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Case No COMP/M.7233 - ALLIANZ/ GOING CONCERN OF UNIPOLSAI ASSICURAZIONI

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sir/Madam,

Subject: **Case M.7233 – Allianz/ Going concern of UnipolSai Assicurazioni**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

(1) On 29 April 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Allianz S.p.A. ("Allianz", Italy), referred to as 'the Notifying Party', controlled ultimately by the Allianz Group (Germany), acquires within the meaning of Article 3(1)(b) of Regulation 139/2004 sole control of a non-life insurance going concern (the "Target", Italy) currently owned by UnipolSai Assicurazioni S.p.A. ("UnipolSai", Italy), by way of purchase of assets (the "Transaction").

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.

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1. THE PARTIES

(2) Allianz Group is a worldwide provider of financial services, active in the provision of life and non-life insurance, reinsurance and asset management. Allianz is a subsidiary of Allianz Group.

(3) The Target is a going concern consisting of a portion of UnipolSai's non-life insurance business and includes certain assets and liabilities of the former Milano Assicurazioni S.p.A, including its business division Sasa. In particular, the Target includes agency agreements with agencies which are currently part of the distribution network of UnipolSai, employees dedicated to such distribution network and non-life insurance portfolio policies. The Target is active in all the Italian non-life insurance market segments in Italy, with the exception of the credit and suretyship insurance business.

2. THE CONCENTRATION

(4) The Transaction concerns the acquisition of sole control by Allianz of the Target, which is currently owned by UnipolSai. UnipolSai is a listed company solely controlled by the holding Unipol Gruppo Finanziario S.pA., and will remain active in the non-life insurance business in Italy.

(5) The Transaction will be executed as follows: (i) […].[2] A legally binding Insurance Business Acquisition Agreement ("IBAA") was signed on 15 March 2014.

3. EU DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Allianz Group: EUR 113 932 million, Target: EUR [1 100] million).[3] Each of them has an EU-wide turnover in excess of EUR 250 million (Allianz Group: EUR 77 160 million, Target: EUR [1 100] million). The Allianz Group does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State, while the Target generates its entire EU-wide turnover in Italy.

(7) Therefore, the Transaction has an EU dimension, within the meaning of Article 1(2) of Regulation 139/2004.

4. RELEVANT MARKETS

Product Market Definition

(8) In previous decisions relating to the insurance sector, the Commission has distinguished between three broad categories of insurance products: life insurance, non-life insurance and reinsurance.[4] It has also made a distinction between, on the one hand, a product

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2 […].

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

4 Case No COMP/M.6957 *IF P&C / Topdanmark*, para. 15; Case COMP/M.6217 *Baloise Holding / Nateus/Nateus Life*, para. 10; and Case COMP/M.6053 *CVC / Apollo / Brit Insurance*, para. 12.

market for the provision of insurance products (which is segmented into three markets as described above) and, on the other hand, a product market for the distribution of insurance products. As the Target's activities are concentrated in non-life insurance, these markets will be analysed in the following.

a) Non-life insurance

(9) In previous decisions,[5] the Commission noted that, from a demand-side perspective, non-life insurance may at least in theory be divided into as many individual product markets as there are different kinds of risks covered, given that characteristics, premiums and purposes are distinct and that there is no substitutability from the consumer's perspective between different risks insured.

(10) However, the Commission has also recognised that from a supply-side perspective the conditions for insurance of different types of risks 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.[6]

(11) Accordingly, the Commission has in the past 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) travel.[7]

(12) In some of its previous decisions,[8] the Commission has also made reference to the applicable national insurance classification, as well as to the case practice of the national regulatory agencies.

(13) For this reason, the Notifying Party also provided the Commission with the relevant segmentation applied by the Italian *Autorità Garante della Concorrenza e del Mercato* ("AGCM"), which considers that each of with 18 regulatory classes in which non-life insurance is categorised under Italian law amounted to a separate product market.[9] Those 18 classes are as follows: (1) accident; (2) sickness; (3) land vehicles; (4) railway rolling stock; (5) aircraft; (6) ships; (7) goods in transit; (8) fire and natural forces; (9) other damage to property; (10) motor vehicle liability; (11) aircraft liability; (12) liability for

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5 Case No COMP/M.6957 *IF P&C / Topdanmark*, para. 16; Case COMP/M.6217 *Baloise Holding / Nateus/Nateus Life*, para. 11; and Case COMP/M.6053 *CVC / Apollo / Brit Insurance*, para. 16.

6 Case No COMP/M.6957 *IF P&C / Topdanmark*, para. 17; and Case COMP/M.6053 *CVC / Apollo/Brit Insurance*, para. 16.

7 Case COMP/M.6521 *Talanx International/Meiji Yasuda Life Insurance/Warta*, para 19; Case COMP/M.4701 *Generali/PPF Insurance Business*, para. 22; and Case COMP/M.4284 *AXA/Winterthur*, para. 14.

8 Case COMP/M.1712, *Generali / INA*, paras. 9 *et seq.*; and Case COMP/M.6649, *Allianz / Insurance Portfolio and Brokerage Services of Gan Eurocourtage*, para. 11.

9 Pursuant to Article 2 of the Italian *Codice delle Assicurazioni Private* (Legislative Decree No. 209/2005, as amended by Legislative Decree No. 130/2012). See AGCM, Case C11524 *Unipol Gruppo Finanziario / Unipol Assicurazioni-Premafin Fianziaria-Fondiaria SAI-Milano Assicurazioni* of 19 June 2012; and Case C11936 *Società Cattolica di Assicurazione / FATA Assicurazioni Danni* of 5 March 2014.

ships; (13) general liability; (14) credit; (15) suretyship; (16) miscellaneous financial loss; (17) legal expenses; and (18) assistance.

(14) The Notifying Party argues that those 18 classes may however be reconciled with the Commission's case practice through the following groupings: (i) accident and illness (no. 1 and no. 2); (ii) motor insurance (no. 3 and no. 10); (iii) fire and other damage to property (no. 8 and no. 9); (iv) MAT (no. 4, no. 5, no. 6, no. 7, no. 11 and no. 12); (v) liability (no. 13); (vi) credit and suretyship (no. 14 and no. 15); (vii) travel (no. 18); and (viii) residual categories (no. 16 and no. 17).

(15) In any event, the exact product market definition for the provision of non-life insurance products can be left open, as the Transaction does not raise any serious doubts as to its compatibility with the internal market under every market definition considered.

b) Insurance distribution

(16) In its previous decisions,[10] the Commission has identified a downstream market for distribution of insurance products, which involves the procurement of insurance cover for individual and corporate customers through different distribution channels, whether comprised of direct writers, tied agents or intermediaries such as banks and brokers.

(17) However, the Commission has left open the question as to whether the market for insurance distribution comprises exclusively all outward (i.e. non-owned and third-party) insurance distribution channels (e.g. brokers and agents), or if the sales forces and office networks of insurance undertakings (constituting a direct means of sale to end-customers) should also fall within the market for insurance distribution.[11]

(18) In addition, the Commission has also considered that a distinction could be made between the distribution of non-life and life insurance products due to differences in the applicable regulatory regime and the fact that different providers are involved in the distribution of life and non-life insurance products.[12]

(19) In any event, the exact product market definition for the distribution of insurance products can be left open, as the Transaction does not raise any serious doubts as to its compatibility with the internal market under every market definition considered.

Geographic market definition

a) Non-life insurance

(20) In previous decisions, the Commission has generally considered the market for the provision of non-life insurance products and its various sub-segments as national, with the exception of (i) large commercial risks, such as the insurance of aerospace risks, which is most likely to be at least EEA-wide in scope and, (ii) the MAT insurance

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10 Case No COMP/M.6957 *IF P&C / Topdanmark*, paras. 35-37; Case No COMP/M.6053 *CVC / Apollo/ Brit Insurance*, paras. 19 and 20; and Case No COMP/M.4284 *Axa / Winterthur*, para. 15.

11 Case No COMP/M.6957 *IF P&C / Topdanmark*, para. 23; Case COMP/M.6649 *Allianz / Insurance portfolio and Brokerage services of Gan Eurocourtage*, para. 15.

12 Case No COMP/M.6957 *IF P&C / Topdanmark*, paras. 24, 27 and 29; Case No COMP/M.1307 *Marsh & McLennon / Sedgwick*, para. 9.

market, which is likely to be wider than national for large/multinational corporate customers and large risk insurance respectively.[13] However, the Commission ultimately left the exact scope of the geographic market open.

(21) The Notifying Party agrees with the Commission's case practice and also points out such an approach is in line with the one adopted by the AGCM, considering the market for non-life insurance products and its sub-segments to be national in scope.

(22) In any event, the exact geographic market definition for the provision of non-life insurance products can be left open, as the Transaction does not raise any serious doubts as to its compatibility with the internal market under every market definition considered.

b) Insurance distribution

(23) In previous decisions,[14] the Commission, while recognising the national nature of insurance distribution channels, left the exact geographic market definition open, in particular with respect to the question as to whether the relevant geographic market could be wider than national.

(24) With regard to the Italian market,[15] the Commission has in some of its previous decisions also assessed whether a narrower segmentation at a local level would be appropriate.

(25) The Notifying Party supports the Commission's practice with respect to the geographic dimension of the market for the distribution of insurance products, but explains that, in its case practice, the AGCM has regarded this as narrower than national, at the level of administrative provinces, due to the perceived lack of mobility of customers.[16] In this regard, the Notifying Party submits that such a granular approach is inappropriate due to the homogeneity of (i) legislative and regulatory environments at national level; (ii) the competitive conditions; and (iii) the type of services provided. Moreover, the Notifying Party argues that the Italian market for the distribution of insurance products would be characterised by a chain of substitutability between the various retail spots located outside of the administrative borders of a given province similar to the one found by the Commission in Case COMP/M.5960 *Crédit Agricole / Cassa di Risparmio della Spezia / Agences Intesa San Paolo* with respect to the market for retail banking.

(26) In any event, the exact geographic market definition for the distribution of insurance products can be left open, as the Transaction does not raise any serious doubts as to its compatibility with the internal market under every market definition considered.

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13 Case No COMP/M.6957 *IF P&C / Topdanmark*, para. 30; Case COMP/M.6521 *Talanx International / Meiji Yasuda Life Insurance / Warta*, para. 56; COMP/M.6053 *CVC / Apollo / Brit Insurance*, para. 17.

14 Case No COMP/M.6957 *IF P&C / Topdanmark*, para. 35; and Case No COMP/M.6053 *CVC/Apollo/Brit Insurance*, para. 21.

15 Case COMP/M.5057 *Aviva / UBI Vita*, paras. 11 and 18; and Case COMP/M.2768 *Generali / Banca Intesa / JV*, paras. 21 and 27.

16 AGCM, Case C11524 *Unipol Gruppo Finanziario/Unipol Assicurazioni-Premafin Fianziaria-Fonsiaria SAI-Milano Assicurazioni*, paras. 54, 55 and 75. See also AGCM, Case C9557 *Cattolica Previdenza in azienda/Ramo d'azienda Eurizon Vita*; and AGCM, Case C8027 *Banca Intesa/San Paolo IMI*, para. 140 (the latter two cases with reference to the distribution of life insurance).

5. COMPETITIVE ASSESSMENT

(27) While Allianz is active in the provision and distribution of both life and non-life insurance, the Target provides and distributes only non-life insurance in Italy.

(28) Based on the data compiled by the Italian insurance regulator (Istituto per la Vigilanza sulle Assicurazioni), the Transaction gives rise to horizontally affected markets in the segment for the provision of travel insurance and, under the segmentation applied by the AGCM, in classes 12 (liability for ships) and 18 (assistance). If a local dimension of the market for the distribution of non-life insurance is ultimately retained, the Transaction also leads to horizontally affected markets in 17 provinces of the Italian territory and to a vertically affected market between the provision non-life insurance (and sub-segments thereof) and the distribution of non-life insurance in the province of Trieste.

a) Provision of non-life insurance

Non-coordinated effects

(29) As regards the segment for the provision of travel insurance, the merged entity would have a market share of only [20-30]%, with a small increment of [0-5]%. The Transaction is unlikely to give rise to competition concerns because (i) post-Transaction, the merged entity will have a relatively modest market share; (ii) the increment brought about by the Transaction is limited; (iii) the segment is characterised by strong competitors such as UnipolSai ([20-30]%) and Generali ([10-20]%), as well as other non-negligible players such as Cattolica ([5-10]%), Axa ([0-5]%) and Reale Mutua ([0-5]%); (iv) over the 2010-2013 period the Notifying Party's and the Target's market shares remained relatively stable, with a slight increase of [0-5] percentage points, respectively; and (v) even at CR3 level, i.e. the sum of the shares of the three main players, the degree of concentration of this segment would remain unchanged pre- and post-Transaction.

(30) The same reasoning would apply *mutatis mutandis* to class 18 under the segmentation of the AGCM (assistance), because according to the Notifying Party the segment for travel insurance and class 18 would identify the same market.

(31) As regards class 12 (liability for ships), the merged entity wold have a market share of only [20-30]%, with a small increment of [0-5]%. The Transaction is unlikely to give rise to competition concerns because (i) post-Transaction, the merged entity will have a relatively modest market share; (ii) the increment brought about by the Transaction is limited; (iii) the segment is characterised by strong competitors such as UnipolSai ([20-30]%) and Generali ([10-20]%), as well as other non-negligible players such as Reale Mutua ([5-10]%), Axa ([0-5]%) and Cattolica ([0-5]%); (iv) over the 2010-2013 period the Notifying Party's and the Target's market shares decreased by [0-5] percentage points, respectively; and (v) even at CR3 level, the degree of concentration of this segment would remain unchanged pre- and post-Transaction.

(32) Finally, the Transaction does not seem to remove a significant competitive constraint that previously exerted over the Notifying Party. First, the number of players in the market would remain unchanged post-Transaction as UnipolSai will remain an active player. Second, in the event of a price increase by the merged entity, this latter would

risk losing customers to its competitors, which are not capacity constrained. Third, the applicable legislation, i.e. the so-called Bersani Legislation,[17] provides that customers must be free to terminate their policy at no cost on an annual basis, which significantly lowers switching costs. Fourth, the Target can hardly be regarded as a maverick, as it has been - since 2002 - part of one of the biggest insurance groups in Italy and was focused on traditional, non-innovative distribution channels, i.e. agency as opposed to direct sales over the phone, internet and bancassurance agreements.

Coordinated effects

(33) One of the respondents to the market investigation raised concerns about possible coordinated effects stemming from the Transaction. Indeed, the Transaction increases the market share of Allianz in the market for the provision of non-life insurance (and segments thereof) in Italy, where only three players, i.e. UnipolSai, Allianz and Generali, currently control around [60-70]% of this market. Nevertheless, competitive harm through coordinated effects is unlikely.

(34) As noted at paragraph (32), the Transaction does not reduce the number of players in the market for the provision of non-life insurance (and segments thereof). Post-Transaction, this market will continue to feature more than six players, whose market shares and incentives are far from being symmetric. In line with Paragraph 45 of the Horizontal Merger Guidelines, "*it is easier to coordinate among a few players then among many*." Therefore, the premise to any such theory of harm would be that coordination could take place among the top three players. However, that is hardly merger-specific and in any event unlikely.

(35) Allianz, UnipolSai and Generali already control the top three positions in the market for the provision of non-life insurance (and segments thereof) in Italy. The Transaction does not alter these dynamics. Moreover, the impact of the Transaction is rather limited and does not justify a finding according to which - because of the transaction - coordination is made more likely than before. The market share increment brought about by the Transaction always remains below [0-5]% in all the segments of the market for the provision of non-life insurance.

(36) In any event, even if the Transaction increased the likelihood of coordination among the three top players, it cannot be concluded that any such attempt to coordinate would be successful. On the one hand, around [40-50]% of the market would remain in the hand of non-coordinating firms, which could jeopardise the outcome of the expected coordination. On the other hand, incentives to enter in any such coordination would not always be obvious. For instance, in the market for the provision of motor insurance the market leader UnipolSai would have - even post-Transaction - a [10-20]-percentage point advantage over the merged entity and an even greater advantage over Generali.

(37) Finally, the Notifying Party submits that coordination is highly unlikely because (i) insurance policies are an example of widely differentiated products, for which effective coordination is hard to achieve; and (ii) recent legislative changes aimed at

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17 Law decree n. 223/2006, converted into law by Law n. 248/2006 and Law Decree n. 7/2007, converted into law by Law n. 40/2007.

increasing competition in the Italian non-life insurance market significantly facilitate customers' switching and, therefore, customers' ability to disrupt any coordination.[18]

(38) In the light of the foregoing, the Transaction is unlikely to give rise to competition concerns in the market for the provision of non-life insurance.

b) Distribution of insurance

(39) At national level, the merged entity's market share would remain below [20-30]% under every market definition considered, i.e. in both the overall insurance distribution segment (regrouping life and non-life insurance distribution including and excluding direct sales) and the segment for the distribution of non-life insurance products including and excluding direct sales. Therefore, the Transaction would not give rise to any affected markets at this geographic level.

(40) At provincial level, the merged entity's market share in the market for the distribution of non-life insurance products would exceed [20-30]% in 17 provinces:[19] Trieste ([30-40]% with an increment of [0-5]%); Isernia ([20-30]% with an increment of [10-20]%); Benevento ([20-30]% with an increment of [5-10]%); Novara ([20-30]% with a market increment of [5-10]%); Aosta ([20-30]% with an increment of [5-10]%); Crotone ([20-30]% with an increment of [0-5]%); Livorno ([20-30]% with an increment of [5-10]%); Olbia ([20-30]% with an increment of [5-10]%); Bolzano ([20-30]% with an increment of [0-5]%); Medio Campidano ([20-30]% with an increment of [5-10]%); Pordenone ([20-30]% with an increment of [0-5]%); Barletta ([20-30]% with an increment of [0-5]%); Cremona ([20-30]% with an increment of [5-10]%); Foggia ([20-30]% with an increment of [0-5]%); Brindisi ([20-30]% with an increment of [5-10]%); and Brescia ([20-30]% with an increment of [5-10]%).

(41) However, no competition concerns are likely to arise, because (i) in most provinces the merged entity's market share would be relatively modest, being only slightly above [20-30]% (with the exception of Trieste, Isernia and Benevento where its market share would be around [30-40]%); (ii) in several provinces, among which Trieste where the merged entity achieves its highest market share, the increment brought about by the Transaction is small around or below [5-10]%; (iii) the merged entity will continue to face strong competitive pressure exerted by a wide array of actual and potential competitors such as Generali, UnipolSai, Aviva, Vittoria, Sara, Reale Mutua, Axa, HDI, Groupama and others; and (iv) in all the provinces where the merged entity's market share exceeds [20-30]% except Trieste (namely, Isernia, Benevento and

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18 For instance, customers' mobility in the motor liability insurance sector will be further facilitated by Article 34 of Law Decree n. 1/2012 (currently under implementation by virtue of a draft IVASS regulation) intermediaries must inform the customer, in a proper, transparent and exhaustive manner, of the fee and other contractual terms offered by at least three different insurance companies not belonging to the same groups before they can stipulate a policy.

19 Data regarding the market for the distribution of non-life insurance products at provincial level include direct sales. However, to the best knowledge and belief of Allianz, those data also constitute a good proxy of a hypothetical market for the distribution of non-life insurance products excluding direct sales.

Novara) the market shares of Allianz and the Target have decreased over the period going from 2010 to 2012[20].

(42) Finally, the Transaction would give rise to a hypothetical vertical relationship between the provision of non-life insurance products (and its sub-segments) and the market for the distribution of non-life insurance products in Trieste. However, given the absence of a significant degree of market power in the upstream markets for the provision of non-life insurance products (below or around [20-30]%), input foreclosure of other downstream distributors as a result of the transaction is not likely. Conversely, considering (i) the merged entity's market shares in the downstream market for distribution of non-life insurance products in Trieste that is only slightly above [30-40]% and (ii) the limited impact of the Transaction (only [0-5]% increment in Trieste), customer foreclosure effects on upstream providers of non-life insurance products are equally unlikely.

(43) Therefore, the Commission concludes that the Transaction is not likely to give rise to any competition concerns on the market for insurance distribution.

6. CONCLUSION

(44) 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

20 While not in the position to provide precise market shares for 2013, the parties confirmed that the market shares for 2012 are representative for 2013 as well.