EN

Case No COMP/M.7204 - ROTHESAY LIFE / METLIFE ASSURANCE

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 29/04/2014

In electronic form on the EUR-Lex website under document number 32014M7204

Office for Publications of the European Union
L-2985 Luxembourg

EUROPEAN COMMISSION

Brussels, 29.4.2014
C(2014) 2943 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE

Public Version

To the notifying party:

Dear Sir/Madam,

Subject: Case M.7204 – Rothesay Life / MetLife Assurance
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

(1) On 21 March 2014**,** the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Rothesay Life Limited ("Rothesay", the United Kingdom), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole MetLife Assurance Limited ("MAL", the United Kingdom), referred to as "the Parties", by way of purchase of shares[2] ("the Transaction"). Rothesay is designated hereinafter as the "Notifying Party".

1. THE PARTIES

(2) Rothesay is an insurance company offering de-risking solutions to Trustees and sponsoring employers of corporate Defined Benefit Pension Schemes (hereinafter "DBPS"). It offers Bulk Annuity contracts and Longevity Swaps in the United Kingdom.

---

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 Publication in the Official Journal of the European Union No C 089, 28.03.2014 p. 8.

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

Rothesay is owned, indirectly, 29.9% by Blackstone Group L.P, 38% by Goldman Sachs Group Inc, 25% by Cambourne and 7% by MassMutual.[3]

(3) MAL is an insurance company offering de-risking solutions to Trustees and sponsoring employers of corporate DBPS. MAL's business focuses mainly on Bulk Annuity contracts in the United Kingdom and Ireland, thus the company does not offer any Longevity Swaps. The entire issued share capital of MAL is currently owned by MetLife European Holdings LLC.

2. THE OPERATION AND THE CONCENTRATION

(4) On 14 February 2014, Rothesay and MetLife European Holding LLC signed a Share Purchase Agreement based on which Rothesay acquires the entire share capital and thus sole control of MAL. Therefore the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] (Rothesay[5]: EUR […] million, MAL: EUR […] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Rothesay: EUR […] million, MAL: 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 operation, therefore, has an EU dimension.

4. COMPETITIVE ASSESSMENT

(6) Both Rothesay and MAL offer de-risking solutions for mitigating the risk inherent in the management of DBPS. Within this domain, Rothesay is active only in the UK where it offers Bulk Annuity contracts and Longevity Swaps. MAL offers only Bulk Annuity contracts in the UK and Ireland.

(7) The Transaction creates horizontal overlaps (resulting in affected markets) regarding the market for de-risking transactions, comprising Bulk Annuity contracts (which can be further segmented into Buy-in and Buy-out contracts) and Longevity Swaps.

4.1. Market definition

(8) Pension schemes in the UK and Ireland are presided by a board of Trustees who are responsible for managing the assets and liabilities of the pension schemes. DBPS guarantee a certain retirement benefit linked to the employees' salary before retirement.[6]

---

3 The Commission authorised the acquisition of joint control by Goldman Sachs and Blackstone of Rothesay in case COMP/M.7044 — Blackstone/Goldman Sachs/Rothesay. Cambourne's stake in the share capital of Rothesay is not controlling, since its voting rights are limited regarding the adoption of strategic decisions.

4 Turnover calculated in accordance with Article 5 of the Merger Regulation.

5 Including Blackstone's and Goldman Sachs' turnover.

6 For instance in DBPS the benefit can be defined as 66% of the employee's final salary upon retirement for the remainder of his or her life. The actual amount is defined upon retirement.

In these schemes the risk is borne by the corporate sponsor (sponsoring employer) or Trustees managing the pension scheme.[7]

(9) DBPS involve inherent risks[8] which the Trustees and their corporate sponsors may seek to decrease through de-risking transactions. As such, de-risking transactions are a type of insurance allowing the transfer of some or all of the risks inherent in to the pension scheme to a third party (the issuer[9]) mainly in two ways: through (i) Longevity Swaps, which consists in insuring or hedging the longevity risk (for example, policyholders living longer than expected) or (ii) Bulk Annuity contracts, which consists in transferring to the insurer the complete responsibility, and hence the entire risk, for meeting the benefit payments to the members of the scheme.

Table 1. Description of de-risking transactions

De-risking transactions	**Type of risk insured**	**Responsibility towards the pension schemes members**
Bulk Annuity contracts	All risks inherent to the pension scheme are covered	Transfer to the insurer of the risk of not meeting benefit payments to the member of the pension scheme
Buy-in	A policy covering all risks for a single up-front premium	The insurer bears all risk and pays the benefit payments to the members of the scheme, while the Trustee retains an administrative role and the relationship with the members of the scheme. The Trustee bears ultimately the liability for the benefit payments and thus also bears the residual counterparty risk that the insurer may not fulfil its obligations under the Buy-in transaction. Buy-in transactions are held as an asset of the pension scheme.
Buy-out	A policy covering all risks for a single up-front premium	The relationship between the members of the scheme and the Trustees is fully transferred to the insurer. The Trustees no longer bear the liability for managing the pension scheme and meeting the benefit payments to the members of the pension scheme.
Longevity swaps	Risk that the members live longer than expected	The Trustee retains control over the assets of the pension scheme and remains responsible for benefit payments to the members of the pension scheme.

(10) In addition to de-risking transactions, the Trustees and their corporate sponsors can also mitigate the risk by using so called Alternative Trustee Options (hereinafter "ATOs").

---

7 In contrast, in Defined Contribution Pension Schemes ("DCPS") the pension plan sponsor (employer or Trustee) does not guarantee in advance any particular amount of retirement benefit payments. In these schemes the retirement payments are determined by the investment performance of the funds accumulated in the scheme. Thus the employee bears the underlying risk and therefore de-risking transactions are not relevant to DCPS.

8 The main types of risks carried by the corporate sponsor and the Trustees managing DBPS are: (i) investment risk (that an investment will underperform), (ii) inflation risk (that inflation will be higher than expected), (iii) interest rate risk (affecting the value of assets and pension scheme deficits), (iv) longevity risk (policyholders living longer than expected) and (v) demographic risk (the likelihood that upon death the member of a pension scheme leaves a spouse). Ultimately the risk consists in whether the DBPS will manage to meet the payment commitments it has undertaken and fixed in advance *vis-a-vis* its members.

9 The issuer is usually an insurance company.

ATOs do not involve the transfer of risk to a third party but rather include activities such as changing the investment strategy of the pension scheme or improving the scheme-funding position, e.g. by increasing contributions from employees.

4.1.1. Product market definition

(11) Based on the Notifying Party's submissions and the results of the market investigation, the Commission will examine, first, whether the market for de-risking activities includes ATOs, second, whether it is appropriate to subdivide the market for de-risking transactions in Bulk Annuity contracts and Longevity Swaps, and third, the possible further subdivision of Bulk Annuity contracts in Buy-in and Buy-out transactions.

(12) In a previous decision[10] the Commission analysed the market for de-risking transactions by reference to the life insurance market and has left open the question whether de-risking transactions such as Buy-in, Buy-out and Longevity Swaps are part of an overall market for de-risking of DBPS.

i. Whether the market for de-risking transactions includes ATOs

(13) The Notifying Party submits that de-risking transactions (that is, Bulk Annuity contracts and Longevity Swaps) are part of an overall market for de-risking of DBPS which cover also ATOs. The Notifying Party does not provide market data for a market comprising also ATOs as there are no objective data available to quantify ATOs. In any event, the Notifying Party submits that it is not necessary to decide whether ATOs form part of the relevant market for the purpose of assessing the proposed Transaction, as it would not significantly impede effective competition even if the market were defined more narrowly.

(14) The Commission considers that ATOs cannot be considered as part of the same relevant market as other de-risking transactions such as Bulk Annuity contracts and Longevity Swaps. Indeed, ATOs are actions undertaken by the Trustees to potentially mitigate the risk they incur, without however transferring the risk of the pension liabilities to a third party. Conversely, the main feature of de-risking transactions is exactly to transfer the risk from the pension fund managed by the Trustees to a third party.

(15) Therefore, there is no substitutability (neither supply, nor demand-side) between de-risking transactions and ATOs. Rather, Trustees are faced with the choice of either transferring the risk to a third party, in which case they will enter in Bulk Annuity Contracts or Longevity Swap, or not, in which case they will retain the risk and mitigate it to the best of their capacities.

(16) Consequently, Commission concludes that de-risking transactions such as Bulk Annuity contracts and Longevity Swaps do not form part of the same relevant market as ATOs.

---

10 Case No COMP/M.7044 – *Blackstone/Cambourne/Goldman Sachs/Rothesay*, para.18.

ii. *Market for de-risking transactions and segmentation between Bulk Annuity contracts and Longevity Swaps*

(17) The Notifying Party submits that both Bulk Annuity contracts and Longevity Swaps address the same customer need, namely reducing the risks related to DBPS, and therefore it is appropriate to consider them as forming part of an overall market for de-risking transactions. However, the Notifying Party also admits that Longevity Swaps transfer a smaller risk element than Bulk Annuities. The Notifying Party further points out that there is an increasing trend in the market to offer hybrid solutions, whereby within the same transaction the customer would de-risk certain liabilities with a Longevity Swap and other liabilities with a Bulk Annuity contract.

(18) The information the Commission obtained from its market investigation militates in favour of the view that Bulk Annuity contracts and Longevity Swaps constitute distinct product markets. Competitors revealed that they do not necessarily offer both products and they are rather specialised in one of them.[11] As to the demand side, the vast majority of the customers consider that Bulk Annuity contracts and Longevity Swaps have different products characteristics and cannot be regarded as substitutable products. In particular, while Bulk Annuity contracts transfer all risk to the issuer, Longevity Swaps transfer only the longevity risk. Moreover, Bulk Annuity contracts involve a transfer of the underlying assets of the scheme to the issuer while in Longevity Swaps asset remains in the scheme. Contrary to the Notifying Party's claim, almost no Trustee or Trustee consultant indicated that they used hybrid solutions involving both Longevity Swaps and Bulk Annuity contracts within the same transaction.[12]

(19) Consequently, the Commission considers that Bulk Annuity contracts and Longevity Swaps constitute separate product markets.

iii. Possible segmentation of the market for Bulk Annuity Contracts at Buy-in and Buy-out transactions

(20) As regards a possible further subdivision of the market for Bulk Annuity contracts into Buy-in and Buy-out transactions, the Notifying Party considers that both types of transactions are fully substitutable from a supply side point of view. This is because for the insurers of de-risking transactions it is possible to enter into either transaction without any significant adjustment. The only difference for the insurer are the increased administration requirements that result from the direct relationship the insurer has with pension scheme members in case of a Buy-out transaction. The Notifying Party also points out that all providers of Bulk Annuity contracts are able to perform both Buy-in and Buy-out transactions and to its knowledge there was no provider in the past five years that performed Buy-in but no Buy-out transactions.

(21) The information the Commission obtained in the context of its market investigation indicated that Buy-in and Buy-out Bulk transactions have some distinctive features; nevertheless the overall result was inconclusive. Specifically, customers indicated that Buy-in and Buy out transactions are very similar regarding the management of assets. However, in Buy-in transactions the Trustees retain the overall liability and the obligation to administer the payments to the members of the scheme and Buy-in

11 Non-confidential reply to questions 5 and 6 of questionnaire M.7204 - Questionnaire to Competitors.

12 Non-confidential reply to questions 3 and 4 of questionnaire M.7204 - Questionnaire to Customers.

transactions are held by the schemes as an asset. In contrast, Buy-out transactions fully transfer the risk on the issuer and discharge the Trustee of any liability.

(22) The vast majority of competitors consider that Buy-in and Buy-out transactions are substitutable. They also largely confirmed the Notifying Party's argument that insurers active in the field of Bulk Annuity contracts typically offer both Buy-in and Buy-out solutions to their customers.[13] Some competitors indicated that Buy-out transactions tend to be more expensive, in some cases prohibitively more expensive. From the customers' point of view, the market investigation was inconclusive.[14] Almost half of the customers responding to the market investigation indicated that they use both Buy-in and Buy-out transactions in order to decrease the risk exposure generated by the assets and liabilities of the pension scheme under their management.

(23) However, the precise scope of product market definition can be left open, since the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any alternative market definition.

4.1.2. Geographic market definition

(24) The Notifying Party submits that the market for de-risking of DBPS has characteristics in common with the market for pension products and that relevant geographic market is therefore national in scope. The Notifying Party argues that insurance companies such as Rothesay and MAL and their competitors are subject to national regulation and are supervised by the national regulators in the EU countries, and specifically in the UK and Ireland. For this reason the Notifying Party does not believe that the UK and Ireland should be considered as a cluster but in any event submits market data also for the hypothetical cluster.

(25) The Commission has previously considered the markets for provision of pension products to be national in scope due to: i) the existence of national distribution channels, ii) different regulatory frameworks and fiscal regimes, and iii) different established brands. However, the Commission ultimately left open the exact geographic market definition.[15]

(26) The information obtained by the Commission during its market investigation supported the Notifying Party's view that the market for Bulk Annuity contracts (including its potential segments of Buy-in and Buy-out transactions) is national in scope, i.e. limited to the territory of the UK. Only one competitor indicated that a cluster comprising the UK and Ireland would be the appropriate geographic scope. A very large majority of the customers confirmed that they select their provider of Bulk Annuity contracts at national level.[16] Customers emphasised the fact that pension scheme in the UK is country specific in terms of regulation and pension provision which leads to different product demands compared with Ireland or other Member States. Insurers providing Bulk

---

13 Non-confidential reply to questions 9 and 10 of questionnaire M.7204 – Questionnaire Competitors.

14 Non-confidential reply to questions 5 and 6 of questionnaire M.7204 - Questionnaire to Customers.

15 Case No COMP/M.6883 – *Canada Life/Irish Life*, para. 19; Case No COMP.M.6521 – *Talanx International/Meiji Yasuda Life Insurance/Warta*, para. 54; Case No COMP/M.4701 – *Generali/PPF Insurance Business*, para. 26.

16 Non-confidential reply to question 8 of questionnaire M.7204 - Questionnaire to Customers.

Annuity contracts need to have the necessary approval to write pension business in the UK.

(27) Customers also underlined the need for local presence and expertise since the trustee needs to have confidence in the capability of the insurer to handle the contract in the context of the UK pension regulatory framework.

(28) Consequently, the Commission considers that the market for Bulk Annuity contracts (including its potential segments of Buy-in and Buy-out transactions) should be regarded as national in scope.

4.2. Competitive assessment

(29) The Transaction creates horizontal overlaps in the market for Bulk Annuity contracts and its Buy-in and Buy-out segments give rise to affected markets in the UK. Parties' activities do not overlap with regard to Longevity Swaps.

4.2.1. Overall market for Bulk Annuity contracts

(30) The Parties' combined market shares in the market for Bulk Annuity contracts in the UK amounted to [20-30]% in value in 2013 (with an increment of only [0-5]% brought by MAL). In this market the Parties face strong competition from the Pension Insurance Corporation ("PIC") which had a market share of [50-60]% in value in 2013 (up from [30-40]% in 2012 and [10-20]% in 2011). The other players in the UK market for Bulk Annuity contracts are Legal & General ([10-20]%), Aviva ([5-10]%) and Prudential ([0-5]%).

Table 2. Market share information for Bulk Annuity contracts (Buy-in and Buy-out) – UK.

Year	2010	2011	2012	2013
Rothesay	[20-30]%	[10-20]%	[20-30]%	[20-30]%
MAL	[5-10]%	[10-20]%	[5-10]%	[0-5]%
Combined	[30-40]%	[30-40]%	[20-30]%	[20-30]%
Pension Insurance Corporation	[10-20]%	[10-20]%	[30-40]%	[50-60]%
Legal & General	[10-20]%	[20-30]%	[20-30]%	[10-20]%

Source: Hyman & Robertson.

(31) The available market data demonstrates high market share volatility in the market for Bulk Annuity contracts in the UK. The Notifying Party submits that the volatility is a result of the bidding nature of the market, the intense competition between issuers for every transaction and because winning even one bid for a large value contract can

heavily influence the issuer's market share.[17] Indeed, Rothesay concluded […] in 2010, […] in each of 2011 and 2012, and […] in 2013.

(32) The Notifying Party, further, points out that the dynamic nature of the market for Bulk Annuity contracts is also demonstrated by the recent evolution of PIC's market share, which grew from [10-20]% in 2011 to approximately [50-60]% in 2013. Furthermore, the Notifying Party submits that entry barriers are low. Indeed, both Parties entered the market in 2007 and in 2012 there were two new entrants in the UK, namely Just Retirement and Partnership.

(33) In addition, the Notifying Party submits that the Parties are not close competitors since Rothesay focuses on high value transactions while MAL is active in smaller sized transactions.[18] The Notifying Party, moreover, points out that MAL's market share has decreased in 2013 to only [0-5]% and thus does not present a significant constraint on Rothesay. The information obtained by the Commission in its market investigation indicated that indeed MAL has in practice almost exited the market given its uncompetitive prices and that in any event it is not active in the market for large Bulk Annuity contacts.

(34) The information the Commission obtained in the context of its market investigation largely confirmed the Notifying Party's submissions. In fact, customers select their insurer following a tender procedure and approximately 15 to 20 tenders take place every year.[19] In addition, Rothesay and MAL are not perceived as close competitors. Rothesay's closest competitor appears to be Legal & General. The acquisition of MAL does not remove a strong competitive source as it is not perceived by customers as being particularly aggressive or innovative competitor. Customers also confirmed that the market for Bulk Annuity contracts has been very dynamic over the last three years, as two companies, Partnership and Just Retirement, entered and other competitors, including Lucida, Credit Suisse and Paternoster, left the market. Lastly, customers were positive about the competitive impact of the Transaction and mentioned that there will remain a sufficient number of insurers, thereby providing customers with choice.[20]

(35) Certain competitors consider that the Transaction would reduce the number of players competing for smaller Bulk Annuity contracts (less than £300 million). However, they also confirmed that MAL has not been writing significant volumes of business recently and there is still a sufficient number of providers in the market.[21]

---

17 Based on the *Hyman and Roberson* Market Reports (http://www.hymans.co.uk/knowledge-centre/surveys-reports.aspx) Notifying Party indicates that in 2012 six deals accounted for nearly 50% of the total value of the market.

18 This is confirmed by the *Hyman and Roberson* Market Report Q4 2012 showing for instance that in 2012 MAL concluded 18 Bulk Annuity transactions at an average value of £19m while Rothesay had three transactions at an average value of £342m. The different focus of the Parties in terms of value of transactions has also been confirmed by one of the respondents to the market investigation.

19 Non-confidential reply to questions 11 and 11.1 of questionnaire M.7204 - Questionnaire to Customers.

20 Non-confidential reply to questions 13-20 of questionnaire M.7204 - Questionnaire to Customers.

21 Non-confidential reply to question 19 of questionnaire M.7204 – Questionnaire Competitors.

(36) Consequently, it can be concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market in the overall market for Bulk Annuity contracts in the UK.

4.2.2. Buy-in and Buy-out segments of Bulk Annuity contracts

(37) The Parties' market shares in the Buy-in and Buy-out segments of the market for Bulk Annuity contracts diverge significantly from their market shares in the overall Bulk Annuity contracts market. Specifically, the Parties' combined market shares for Buy-in transactions in 2013 in the UK reached [40-50]% in value with a minor increment of less than [0-5]% brought by MAL. On the market for Buy-out transactions the Parties' combined market shares in the UK remained very modest in 2013 at [10-20]% with an increment of [0-5]%; however, in 2012 and 2011 their market shares were significant at [50-60]% and [40-50]% respectively. Nevertheless, the Parties' market shares for Buy-out transaction in the UK for the period from 2010 to 2013 taken together would amount to approximately [20-30]%. The Parties' market shares for the years 2010-2013 are illustrated in tables 3 and 4 below.

Table 3. Market share information for Buy-in transactions – UK.

Year	2010	2011	2012	2013
Rothesay	[30-40]%	[5-10]%	[5-10]%	[40-50]%
MAL	[5-10]%	[10-20]%	[0-5]%	[0-5]%
Combined	[30-40]%	[10-20]%	[5-10]%	[40-50]%

Source: Form CO.

Table 4. Market share information for Buy-out transactions – UK.

Year	2010	2011	2012	2013
Rothesay	[5-10]%	[30-40]%	[40-50]%	[10-20]%
MAL	[5-10]%	[10-20]%	[10-20]%	[0-5]%
Combined	[10-20]%	[40-50]%	[50-60]%	[10-20]%

Source: Form CO.

(38) The Notifying Party's arguments related to the overall market for Bulk Annuity contracts also apply to each of the two sub-segments for Buy-in and Buy-out transactions. Indeed, the market share data show that each of the sub-segments is more volatile than the overall market for Bulk Annuity contracts. The Notifying Party submits in this regard that Rothesay concluded only […] Buy-in […] in each of 2010, 2011 and 2012, and […] in 2013. Similarly, for Buy-out transactions Rothesay concluded […] in each of 2010 and 2011, […] in 2012 and […] in 2013.

(39) Additionally, in the market for Buy-in transactions MAL's presence, and hence the market share increment brought about by the Transaction, is particularly small at less than [0-5]%.

(40) The information obtained by the Commission in the course of its market investigation supports the view that there are no significant barriers to extending an offering of Buy-out transactions for an insurer active only in Buy-in or *vice-versa*.[22] Therefore, competitors and new entrants would be able to react timely to hypothetical unilateral price increase by Rothesay in both the market for Buy-in or Buy-out transactions. In addition, as mentioned in paragraph 31, Just Retirement and Partnership are new entrants offering both Buy-in and Buy-out transactions.

(41) Consequently, it can be concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market even at narrower level, regarding the Buy-in and Buy-out segments of the market for Bulk Annuity contracts in the UK.

5. CONCLUSION

(42) 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

---

22 Non-confidential reply to question 15 of questionnaire M.7204 - Questionnaire to Competitors.