

***Case No COMP/M.4950 -
AVIVA / BANK
ZACHODNI***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/02/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.02.2008

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

**Subject: Case No COMP/M.4950 - Aviva/ Bank Zachodni
Notification of 20.12.2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 20 December 2007, 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 undertakings Aviva plc ("Aviva", United Kingdom) and Bank Zachodni WBK S.A. ("BZ WBK", Poland), controlled by Allied Irish Banks group ("AIB group", Ireland), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertakings BZ WBK – CU Towarzystwo Ubezpieczeń na Życie S.A. ("JV Life Insurance", Poland) and BZ WBK – CU Towarzystwo Ubezpieczeń Ogólnych S.A. ("JV Non-Life Insurance", Poland) by way of purchase of shares in two newly created companies constituting joint ventures.
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.

(1) THE PARTIES

3. **Aviva** is an international insurance group that is also active in long term savings and fund management. In Poland Aviva is active in the underwriting of life and non-life insurance, and the provision of mutual funds, pension funds and asset management services.
4. **BZ WBK** is a universal bank offering services to personal customers, small and medium enterprises as well as large corporate companies, through its specialised subsidiaries it

¹ OJ L 24, 29.1.2004 p. 1.

also performs a wide range of activities such as mutual funds, brokerage activities, factoring and asset management. BZ WBK, listed on the Warsaw Stock Exchange, is a controlled subsidiary of the AIB group which holds 70.5% of its shares.

5. **AIB group** has two subsidiaries in Poland (i) AIB European Investments Ltd Poland - providing consultancy and research activities related to the AIB group's interest in the Polish market; and (ii) European Convergence Partners sp. zo.o - providing property advisory services. Neither of these subsidiaries is active in any market in which BZ WBK, Aviva or the JVs are active, or in any related market.
6. **JV Life Insurance** will be active in underwriting life insurance for mortgage borrowers and investment products. **JV Non-Life Insurance** will be active in underwriting the following insurances: card theft, enhanced card theft, cover for unemployment and accidental death, travel insurance, home contents and civil liability insurance. Both JVs will partly underwrite the payment protection package for home mortgages and payment protection for cash loan borrowers.
7. In the future the JVs may also develop new products such as unit linked investment products, protection against unemployment, direct personal accident insurance (sold by telephone to bank customers) and direct travel insurance. The JVs will initially distribute these products only through the BZ WBK branch network. It is anticipated that the branch network will remain the most important distribution channel although other channels may be considered in the future.

(2) THE OPERATION

8. By agreements dated 20 November 2007, BZ WBK and Aviva International Insurance Limited, a wholly owned subsidiary of Aviva have agreed to set up two insurance companies in Poland for life assurance and general insurance (JV Life Insurance and JV Non-Life Insurance respectively). It is noted that Polish law requires to run life insurance and non-life insurance separately therefore two JVs were created and each JV will obtain a license from the Polish regulator. The proposed concentration was announced on 21 November 2007.
9. According to the shareholders agreements governing the strategic direction of the JVs Aviva and BZ WBK will each hold an equal number of shares and an equal number of votes at the Shareholders Meeting of the two JVs. The Management Boards of the two companies will be composed of the same people; the Management Board will have 4 members (2 Aviva / 2 BZ WBK) and the Supervisory Board 4 to 6 members (both parties will have max. 3 members and min. 1 member). None of the parties will have a casting vote and the board resolutions shall be approved by a simple majority of votes. Reserved matters such as the preparation/approval of the business plan and changes thereto and investment policy will require unanimity of the members of the Management Board and the Supervisory Board.
10. It is intended that the JVs will be created for an unlimited period, although the Shareholders Agreements are initially concluded for a [10-20] year duration with an automatically extension for further periods of [0-10] years. The JVs shall bear the entire commercial risk for the distribution of their product through BZ WBK's channel and will not have any financial guarantees in place with the parents if they are not successful. The joint ventures will have their own staff, offices and license and will have all the necessary assets in terms of finances, underwriting and marketing of insurance products.

11. Therefore, the transaction leads to the acquisition of joint control by Aviva and BZ WBK over the two newly created JVs and constitutes a concentration within the meaning of Article 3(4) of the Merger Regulation.

(3) COMMUNITY DIMENSION

12. The transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation. The parties have a combined aggregate worldwide turnover in excess of €5,000 million (Aviva € 42,150 million, AIB group € 4,320 million) and a Community-wide turnover in excess of € 250 million (Aviva € 37,561 million, AIB group € 4,209 million). None of the parties achieves more than two thirds of its Community-wide turnover in the same Member State.
13. Based on the above, the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

(4) THE RELEVANT MARKETS

A. Relevant product markets

14. The JVs will operate on the markets for underwriting of life insurance and non-life insurance. Moreover, both Aviva and BZ WBK are active in asset management in Poland.
15. In previous decisions, the Commission has distinguished between the provision of insurance products into non-life insurance, life insurance and reinsurance.
16. The Commission has in a number of decisions acknowledged that there is a significant degree of supply side substitutability in the *non-life insurance* segment, as certain insurance products require a common set of skills and resources including risk management, administration, IT systems and technology². The Commission has found that from a supply side perspective the conditions for insurance of different types of risks are similar and most large insurance companies are active in multiple risk types. This suggests that there is supply side substitutability between the different segments of non-life insurance therefore many different types of non-life insurance could be included in the same product market³.
17. However, this substitutability does not exist from the customer's perspective (demand side) and the market could potentially be divided into as many products as there are different risks⁴. From the demand side, the Commission has considered that there is limited substitution for the insured between the different categories of policy offered⁵.
18. As regards *life insurance*, the Commission has found that life assurance products can in principle be divided into as many product markets as there are different kinds of

² See Case No IV/M.1142 – Commercial Union/General Accident.

³ Case No COMP/M.3035 – Berkshire Hathaway Convergence/Gaum/JV; Case No COMP – M.2676 Sampo/Varma Sampo/If Holding/JV; Case No IV/M.1142 – Commercial Union/General Accident.

⁴ See, for example, Case No COMP/M.759 – Sun Alliance/Royal Insurance and Case No COMP/M.862 – AXA/UAP.

⁵ Case No COMP/M.3035 – Berkshire Hathaway Convergence/Gaum/JV.

risks covered⁶. Their characteristics, premiums and purposes are distinct and there is typically no substitutability for the consumer between the different risks insured⁷. As such the Commission has looked at the various segments of the life insurance market, including life insurance products, investment products and pensions. The Commission has not found it necessary however to determine conclusively whether the market should be subdivided accordingly.

19. The majority of respondents to the market investigation⁸ indicated that life assurance could be further subdivided into a market for life risk products, a market for savings and investment products and a market for supplementary pension products both from a demand and supply side perspective. The market investigation confirmed the Commission's earlier findings that the market could be further separated into individual and group life policies and into unit-linked and non unit-linked policies. However, the exact definition can be left open as no competition concerns arise in any alternative product market definition.
20. The Commission has previously defined asset management as a relevant product market and concluded that it is distinct from life and non-life insurance. It includes the creation, establishment and marketing of retail pooled funds (mutual funds, unit trusts, investment trusts and open-ended investment companies), and the provision of portfolio management services.⁹ The market investigation has confirmed this definition but indicated that the management of pension funds could be a separate market.
21. The Polish pension system has a relatively complex and unique structure, it is based on three pillars, the first two pillars are based upon mandatory contributions from wages while the third pillar is voluntary. The first pillar is based on notional defined contributions and run by the State. The second pillar is run by open pension funds i.e. independent legal entities created and managed by a joint stock company that obtained a permission from the Insurance and Pension Funds Supervisory Commission. These pension funds are subject to quantitative investment restrictions and minimum return guarantees. The third pillar provides an additional layer of pension based on employer established schemes to which employees may make additional contributions to supplement those of the employer. The third pillar can be run by investment funds, broker companies, life insurance companies or banks. The market investigation indicated that obligatory pensions (pillars one and two) and voluntary pensions (pillar three) form two separate product markets. However, the exact definition can be left open as no competition concerns arise in any alternative product market definition.

B. Relevant geographic markets

⁶ Case No COMP/M.2676 – Sampo/Varma Sampo/If Holding/JV.

⁷ Case No COMP/M.862 – AXA/UAP.

⁸ Questionnaires were sent to competitors of the parties, both insurance companies and distributors.

⁹ See Case COMP/M.1453, *AXA/GRE*, 8 April 1998.

22. In past decisions¹⁰, whilst recognising that *insurance markets* are becoming more open to intra-Community competition, the Commission has held that the markets for non-life insurance and life insurance are generally national in scope due to the national distribution channels, the established market structures, fiscal constraints and differing regulatory systems¹¹. Differences in regulatory regimes and legal obligations mean that the conditions of competition are normally appreciably different in the various Member States. In addition, basic terms and conditions of the policies are determined on a national level and competition normally takes place on a nation-wide basis, with national advertising and increasingly centralised sales functions. The market investigation generally confirmed that life insurance in Poland would be mainly national in scope but that the market for saving and investment products could possibly be seen as broader than national from a supply side perspective.
23. In previous decisions the Commission has considered that the market for *asset management* services may be as wide as global in scope given that there is a need to pool risks on an international basis.¹² The present market investigation confirmed the international character of asset management and mutual funds.
24. According to the Parties, the market for Polish *pensions* is undoubtedly a national one, all pensions sold are designed specifically for the Polish market. Polish customers are restricted by regulation from applying their contributions to pension products other than such special authorised Polish pensions. The market investigation has also broadly confirmed the view of the Parties.
25. For the purpose of the current decision, the exact geographic scope can be left open as the proposed transaction does not lead to competition concerns on any alternative market definition.

(5) COMPETITIVE ASSESSMENT

Insurance products

26. The JVs will be active in the underwriting of life and non-life insurance in Poland.
27. Currently Aviva is active in the underwriting of both life and non-life insurance in Poland and will continue to be so following the proposed transaction. Aviva had an estimated market share of [10-20]% in all life insurance in 2006 and less than [<5]% in non-life insurance during the same period (based on gross premiums). BZ WBK's only involvement in the insurance sector is the distribution of insurance products through its bank branches and a small local company. As far as distribution of

¹⁰ See, for example, Cases No COMP/M.759 - Sun Alliance/Royal Insurance and COMP/M.2225 - Fortis/ASR.

¹¹ Whilst not relevant to the markets in the present transaction, the Commission has indicated that some differences in the geographic scope of different types of non-life/general insurance may exist (e.g. in relation to transport liability and marine, aviation and transport (MAT) insurance for large corporate customers and large risk respectively): see Case No COMP/M.3395 - Sampo/If Skadeförsäkring and Case No COMP/M.2676 - Sampo/Sampo-Varma/If Holding/JV.

¹² See Case COMP/M.1886, *CGU/Norwich Union*, 13 April 2004; Case COMP/M.1453, *AXA/GRE*, 8 April 1999, Case COMP/M.1067, *Merrill Lynch/Mercury*, 22 December 1997; Case COMP/M.1043, *BAT/Zurich*, 16 February 1998.

insurance is concerned, BZ WBK represented less than [<5]% of the distribution of both sorts of insurances in 2006.

28. Overall there are a number of national and international players active in the Polish insurance market in both underwriting and distribution. As regards the distribution of insurance products all major banks offer such products via their branch network. This includes PKO BP, the largest Polish banks and Pekao SA (member of the Unicredit group) the second largest Polish bank.

Related markets (Asset management and pension funds)

29. The JVs will not be active in this area but they will buy asset management services from both Aviva and BZ WBK on arm's length terms and on a non-exclusive basis. The parties' estimate their combined market share in Poland in 2006 in asset management to [15-25]% (Aviva [5-10]%, BZ WBK [10-15]%). The market investigation did not contradict these figures. It should be noted that currently all of Aviva's asset management services in Poland are provided internally, managing the assets of the Aviva group companies (insurance companies and its mutual fund company).
30. Both parent companies are also active in the pension funds markets in Poland. Aviva both sells and distributes such funds in Poland. BZ WBK distributes Aviva pension funds on the basis of a distribution agreement. In 2006 Aviva had an estimated market share of [20-30]% on the upstream market (based on assets under management). BZ WBK is not active in the provision of pension funds. On the downstream market for the distribution of pension products Aviva had an estimated market share of [5-15]% in 2006 and BZ WBK less than [<5]%.
31. The market investigation has not provided any indications that the creation of the proposed JV Life Insurance would have as its object or effect the co-ordination of the competitive behaviour of Aviva and BZ WBK. Although Aviva has an important market share for asset management neither Aviva nor BZ WBK have significant market shares in the distribution of pension or related products. It is also unlikely that the creation of the JV Life Insurance would allow them to eliminate competition in any market in respect of a substantial part of the services in question. A number of competitors are active in the provision of pensions in Poland. This includes competitors such as ING ([20-25]% market share), OFE PZU "Zlota Jesien" ([10-15]%) and AIG OFE ([5-10]%). The market investigation also indicated that AXA and AEGON recently entered the Polish pension fund market.
32. Further as regards the vertical relationship, given the limited market shares and in line with the Commission's guidelines on the assessment on non-horizontal mergers, it is unlikely that competition concern would arise in non-horizontal merger where the market shares in the markets concerned are below 30%. This was also confirmed by the market investigation, which did not indicate any competition concerns in relation to either input or customer foreclosure.
33. Overall, both for the insurance products and the related markets, the Commission's market investigation did not provide any indication that the concentration would significantly impede effective competition in the common market, and in particular that there would not be any creation or strengthening of a dominant position due to the proposed transaction.

(6) 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)
Neelie KROES
Member of the Commission