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***Case No COMP/M.6521 - TALANX INTERNATIONAL /
MEIJI YASUDA LIFE INSURANCE / WARTA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/04/2012

***In electronic form on the EUR-Lex website under
document number 32012M6521***



EUROPEAN COMMISSION

Brussels, 04/04/2012
C(2012)2406 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.6521 - Talanx International/ Meiji Yasuda Life Insurance/ Warta
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹**

1. On 01/03/2012, the Commission received a notification pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation")² of a proposed concentration by which Talanx International AG and Meiji Yasuda Life Insurance Company (together also referred as "the Notifying Parties") acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, joint control of the whole of Towarzystwo Ubezpieczeń i Reasekuracji Warta S.A., with the exceptions of its subsidiaries Powszechne Towarzystwo Emerytalne WARTA S.A. and KBC Towarzystwo Funduszy Inwestycyjnych S.A., by way of purchase of shares.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1-22.

1. THE PARTIES

2. **Talanx International AG** ("TINT") is a direct 100% subsidiary of Talanx, which in turn is a 100% subsidiary of the German mutual insurance company HDI V.a.G. Talanx provides life and non-life insurance products and is active in the market for reinsurance. Its activities have a worldwide scope, and it is also active in Poland.
3. **Meiji Yasuda Life Insurance Company** ("MY") is a Japanese insurance company, providing both life and non-life insurance products and to a much lesser extent reinsurance. Outside Japan, MY operates through subsidiaries and affiliates in Asia, Europe and North America. Its activities in the EEA are marginal and related to the reinsurance market. It is not active in Poland, whether by way of subsidiaries or otherwise³.
4. **Towarzystwo Ubezpieczeń i Reasekuracji Warta S.A.** ("Warta") is a Polish insurance company and currently wholly owned subsidiary of KBC Verzekeringen NV, part of the Belgian KBC Group NV ("KBC"). It provides life and non-life insurance products to individual and business customers, with a focus on maritime and aviation insurance products. It also has a limited reinsurance business. KBC was required to sell Warta following the amendment of the restructuring plan that was approved by the Commission on 27 July 2011 in the context of the state aid procedure⁴. Before being acquired by TINT and MY, two of the current subsidiaries of Warta, Powszechnie Towarzystwo Emerytalne WARTA S.A. ("PTE Warta") and KBC Towarzystwo Funduszy Inwestycyjnych S.A. ("KBC TFI"), will be transferred by Warta to another entity belonging to the KBC Group NV. Any references to Warta below should be understood to refer to the acquired entity and therefore exclude PTE Warta and KBC TFI.

2. THE OPERATION

5. The notified transaction consists in the acquisition of joint control over Warta by TINT and MY. It is structured as follows: (i) first TINT will acquire 100% of the shares in Warta from KBC⁵; (ii) after, and subject to completion of this transaction, MY will acquire 30% of the shares in Warta from TINT⁶.

³ On 13 and 18 January 2012, TINT and MY notified to, respectively, Ukraine's Antimonopoly Committee and the Polish Office for Competition and Consumer Protection, a transaction by which they will acquire joint control over the Polish insurance company Towarzystwo Ubezpieczeń Europa S.A. ("TU Europa").

⁴ During the financial crisis, KBC received two recapitalisations of EUR 3.5 billion and an asset relief measure covering a portfolio of Collateralised Debt Obligations with a notional value of EUR 20 billion (the aid element was calculated at EUR 260 million). The restructuring plan of KBC was approved by the Commission on 19 November 2009. The amendment decision of 27 July 2011 covered the exchange of the 40% listing by KBC of its Czech and Hungarian business for the sale of KBC's Polish businesses (Warta and Kredybank).

⁵ Preliminary Agreement for the Sale of Shares in Towarzystwo Ubezpieczeń i Reasekuracji WARTA S.A. dated 19 January 2012, Annex 5_(01)_(01) (a) to the Form CO.

⁶ Preliminary Agreement for the Sale of Shares in Towarzystwo Ubezpieczeń i Reasekuracji WARTA S.A. with Meiji Yasuda dated 19 January 2012, Annex 5_(01)_(02) (a) to the Form CO.

6. As a result of the transaction, TINT and MY will hold, respectively, 70% and 30% of the shares in Warta. [Description of the corporate governance regarding Warta agreed between TINT and MY]⁷.
7. [Description of the deadlock resolution mechanism regarding Warta agreed between TINT and MY]⁸.
8. Therefore, TINT and MY will acquire joint control over Warta and the notified transaction represents a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁹ (TINT: EUR 22,869 million; MY: EUR 35,036 million; Warta: EUR 1,129.84 million). Each of them has an EU-wide turnover in excess of EUR 250 million (TINT: EUR [...] million; MY: EUR [...] million; Warta: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified transaction therefore has an EU dimension.

4. COMPETITIVE ASSESSMENT

4.1. Relevant Markets

10. The notified transaction is assessed against the backdrop of acquisition by TINT and MY of another Polish insurer, TU Europa, primarily active in different fields to those of Warta. The TU Europa acquisition has been notified to the Polish competition authority. The assessment below assumes closing of the TU Europa transaction.
11. Warta is active in the provision of insurance products to individual and business customers in Poland. The Notifying Parties' activities, including those of TU Europa, overlap to some extent with Warta's business.

4.1.1. Product Market definition

12. With regard to the relevant product market, in previous decisions the Commission has distinguished between three broad categories of insurance products: life insurance, non-life insurance and reinsurance¹⁰. Within these categories, insurance products are intended to cover specific risks.

⁷ Shareholders' Agreement relating to Towarzystwo Ubezpieczeń i Reasekuracji WARTA S.A. dated 19 January 2012, Annex 5_(01)_(03) to the Form CO.

⁸ [...].

⁹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

¹⁰ See for example Cases No. COMP/M.4284 - AXA/Winterthur; COMP/M.6053 - CVC/Apollo/Brit Insurance; COMP/M. 6217 Baloise Holding / Natuus / Natuus Life.

13. From a demand side perspective, the Commission in previous decisions has noted that life and non-life insurance products might be sub-divided into as many product markets as there are different kinds of risk covered since the characteristics of individual policies are distinct and the insurance against a given risk is not generally substitutable with insurance against another risk from the consumer's perspective¹¹.
14. From a supply side perspective, however, the Commission has noted that certain types of risks are covered under similar conditions by a large number of companies which are simultaneously active in providing insurance against several kinds of risk, as a result of which it has considered that a broader product market definition might be appropriate¹².
15. The Notifying Parties share the supply side considerations and do not agree with a narrower segmentation of the market according to the risk covered, but have provided market data also at this narrower level.

4.1.1.1. Life insurance

16. With respect to the life insurance market, the Commission has in the past looked separately at (i) pure protection products, (ii) pension products and (iii) investment products¹³, but also considered pension and investment products together, but in a separate class from pure protection products¹⁴. The Commission has, however, so far left the exact product market definition open.
17. The Notifying Parties point out that the classification according to the Polish Insurance Act does not strictly distinguish between protection, pension and insurance products. Rather they point out that, within some classes of insurance different types of products are grouped¹⁵. Therefore the Notifying Parties propose a market segmentation by insurance class. They have nonetheless provided market share data also for the possible market segments of pure risk products and investment/pension products.
18. In any event, the exact product market definition for life insurance in Poland can be left open in this case as the proposed transaction does not raise competition concerns irrespective of the market definition.

¹¹ See for example Cases No. COMP/M.5075 - *Vienna Insurance Group/EBV*; COMP/M.5925 - *Metlife / Alico / Delam*; COMP/M.5083 - *Groupama / OTP Garancia*; COMP/M.5010, *Berkshire Hathaway / Munich RE / GAUM*; COMP/M. 6217 - *Bâloise Holding / Nateus / Nateus Life*.

¹² See for example Cases No. COMP/M.5075 - *Vienna Insurance Group / EBV*; COMP/M.5728 - *Crédit Agricole/Société Générale Asset Management*; COMP/M.5925 - *Metlife / Alico / Delam*; Case COMP/M.4284 - *AXA/Winterthur*; COMP/M. 6217 - *Bâloise Holding / Nateus / Nateus Life*.

¹³ See Case No. COMP/M.4701 *Generali/PPF Insurance business*.

¹⁴ See Cases No. COMP/M.5075 *Vienna Insurance Group/EBV*; COMP/M.5728 *Crédit Agricole/Société Générale Asset Management*; COMP/M.5384 *BNP Paribas / Fortis*.

¹⁵ In particular, the Notifying Parties note that, whilst Class 1 includes both protection products as well as savings-investment insurance products, Class 3 also includes savings-investment products. The difference between Class 1 and Class 3 is the allocation of the risk: while Class 1 products have capital guarantees, the insured bears the risk with regard to Class 3 products. However, customers tend to switch between Class 1 and Class 3 insurance products e.g. as a result of changes to the tax regime.

4.1.1.2.Non-life insurance

19. Within the non-life insurance market, the Commission has generally considered a distinction between the following segments: (i) accident and sickness; (ii) motor vehicle; (iii) property; (iv) marine, aviation and transport ("MAT"); (v) liability; (vi) credit and suretyship and (vii) travel¹⁶. The Notifying Parties agree with this categorization and discuss each of these segments.
20. The discussion below deals with those categories of insurance for which the Notifying Parties consider that an affected market might arise on the basis of the segmentation identified by the Polish Insurance Act. It does not discuss, therefore, general third party liability, legal protection and travel insurance, i.e. Classes 13, 17 and 18.
21. In the past, the Commission has often carried out its initial analysis on the basis of a segmentation by insurance class, following the classification used in the national regulatory framework, which transposes the relevant EU Directive¹⁷. However, where necessary and in particular in relation to large commercial risks, the Commission has also looked at more narrow possible markets¹⁸.

4.1.1.2.1.Accident and sickness insurance (Classes 1 and 2)

22. Whilst the Notifying Parties consider accident and sickness products as part of a single market, the Notifying Parties note that, according to the Polish Insurance Act two classes of insurance are identified, i.e. Class 1 – accident and Class 2 – Sickness. The Notifying Parties provide the market shares also on this basis.
23. In any event, the exact product market definition for accident and sickness insurance products can be left open in this case as the proposed transaction does not raise competition concerns irrespective of the market definition.

4.1.1.2.2.Motor vehicle insurance (Classes 3 and 10)

24. As regards motor vehicle insurance, the Notifying Parties note that this category comprises two classes of insurance, i.e. Class 3 – Overland vehicle hull insurance ("casco"), excluding railway, and Class 10 – Motor vehicle third party liability ("TPL") insurance. Nonetheless, the Notifying Parties argue that the motor vehicle insurance should be considered as a single market without any segmentation, but provide the market shares also for Class 3 and Class 10 separately.
25. Moreover the Notifying Parties claim that no segmentation exists between insurance of large vehicles, such as buses, trucks and off-road vehicles, on the one hand, and automobile and/or small commercial vehicle insurance, on the other hand; indeed, according to them, this segmentation would not correspond to the commercial practice and normally there

¹⁶ See for example Cases No. COMP/M.4284 *AXA/Winterthur*; COMP/M.4701 *Generali/PPF Insurance Business*.

¹⁷ For example with reference to the Italian market, see Cases No. COMP/M.1507 *Aviva/Ubi Vita*; COMP/M.2768 *Generali/Banca Intesa/Intesa Vita*; COMP/M.1712 *Generali/INA*.

¹⁸ For example, in Case No. COMP/M.5010 *Berkshire Hathaway/Munich Re/GAUM*, the Commission looked at aerospace insurance including a possible subsegment for space and satellite risks.

would be no distinction between the two groups in either the business organization, the distribution channels or the legal requirements.

26. In a previous case the Commission considered the motor vehicle insurance market in the Czech Republic. The market investigation, in that case, indicated that this market could be further subdivided into casco insurance and motor TPL insurance: indeed, whilst motor TPL insurance is obligatory for each motor vehicle, the penetration of casco insurance in the Czech Republic was much lower¹⁹. In another case, the Commission determined that in Romania, there were indications that these should be viewed as two separate markets, but ultimately left this question open²⁰.
27. The market investigation, in the present case, sought to determine whether, with reference to the Polish market, Class 3 and Class 10 insurance products constituted separate markets or should be considered as parts of the same market.
28. In relation, at least, to automobiles and small commercial vehicles, it was noted that while certain customers demanded hull insurance in addition to liability insurance, in the vast majority of cases they purchased these two types of insurance from the same provider. It was further noted that almost all providers offered both types of insurance and that there were no barriers for a provider of one type also to enter the other segment. While TPL insurance is provided on terms defined in relevant legislation, there is a greater scope for differentiation of product and service offering in relation to hull insurance. Both types of insurance were addressed to the same customers and, if both were purchased, they were often purchased together at the same time. It was typically more advantageous to do so from the same provider than from different providers, although the latter was also theoretically possible and occasionally encountered.
29. It follows that, in the case of Poland, supply side considerations and product bundling suggest that a single market might be defined for both TPL and hull insurance for automobiles (including two-wheeled vehicles) and small commercial vehicles²¹.
30. The market investigation also looked at whether a distinction between insurance of large vehicles, on the one hand, and automobile and/or small commercial vehicle insurance, on the other hand, was appropriate and whether there was any link between hull and liability insurance and cargo insurance for trucks.
31. A number of elements obtained during the market investigation point to the possibility that such a distinction might indeed be appropriate²². Such insurance typically concerns fleets of vehicles rather than single vehicles, and both TPL and hull insurances are individually priced based on claims history and the nature of the activity carried out. This type of insurance is often obtained by customers through brokers and requires specialized risk assessment. By contrast, automobile insurance is a more commoditized product with much less determination of individual risk. Nonetheless the market investigation was not

¹⁹ Case No. COMP/M.4701 *Generali / PPF Insurance Business*.

²⁰ Case No. COMP/M.5075 *Vienna Insurance Group / EBV*, recital 51.

²¹ Competitors unanimously expressed this view as did the majority of customers.

²² This view was expressed by the majority of both competitors and customers.

conclusive as to whether or not supply side substitutability might result in a single market across both classes of motor vehicle.

32. The market investigation was also inconclusive as to whether a distinction should be drawn between TPL and hull insurance in the case of large vehicles, but indicated that these two types of insurance should in any case be distinguished from cargo insurance which was normally obtained separately.
33. In any case, each of these possible segmentations of the market can be left open for the purposes of the present decision since, regardless of how the market is segmented, serious doubts do not arise as to the compatibility of the notified transaction with the EU internal market.

4.1.1.2.3. Property insurance (Classes 8 and 9)

34. In previous cases, the Commission has generally not distinguished between property insurance on the basis of the origin of the risk²³. The Notifying Parties note that, according to the Polish Insurance Act, two classes of insurance are identified within the broader category "property insurance", i.e. Class 8 – Natural disasters and Class 9 – Other property losses if the causes are not included in Class 8, but agree with the Commission's previous practice which tended to find that a single, overall market existed for property insurance. Nonetheless, the Notifying parties provide the market shares also on the basis of a breakdown between Classes 8 and 9.
35. The exact product market definition for property insurance can be left open in this case as the proposed transaction does not raise competition concerns irrespective of the market definition.

4.1.1.2.4. MAT insurance (Classes 4, 5, 6, 11 and 12)

36. In previous decisions, the Commission has considered MAT insurance as a separate segment within non-life insurance²⁴, but it has also considered whether a further segmentation would have been possible on the basis of the means of transport²⁵.
37. The Notifying Parties agree with the latter segmentation and note that a distinction by means of transport would also be in line with a number of other cases in which the Commission specifically investigated aviation and aerospace risks, or even sub-segments thereof such as, e.g., airline risks, product and airport risks, general aviation risks, banks/non-ownership risks (insurance of legal owners of aircrafts when these are not their users, e.g., banks and leasing companies), satellite and space risks.²⁶ Moreover, in support of this segmentation, the Notifying Parties argue that insurance companies

²³ See for example Case No. COMP/M.5075, *Vienna Insurance Group / EBV*, recital 56

²⁴ See for example Cases No. COMP/M.4284 *AXA/Winterthur*; COMP/M.4701 *Generali/PPF Insurance Business*; COMP/M.5075 *Vienna Insurance Group/EBV*; COMP/M.2676 *Sampo / Varma Sampo / IF Holding / JV*; COMP/M. 6217 *Bâloise Holding / Nateus / Nateus Life*.

²⁵ See for example Case No. COMP/M.2676 *Sampo / Varma Sampo / IF Holding / JV*.

²⁶ See Cases No. COMP/M.5010 *Berkshire Hathaway/Munich Re/GAUM*; COMP/M.1017 *Hannover Re/Skandia*.

that seek to offer coverage for insurance of marine and aviation risks tend to require specific know-how. In this respect, the Notifying Parties provided market share data according to the classes of the Polish Insurance Act, which identifies different classes according to the means of transport (Class 4 – Railway hull insurance; Class 5 – Aviation hull insurance; Class 6 - Marine and inland navigation hull insurance; Class 11 – Aircraft third party liability insurance; and Class 12 Marine and inland third party liability insurance).

38. In the most recent case where the Commission examined whether a segmentation by means of transport would be appropriate, the results of the market investigation were inconclusive²⁷.
39. The market investigation, in the present case, sought to determine whether the MAT insurance market should be further segmented according to the means of transport, and in particular according to the segmentation by classes proposed by the Notifying Parties.
40. In general the market investigation was inconclusive as regards supply side substitution. Whilst certain segments such as rail could be viewed as relatively specialized and characterized by a small number of buyers and providers of insurance, in other cases the distinction between means of transport and between hull and liability insurance appeared less important than a distinction based on the size of the risk. Often the size of the risk was also correlated with the geographical scope of the market, such that, for instance, in the marine segment smaller pleasure vessels, fishing vessels etc. had access to a market defined on national lines, whilst larger vessels could access international markets for insurance. In such cases, whilst there might be fewer domestic providers active in the market, this was usually compensated for by the possibility to purchase internationally.
41. In any case, the market definition for the purposes of the present case can be left open since, regardless of the exact market definition, the proposed transaction does not raise serious doubts as to its compatibility with the internal market.

4.1.1.2.5. Cargo insurance (Class 7)

42. The Notifying Parties also considered a possible separate segment and provided market share data for insurance Class 7, named "Cargo in transit insurance". The Notifying Parties note that while cargo insurance is frequently referred to in publications of the Polish Financial Supervision Authority and the Polish Insurance Chamber as "goods-in-transit insurance" ("GiT"), the risks covered under Class 7 relate to all cargo shipped into, from or within Poland, not just transit cargo in a strict sense, i.e. cargo neither the origin nor the destination of which is located in Poland. Therefore, the Notifying Parties refer to Class 7 in general as "cargo insurance" and not as "goods-in-transit insurance". Moreover, the Notifying Parties consider this market segment as an overall market, without any further segmentation based on the means of transport, the type of cargo, the place of origin or destination, etc.
43. In a previous case, the Commission investigated cargo insurance and whether, within it, it was possible to identify any segmentations. Nonetheless, in that case, the market investigation was inconclusive²⁸.

²⁷ Case No. COMP/M. 6217 *Baloise Holding / Nateus / Nateus Life*.

44. In the present case the market investigation sought to verify whether insurance Class 7 should be further segmented taking into account the means of transport, the type of cargo, and the place of origin or destination (therefore distinguishing national shipments from cross-border and transit shipments).
45. Similar to other classes, the market investigation suggested that, for smaller risks, there were a number of providers of cargo insurance and low barriers to entry. In these instances, the type of cargo and the means of transport were not significant factors impeding supply-side substitutability. Such smaller risks included most purely national shipments. Nonetheless, both international and national shipments of dangerous or perishable cargo and cargo posing a risk to human health or the environment could rely on access to a much smaller pool of insurers able to correctly assess the specialized nature of these risks and with the financial standing to honour claims both for cargo loss but especially for third party and public prejudice.
46. In relation to international shipments, the market investigation found that the Polish section of the shipment would typically ultimately be insured by a Polish insurer, even if subcontracted under a policy covering the shipment also in other countries. Such shipments were governed in Poland by standard "Institute" terms whereas purely domestic shipments were frequently insured on bespoke national terms. In order to be competitive in providing end-to-end insurance, geographic scope of activity and alliances were important so that claims could be settled in different jurisdictions. There were therefore fewer providers of this type of insurance to Polish customers active internationally. For this reason a distinction could also be drawn between international and national shipments.
47. However, the market definition can be left open for the purposes of the present decision since, regardless of the market definition considered, competition concerns do not arise.

4.1.1.2.6. Financial insurance including credit and suretyship insurance (Classes 14 through 16)

48. As regards credit and suretyship insurance, the Commission has in previous cases considered a possible segmentation into the following segments: (i) delcredere insurance, (ii) capital goods insurance, (iii) consumer credit insurance, (iv) fidelity insurance and (v) guarantee insurance²⁹. The Notifying Parties have provided market share data at the narrowest level.
49. The exact product market definition for credit and suretyship insurance can be left open in the present case as the proposed transaction does not raise competition concerns irrespective of the market definition.

4.1.1.3. Reinsurance

50. Reinsurance consists in providing insurance cover to another party (the insurer) for part or all of the liability assumed by it under a policy or policies of insurance which it has issued. It is a means of risk management, to transfer risk from the insurer to the reinsurer.

²⁸ Case No. COMP/M. 6217 *Bâloise Holding / Nateus / Nateus Life*.

²⁹ See for example Cases No. COMP/M.3786 *BP/Euler Hermes/Cosec*, COMP/M.2602 *Gerling/NCM*, COMP/M.4701 *Generali/PPF Insurance Business*.

51. The Commission has in the past distinguished the market for reinsurance from those for life insurance and non-life insurance, but left open whether, within the reinsurance market, a further distinction between life and non-life segments should be considered, and whether, within the non-life segment, a segmentation according to the class of risk covered should be considered³⁰.
52. The Notifying Parties, in the present case, argued for a broad product market definition of reinsurance, distinct from life and non-life insurance, but not itself segmented.
53. The precise market definition can be left open in this case, since the transaction does not raise competition concerns with respect to the reinsurance market, however segmented.

4.1.2. *Geographic Market definition*

4.1.2.1. Life insurance

54. As concerns life insurance, the Commission in its previous decisions has considered the geographic market to be national due to the different states of development of different national markets, differing regulatory frameworks, differing distribution structures and established brands³¹. The Notifying Parties agree with this definition of the market.
55. In any event, the geographic market definition for life insurance can be left open in the present case as the proposed transaction does not raise competition concerns irrespective of the market definition.

4.1.2.2. Non-life insurance

56. With regard to the geographic scope of non-life insurance markets, the Commission has generally considered these markets as national³², with the exception (i) of large commercial risks, such as the insurance of aerospace risks, which is most likely to be at least EEA-wide in scope³³ and (ii), with respect to MAT insurance, the Commission has indicated that the market is likely to be wider than national for large/multinational corporate customers and large risk insurance respectively.³⁴ However, the Commission finally left the exact scope of the geographical market open.
57. The Notifying Parties agree with the Commission's previous findings as regards the geographic market definition and consider that the geographic scope of the affected markets for non-life insurance is national, with the exception of MAT insurance, including cargo insurance, which in their view would be at least EEA-wide, if not international. In this regard they submit that international transport insurances are based

³⁰ See for example Cases No. COMP/M.5925 *MetLife / Alico / Delam*; COMP/M.5083, *Groupama / OTP Garancia*; COMP/M.6053 *CVC / Apollo / Brit Insurance*.

³¹ See Cases No. COMP/M.5075 *Vienna Insurance Group/EBV*; COMP/M.5057 *Aviva/UBI Vita*.

³² See for example Case COMP/M.4284 *AXA/Winterthur*.

³³ See for example Case COMP/M.5010 *Berkshire Hathaway / Munich RE / GAUM*.

³⁴ See for example Case COMP/M.2676 *Sampo / Varma Sampo / If Holding / JV*, COMP/M.4284 *AXA/Winterthur*, COMP/M.1082 - *Allianz / AGF*; COMP/M.3556 *FORTIS / BCP*, COMP/M.5010 *Berkshire Hathaway / Munich RE / GAUM*,

on the international GATT agreement according to which the insurance of drop-shipment is a so called “non-admitted business”; thus insurers do not require a national license in order to insure drop-shipments from one country to another and therefore there would be no significant national differences in this segment. Moreover, in support of a broader geographic market definition, the Notifying Parties submit that insurances in this segment are sold internationally by brokers such as MARSH, AON, Willis, and that insurance companies sell such insurances via centralized offices, e.g. Talanx in Norway, Allianz in London and New York and Axa in Genua.

58. The market investigation in the present case did not fully support the position of the Notifying Parties, since it suggested that the geographic scope of the markets for MAT and cargo insurance was at least EEA-wide in the case of large risks, but nonetheless remained national for smaller risks and, in the case of cargo insurance, for most purely domestic shipments.
59. In relation to motor insurance for large commercial vehicles, if this were to be considered a separate market, the market investigation suggested that it would nonetheless also be national in scope: indeed whilst a insurance policy could cover more than one country, owners as regards third party liability are obliged to insure their vehicles in the country of registration of the vehicle and within its legal regime. Also as regards hull insurance, domestic claim-handling facilities are required.
60. In any event, the exact scope of the relevant geographic market for each of the classes of non-life insurance considered can be left open for the purposes of the present decision since the notified transaction does not lead to serious doubts as to its compatibility with the internal market, whether or not each of the markets is national or EEA-wide (or wider) in scope.

4.1.2.3. Reinsurance

61. As regards reinsurance, the Commission has previously defined this market as global, due to the need to pool risks on a worldwide basis³⁵. The Notifying Parties agree with this definition.
62. The geographic scope of the reinsurance market can be left open for the purposes of the present decision since the notified transaction does not raise significant doubts as to its compatibility with the internal market regardless of whether the reinsurance market were to be considered at an EEA or global level.

4.2. Competitive Assessment

63. The Notifying Parties' activities overlap horizontally, resulting in certain possible affected markets with respect to life and non-life insurance. Regarding reinsurance, whilst the transaction will not result in a horizontally affected market, in view of the vertical relationship with life and non-life insurance products, it would on certain possible market definitions be vertically affected by the notified transaction.

³⁵ See Cases No. COMP/M.5925 *MetLife / Alico / Delam*; COMP/M.5083, *Groupama / OTP Garancia*; COMP/M.4059 *Swiss Re / GE Insurance Solutions*; COMP/M.6053 *CVC / Apollo / Brit Insurance*

4.2.1. *Life insurance*

64. As regards life insurance, the Notifying Parties' combined market share would be below 15% on the basis of the classification under the Polish insurance act with three exceptions: (i) the overall market for the provision of life insurance, where the Notifying Parties would have achieved a combined market share of [10-20]% in 2011; (ii) Class 1, which combines risk and savings products, but with a capital guarantee, where the Notifying Parties' share in 2011 would be [10-20]%; and (iii) Class 3 – Life insurance linked to capital (where the insured bears the investment risk), where the estimated combined share in 2011 would be [20-30]%. If a distinction between pure risk products and investment/pension products were considered, the combined market share would be above 15% ([20-30]% in 2011 according to the Notifying Parties' estimates) in the market segment for investment/pension products.
65. As concerns the overall market for the provision of life insurance, given the number and strength of the other competitors in the possible overall market for the provision of life insurance products, particularly the market leader PZU Życie S.A., which achieved a market share of above 30% in 2011, the transaction is unlikely at this stage to raise serious doubts as to its compatibility with the internal market: the limited Δ HHI ([100-200] points) and the combined market share below [20-30]% would put the transaction within the safe harbor provided for in the Horizontal Mergers Guidelines if the market were to be defined at this level³⁶. Similarly as concerns pure risk based products (a subset of Class 1), the Notifying Parties' combined market share would be below the level at which an affected market would arise.
66. The Notifying Parties would achieve a combined market share slightly above [20-30]% both in the possible market for investment/pension products and for Class 3 life insurance products. Their combined market share would remain, however, modest. In addition, these segments of the market are characterized by a number of other strong competitors. No concerns in relation to this market were raised during the procedure. It can therefore be considered that the proposed transaction does not give rise to serious doubts as to its compatibility with the EU internal market as regards investment-oriented life insurance products in Poland.

4.2.2. *Non-life insurance*

67. As concerns non-life insurance, the Notifying Parties' combined market share would be below [10-20]% under any possible market definition with the following exceptions: (i) a possible market for motor TPL insurance only, possibly divided further between general automobile and large commercial vehicle insurances (Class 10); (ii) property insurance (Classes 8 and 9); (iii) credit insurance (Classes 14 and 15³⁷); and (iv) MAT insurance.

³⁶ The delta measures changes in the HHI and is a useful proxy for the change in concentration directly brought about by the merger. The Commission is unlikely to identify horizontal competition concerns in a merger with a post merger HHI between 1000 and 2000 and a delta below 200, see Guidelines on the assessment of horizontal mergers under the council regulation on the control of concentrations between undertakings, in OJ 5.2.2004 C 31/5, para. 20.

³⁷ In Class 17, the combined market share is [60-70]%, almost entirely due to TU Europa, but there is no increase as a result of the merger.

4.2.2.1. Motor third party liability insurance

68. In Class 10 as a whole the Notifying Parties achieve a combined market share of [10-20]%.
69. As concerns the market for motor TPL insurance as a whole, given the relatively moderate combined market share, the presence of a number of other players including the market leader (PZU SA, [30-40]%) and the limited Δ HHI ([100-200] points), the transaction is unlikely to raise serious doubts as to its compatibility with the internal market. No concerns in this regard were raised by the market investigation or during the procedure.
70. If separate markets for automobile and large commercial vehicles were to be identified, the Notifying Parties indicate that their combined market share and those of their competitors in each of these segments would be proportional to those in the overall market for motor third party liability insurance (and for motor insurance as a whole) since there are no significant players in Poland present only in one or other of these segments or with a special advantage or focus thereon.
71. It follows that the transaction does not raise serious doubts as to its compatibility with the internal market, even when hypothetical separate segments for automobile and large commercial vehicle TPL insurance were to be considered.

4.2.2.2. Property insurance

72. In Classes 8 and 9 considered together, the Notifying Parties achieve a combined market share [10-20] %; if Class 8 were considered as a separate market, the combined market share in 2011 would have amounted to [10-20]%.
73. The Notifying Parties therefore would have a relatively modest market share post-merger and continue to face numerous qualified competitors, including PZU ([10-20]%), Ergo Hestia ([5-10]%), Allianz Polska ([5-10]%), Generali ([5-10]%) and Interrisk ([0-5]%), in what remains a rather fragmented market.
74. It follows that the notified transaction does not raise serious doubts as to its compatibility with the internal market on the Polish market for property insurance, whether or not divided between Classes 8 and 9.

4.2.2.3. Financial insurances

75. The Notifying Parties would achieve a Class 14 combined market share of [20-30]% and Class 15 combined market share of [10-20]%.
76. In Class 14, the increment brought by Warta is negligible ([0-5]%) and the whole market share derives from TU Europa's business. In Class 15 the increment remains limited at [0-5]%. It follows that on any definition of the relevant market, the Notifying Parties would retain a relatively modest market share and continue to face a number of effective competitors.
77. Consequently, the notified transaction does not raise serious doubts as to its compatibility with the internal market on the Polish market for credit insurance and suretyship, whether or not considered separately or together.

4.2.2.4. MAT insurance

78. As concerns MAT insurance markets, if the geographic scope of these markets were to be wider than national, according to the data provided by the Notifying Parties, no affected market would arise at EEA or global level from the transaction on any segmentation by type of insurance.
79. The combined market share under possible sub-segments of MAT insurance in Poland is shown in Table 1 below (the share of MY other than via TU Europa is zero in all cases):

Class	Talanx	WARTA	Total
4	[0-5]%	[30-40]%	[30-40]%
5	[0-5]%	[30-40]%	[30-40]%
11	[0-5]%	[50-60]%	[50-60]%
5 + 11	[0-5]%	[40-50]%	[40-50]%
6	[0-5]%	[80-90]%	[80-90]%
12	[0-5]%	[90-100]%	[90-100]%
6 + 12	[0-5]%	[80-90]%	[80-90]%
4 + 5 + 6 + 11 + 12	[0-5]%	[60-70]%	[60-70]%

Source: Form CO

80. It follows that if any of these markets were to be considered national in scope, the Notifying Parties' combined market share would be above [30-40]% in each insurance class. Nonetheless, the increment following the merger is negligible and always well below [0-5]% (except [0-5]% for Class 11). The notified transaction therefore results only in the elimination of a competitor which is at best marginal and therefore leaves the market structure essentially unchanged.

4.2.2.5. Cargo insurance

81. As concerns Class 7 overall, at national level the combined market share would amount to [30-40]%³⁸, with an increment brought by Warta of [10-20]%. Nonetheless the market is characterised by the presence of other strong players (PZU: [20-30]%; Ergo Hestia: [10-20]%; Allianz: [10-20]%).

³⁸ Of which [0-5]% via joint control with MY over TU Europa.

82. If the cargo insurance market were to be segmented between purely domestic shipments and international shipments, the market investigation indicated that certain smaller insurers active on the domestic segment would not be active on the international segment. As a result of this, the combined share of the merged entity on the international segment could be expected to be somewhat higher than on the solely domestic segment. Nonetheless, all the larger players are present in both segments and the market investigation confirmed that the international segment would also remain competitive, with no competition concerns raised.
83. An analogous reasoning applies in relation to a segmentation based on risk, where certain smaller insurers would either not be able to price the insurance risk of particularly dangerous cargos or would be financially unable to insure such risk. Nonetheless, all the main players would remain present and are able to price all types of risk in this segment such that the merged entity would continue to face competition from a number of viable competitors. Once again, no concerns were raised by the market investigation or during the procedure.
84. In both of the latter cases, the possibility that the relevant market might in part be wider than national in scope, and not captured in the available statistics, further acts to attenuate any possible competition concerns since, on such a wider market, the share of Warta, which achieves most of its business with Polish clients, would be diluted further whilst additional providers are present who could enter these segments of the Polish market (and indeed might already service certain clients in Poland without this being picked up in the available statistics).
85. It follows that serious doubts do not arise as to the compatibility of the notified transaction with the EU internal market as regards cargo insurance, however this market might be further subdivided.

4.2.3. *Reinsurance*

86. The Notifying Parties' combined market share in the worldwide market for reinsurance amounts to [10-20]%, therefore this market would not be horizontally affected as a result of the transaction. Nonetheless in view of the vertical relationship with life and non-life insurance products and given that the Notifying Parties' combined market share downstream would be above 25% in a certain number of market segments, the reinsurance market could be vertically affected.
87. Nonetheless, given the absence of horizontal concerns in all the markets where the combined market share would be above 25%, concerns can be excluded also with respect to the vertical relationship. Indeed the presence of Warta in the reinsurance market is extremely marginal (less than [0-5]% at worldwide level). The presence of MY is slightly more significant, at [0-5]%, but still remains very limited. It follows that cooperative effects in the sense of Article 2(4) of the Merger Regulation between Talanx and MY due to the acquisition of joint control over Warta can also be excluded.

5. **RELATIONSHIP WITH STATE AID RULES**

88. Based on the information available, the Commission has no indication that KBC is in breach of any of its obligations regarding the sale of Warta within the framework of the State aid procedure. The present decision under the EU Merger Regulation in no way prejudices, however, the ongoing monitoring of KBC's implementation of its obligations in line with the above decision of the Commission of 27 July 2011.

6. CONCLUSION

89. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission
(signed)
Joaquín ALMUNIA
Vice-President