 20 July 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which the undertaking AXA S.A. ("AXA", France) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the whole of the undertaking "Winterthur" Swiss Insurance Company ("Winterthur", Switzerland) which is a wholly-owned subsidiary of Credit Suisse Group (Switzerland) by way of purchase of shares.

2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the Common Market and the EEA Agreement.

II. THE PARTIES AND THE OPERATION

3. AXA is an international group active in the provision of life and non-life insurance and related financial services primarily in Western Europe, North America, the Asia Pacific Region, the Middle East and Africa.

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[1] OJ L 24, 29.01.04, p.1

4. Winterthur is an international group active in the provision of non-life insurance products and services, predominantly in Europe and the United States of America, and life insurance and pension products and services in Europe and selected Asian markets.

5. The operation consists of the acquisition by AXA of all of the issued and outstanding shares of Winterthur from Credit Suisse. As a result, AXA will acquire sole control over Winterthur. The present operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation.[2] The parties have a combined aggregate worldwide turnover in excess of €5,000 million (AXA over €71 billion, Winterthur over €13 billion), and each party has a Community-wide turnover in excess of €250 million (AXA over €41 billion and Winterthur over €5 billion). The parties concerned did not achieve more than two thirds of their Community-wide turnover in one and the same Member State.

IV. RELEVANT MARKETS

A. Relevant product markets

7. The transaction concerns the insurance sector. In its previous decisions, the Commission has distinguished between three large categories of insurance products: life insurance, non-life insurance and reinsurance[3]. This distinction has been confirmed by the Commission's market investigation.

8. Although the Commission has not previously definitively concluded on the matter, it has been suggested that life and non-life insurance can be divided into as many product markets as there are different kinds of risks covered, given that their characteristics, premiums and purposes are distinct and that there is typically no substitutability from the consumer's perspective between certain different risks insured, e.g. life-individual, life-group and unit linked for life insurance; motor, fire, transport, health, property, general civil liability, casualty, litigation, working accidents etc. for non-life insurance[4].

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2 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).

3 See Case No. COMP/M.2676 – Sampo/Varma/If Holdings/JV, Decision 18/12/2001; Case No. COMP/M.2400, Dexia/Artesia, Decision 14/06/2001; Case No. COMP/M.2225, Fortis/ASR, Decision 13/12/2000; Case No. COMP/M.1989, Winterthur/Colonial, Decision 09/06/2000; Case No. COMP/M.1886, CGU/Norwich Union, Decision 13/04/2000; Case No. COMP/M.1910, Meritanordbanken/Unidanmark, Decision 10/04/2000; Case No. COMP/M.1816, Churchill Insurance Group/Hig Holdings, Decision 02/02/2000; Case No. COMP/M.1777, CGU/Hibernian, Decision 18/01/2000.

4 See Case No. M.2676 Sampo/Vama/IF Holding/JV Decision 18/12/2001; Case No. COMP/M.2400, Dexia/Artesia, Decision 14/06/2001; Case No. COMP/M.1453, AXA/GRE, Decision 8/4/1999; Case COMP/M.2343, Toro Assicurazioni/Lloyd Italico, Decision 15/03/2001; Case No. COMP/M.2225, Fortis/ASR, Decision 13/12/2000; Case No. COMP/M.1886, CGU/Norwich Union, Decision 13/04/2000; Case COMP/M.1712, Generali/INA, Decision 12/01/2000.

9. However, the Commission has also recognised that from a supply-side perspective the conditions for insurance of different types of risk are quite similar and most large insurance companies are active in several types of risk. This suggests that different types of non-life insurance could be included in the same product market[5]. The Commission also considered that a similar approach might apply to life insurance.[6]

10. The market investigation has largely confirmed the Commission's general approach. Only few respondents pointed out that even from a supply side perspective different life and non-life products needed different kinds of expertise and could therefore not be considered as substitutable.

11. The parties consider that whereas the high level of supply-side substitutability indicates that all life insurance may constitute a relevant product market, from the demand-side, a distinction could be drawn between group life insurance products and individual life insurance products. Another possible distinction between life insurance products could be to categorise them into protection products, pension products and savings and investment products.

12. Most respondents confirmed that within life insurance, one should distinguish between group life insurance products and individual life insurance products because of, *inter alia*, different customers' needs and the legal framework. As far as a distinction between protection products, pension products and savings and investment products is concerned, the results of the market investigation are not conclusive.

13. For non-life insurance the parties submit that product markets can be defined according to the type of risk insured. Therefore, the parties have considered what their combined position would be based on the narrowest likely product markets in non-life insurance.

14. Specifically for the Belgian non-life insurance market[7], the majority of respondents agreed with the parties' view that one could distinguish the following categories (i) accident & health insurance, (ii) workers' compensation, (iii) third party liability ("TPL") motor insurance, (iv) non-TPL motor insurance, (v) insurance against fire and other damage to property, (vi) liability insurance, (vii) legal protection insurance and (viii) transport insurance. It should be noted that several respondents considered that categories (iii) and (iv) should be regarded as one segment only since these types of insurance products are usually sold together in a package.

15. Concerning the distribution of insurance products, in its earlier decisions the Commission left the product market definition open[8]. The parties submit that the relevant market for either non-life or life insurance distribution would comprise all outward (*i.e.* third party or

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[5] Case No. COMP/M.2676, Sampo/Varma Sampo/IF Holding/JV, Decision 18/12/2001; Case No. IV/M. 3556, Fortis/BCP; Case COMP/M.2491, Sampo Storebrand Decision 27/07/2001; Case No. COMP/M.1989, Winterthur/Colonial, Decision 09/06/2000; Case No. COMP/M.1886, CGU/Norwich Union, Decision 13/04/2000; Case COMP/M.1712, Generali/INA, Decision 12/01/2000.

[6] Case No. COMP/M. 4055 Talanx/Gerling,, Decision 05/04/2006, Case No. COMP/M.3446. Unica/Mannheimer, Decision 28/06/04.

[7] The market investigation focused on the Belgian insurance market, where the present operation gives raise to affected markets.

[8] See Case No. COMP/M.3395 – Sampo/If Skadeförsäkring, Decision 28/04/2004; Case No. COMP/M.1307 – Marsh & McLennan/Sedgwick, Decision 23/10/1999.

non-owned) distribution channels, such as brokers, agents and other intermediaries. The sales force and office network of insurance companies themselves, pursuant to which insurance providers directly sell products to end-customers, would not come within this definition as they form an inherent part of the insurance companies' normal business. This has been confirmed by the market investigation.

16. For the purpose of this case the Commission can leave the exact product market definitions open as the transaction does not lead to any competitive concerns.

B. Relevant geographical markets

17. The Commission in its previous decisions has defined the markets for life and non-life insurance as being mainly national in scope as a result of national distribution channels, the established market structures, fiscal constraints and differing regulatory systems[9]. For the purpose of the present operation the parties have considered life and non-life insurance markets on a national basis, except for marine and aerospace risk insurance, which the parties have considered to be at least EEA-wide in scope. The parties consider reinsurance to be worldwide in scope or at least EEA-wide.

18. The market investigation has confirmed that in general the relevant geographical markets for life and non-life insurance can still be considered as mainly national. As to marine and aerospace risk insurance and reinsurance, all respondents have confirmed that these markets are at least EEA-wide in scope.

19. The parties consider that the markets for the distribution of most insurance products can be regarded as national in scope. This follows from the fact that life and non-life insurance markets are themselves national in scope. The Commission has also recognised the national nature of insurance distribution channels in previous decisions[10]. This has largely been confirmed by the market investigation.

20. For the purpose of this case the Commission can leave the exact geographic market definitions open as the transaction does not lead to any competitive concerns.

V. ASSESSMENT

21. The parties have overlapping activities in the life and non-life insurance markets in Belgium, Germany, Luxembourg, Spain and the Netherlands. In the UK, the parties' activities overlap in the life insurance market only. The present concentration however does not give raise to any affected market within the EEA except in several non-life insurance markets in Belgium and in motor insurance in Luxembourg.

22. As far as reinsurance is concerned, Winterthur is not active in providing reinsurance and AXA is in the process of selling its reinsurance business (AXA RE). Therefore, this market is not considered further.

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9 See Case No. IV/M.759, Sun Alliance/Royal Insurance, Decision 18/06/1996; Case COMP/M.2343, Toro Assicurazioni/Lloyd Italico, Decision 15/03/2001.

10 See Case No. COMP/M.1307 – Marsh & McLennan/Sedgwick, Decision 23/10/1999; Case No. COMP/M.2225, Fortis/ASR, Decision 13/12/2000.

Luxembourg

23. According to the parties' estimates, their combined market share in the overall non-life insurance market in 2004 in Luxembourg is [10-20]%.[11] Only in the TPL motor insurance and non-TPL motor insurance their combined market share slightly exceeds 15%. In all three hypothetical segments (i.e. TPL motor insurance, non-TPL motor insurance, both segments combined) the parties' combined market share would be approximately [10-20]%.

24. Considering the parties position in this market and the presence of strong competitors such as Foyer Assurances and LA Luxembourgeoise (with more than [25-35]% of the motor insurance market), the present operation is unlikely to significantly impede effective competition in Luxembourg.

Belgium

25. The transaction will result in the creation of the biggest non-life insurance provider in Belgium with a post merger combined market share of [20-30]% (AXA – [10-20]%; Winterthur – [0-10]%), based on 2004 data. [12]

26. Based on the narrowest (hypothetical) product market definitions, the transaction will give rise to eight horizontal affected markets in the non-life insurance sector in Belgium: (i) accident & health insurance; (ii) workers' compensation; (iii) third party liability ("TPL") motor insurance; (iv) non-TPL motor insurance; (v) insurance against fire and other damage to property; (vi) liability insurance; (vii) legal protection insurance; and (viii) transport insurance.

27. In five of eight affected markets the parties' combined share is below 25%[13], while the parties' combined market share in motor insurance in each of the TPL and non-TPL segments is [20-30]%. In the hypothetical segment for overall motor insurance (comprising both TPL and non- TPL) the parties' combined market share would be [20-30]%. In workers' compensation their combined market share is [30-40]% (See Table 1).

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[11] Market share data for 2005 from the insurance regulator in Luxembourg (Commissariat aux Assurances) are not yet available.

[12] Market share data for 2005 are not yet final but the data already available from *Union professionnelle des entreprises d'assurances belges* (Assuralia) show that market shares remain largely similar to those of 2004.

[13] See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentration between undertakings ("Horizontal Guidelines", OJ C31, 5.2.2004, p5), recital 18. An indication that a concentration is not liable to impede effective competition exists when the market share of the undertakings concerned does not exceed 25% either in the common market or in a substantial part of it.

Table 1: Shares in non-life insurance segments in Belgium in 2004

Competitor	(i) Accident& Health	(ii) Workers' Compensation	(iii) Motor - TPL	(iv) Motor Non-TPL	(v) Fire and other damage	(vi) Liability	(vii) Legal Protection	(viii) Transport
AXA	[10-20]%	[20-30]%	[15-25]%	[15-25]%	[10-20]%	[10-20]%	[10-20]%	[0-10]%
Winterthur	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Combined	**[10-20]%**	**[30-40]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[10-20]%**
Ethias	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[0-10]%	[10-20]%	[0-10]%	[15-25]%
Fortis	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-15]%	[5-15]%	[20-30]%
KBC	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[10-20]%	[0-10]%	[10-20]%	[0-10]%
ING	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Dexia	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	0%
P&V	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Allianz	[0-10]%	0%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
Others	[30-40]%	[20-30]%	[10-20]%	[10-20]%	[15-25]%	[30-40]%	[30-40]%	[30-40]%

Source: Union professionnelle des entreprises d'assurances belges (Assuralia) market statistics and the parties' estimates

28. The present operation gives rise to a modest increase in concentration levels in each of the eight horizontal markets.[14] The non-life insurance market in Belgium is characterised by the presence of several significant competitors such as Fortis, ING, Dexia, KBC and Ethias. The market investigation has shown that although special know-how is necessary for each insurance product, in general there is high supply-side substitutability and therefore, insurers are able to easily switch between the provision of different types of insurance.

29. In addition, barriers to entry into the non-life insurance market in Belgium are not significant, and the cost of setting up a distribution channel is not a barrier to entry given that most non-life insurance products in Belgium are distributed through independent brokers. Participants to the market investigation confirmed the high importance of brokers in Belgium. Moreover, respondents have pointed out that *inter alia* legal and regulatory constraints and the need for a minimum volume of business might be barriers to entry but that these are not important enough to keep new entrants out from the Belgian non-life

[14] According to the parties' estimates, in two of the eight segments, which are (vi) liability insurance (vii) legal protection insurance, the post-merger Herfindahl-Hirschmann Index (HHI) in 2004 is below 1000. According to the Horizontal Guidelines, recital 19 these markets are unlikely to raise competition concerns and do not normally require extensive analysis. In the segments for (i) accident & health insurance, (v) insurance against fire and other damage to property and (viii) transport insurance, the post-merger HHI is between 1000 and 2000 and the delta below 250 and none of the caveat factors seems to apply (Horizontal Guidelines, recital 20). Finally, in the three segments where the parties' combined markets shares are above 25%, i.e. (ii) workers' compensation, (iii) third party liability ("TPL") motor insurance and (iv) non-TPL motor insurance, the post-merger HHI is between 1000 and 2000 and the delta ranges from 320 and 380.

insurance market. This is in line with previous Commission decisions where the Commission considered that the Belgian insurance market is particularly open to entry by the major European insurers.[15]

30. AXA and Winterthur are also present in the outward insurance distribution market via their participation in brokers. In particular Winterthur owns Atelia and has a 60% stake in VJL and AXA owns Viaxis. Each of these three companies, however represent less than 1% of the total insurance broking in Belgium.

31. In addition, coordinated effects between main non-life insurance providers on the Belgian market are very unlikely due to the characteristics of the non-life insurance market in Belgium. As mentioned above, concentration levels on the Belgian non-life insurance market are low, there are a number of big and small competitors, no constraints on the supply side and barriers to entry are not significant. Coordinated behaviour would be also difficult to sustain due to the countervailing power of independent brokers, which control over 70% of the insurance distribution in Belgium.

32. The transaction is very unlikely to give rise to any conglomerate effects, and in particular portfolio effects, that could lead to a significant impediment of competition. The combined AXA and Winterthur product offerings will not be materially different from AXA's current portfolio or a portfolio of any big competitor. The transaction will mainly broaden the geographic scope of AXA's product portfolio by adding the insurance business of Winterthur in those countries where AXA is currently not present or has very small market shares. Moreover, the parties' abilities and incentives to profitably bundle products will be low. Even if AXA were to become a market leader in all relevant markets, there are strong competitors in each market that may counterbalance such efforts to bundle or leverage its power to neighbouring markets. The market investigation confirmed that there are no capacity constraints on the part of the competitors and entry barriers into the Belgian insurance market are low. All the insurance companies are or could potentially be active in all the relevant markets where bundling could occur, therefore a strategy to bundle could be counteracted by offering a similar bundle of insurance products.

33. It follows from the above that the transaction is unlikely to significantly impede effective competition in the non-life insurance sector in general or in any of its segments in Belgium.

VI. CONCLUSION

34. 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
Louis MICHEL
Member of the Commission

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[15] See Case No. COMP/M. 862 AXA/UAP Decision of 20/12/1996, Case No. COMP/M. 1193 AXA/Royal Belge Decision of 12/06/1998.