EUROPEAN COMMISSION
DG Competition

Case M.8257 - NN GROUP / DELTA LLOYD

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 07/04/2017

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EUROPEAN COMMISSION

Brussels, 7.4.2017
C(2017) 2450 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Subject: Case M.8257 - NN Group / Delta Lloyd
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

1. On 22 February 2017, the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004[3] by which NN Group N.V. ('NN') of the Netherlands acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Delta Lloyd N.V. ('Delta Lloyd'), also of the Netherlands by way of a public bid announced on 2 February 2017 ('the Transaction'). NN is referred to as 'the Notifying Party' and NN and Delta Lloyd are collectively referred to as 'the Parties'.

I. THE PARTIES AND THE OPERATION

2. NN is a Netherlands-based financial services provider active in the provision of life and non-life insurance policies, pension products, banking and asset management to

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 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

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both individuals and corporations. It is active in 18 countries worldwide, including a number of European markets.

3. Delta Lloyd is a Netherlands-based financial services provider active in the provision and distribution of life and non-life insurance policies, pension products, banking services and asset management to both individuals and corporations. It is active in the Netherlands and Belgium.

4. The Transaction involves the acquisition within the meaning of Article 3(1)(b) by NN of the whole of Delta Lloyd by way of a public bid announced on 2 February 2017. This formal offer marked the start of a nine-week offer period (ending 7 April) during which Delta Lloyd shareholders can choose to sell to NN on the terms set out in the bid.

II. EU DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] (NN EUR [10 000 - 15 000] million, Delta Lloyd EUR [0 - 5 000] million). Each of them has EU-wide turnover in excess of EUR 250 million (NN EUR [5 000 - 1 0000] million, Delta Lloyd EUR [0 - 5000] million). Delta Lloyd achieves more than two thirds of its aggregate EU-wide turnover within one and the same Member State (the Netherlands) but NN does not. The notified operation therefore has an EU dimension.

III. MARKET DEFINITIONS

III.1. **Introduction**

6. NN and Delta Lloyd are both Netherlands-based financial services providers, whose principal activity is in the area of insurance. They both offer pension products, life and non-life insurance policies, alongside various banking services. The Transaction leads to horizontal and vertical links in the Netherlands and in Belgium.

7. In the Netherlands, the Transaction creates a number of horizontally affected markets within the following broad markets: pension products and pension fund buy-outs, individual life insurance, non-life insurance and insurance services to pension funds. In addition, it also creates vertically affected markets between the production of insurance and: the downstream market for insurance distribution, the upstream market for asset management, the upstream market for pensions administration services and the upstream market for reinsurance.

8. In Belgium, the Transaction leads to several horizontal overlaps and vertical links between various markets in the area of insurance, insurance distribution, reinsurance and asset management. None of them is, however, an affected market.

9. The following assessment therefore focuses on the specific characteristics of the relevant product and geographic markets in the Netherlands.

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4 Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

III.2. **Relevant market**s

10. In previous decisions relating to the insurance sector, the Commission has distinguished between a product market for insurance provision and a product market for insurance distribution.

11. Within the upstream market for insurance provision, three broad categories of insurance products can be further distinguished: life insurance, non-life insurance and re-insurance.[5] The Commission has considered the possibility that both life and non-life insurance could be divided into as many different product markets as there are types of risks to insure. This possible distinction is based on the fact that the characteristics and purpose of the different types of insurance are distinct, and that there is typically no substitutability between different types of insurance from a customer's perspective.[6] The Commission has, however, also noted a previous case that there were indications of potential degree of supply-side substitutability between some insurance products.[7] Within the downstream market for insurance distribution, the Commission considered that a distinction could be made between the distribution of non-life and life insurance products and left the question of further segmentation open.[8] In its past practice, the Commission has also left open the possibility of whether the market for insurance distribution comprises exclusively third-party outward insurance distribution channels (such as brokers, agents and banks) or whether direct sales forces should also fall within the market for insurance distribution.[9]

III.2.A. *Life insurance*

12. The Commission has further considered segmenting the life insurance market according to the purpose served by the product, distinguishing between: (i) pure risk protection products; (ii) savings and investment products; and (iii) pension products.[10] In addition, the Commission has considered a possible segmentation of these product markets between group and individual products.[11]

13. The Notifying party agrees with the definition of a possible market for pension products, but argues that a segmentation between pure risk protection and savings and investment products is not appropriate in the Netherlands. Likewise, the Notifying Party notes that in the Netherlands pension products are offered only to group customers (employers acting on behalf of their employees), whilst pure risk protection products and savings and investment products are both only offered on an individual basis.

14. The respondents to the market investigation confirmed the Notifying Party's claim that there is a strong distinction in the Netherlands between pension products, on the one hand, and individual life insurance (including both pure protection and savings

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5 See COMP/M.5384 BNP Paribas/Fortis, COMP/M.4284 AXA/Winterthur.

6 See COMP/M.5384 BNP Paribas/Fortis, COMP/M.4284 AXA/Winterthur.

7 See COMP/M.7478 Aviva/Friends Life/Tenet.

8 See COMP/M. 4284 AXA/Winterthur, COMP/M.6957 IF P&C/TopDanmark.

9 See COMP/M.6957 IF P&C/TOPDANMARK, COMP/M.6053 CVC/Apollo/Brit Insurance.

10 See COMP/M.4701 Generali/PPF Insurance business, COMP/M.6521 Talanx International Meiji Yasuda Life insurance/Warta.

11 See COMP/M.5075 Vienna Insurance Group/EBV, COMP/M.4701 Generali/PPF Insurance Business.

and investment products) on the other. Indeed, in the Netherlands, the former are purchased by employers for the sake of their employees (group products) while the latter are only purchased by individuals (individual products). Furthermore, pension products can only be distributed by professional intermediaries holding a specific regulatory license and, thus, insurers are not allowed to sell their pension products directly to customers. Conversely, individual insurance products are purchased by and at the initiative of interested individuals directly from insurers or via any distribution channel.

15. In view of the above, the Commission considers that the segmentation of life insurance into pension products, pure risk protection products and savings and investment products makes any further segmentation into group and individual products redundant in this case since, in the Netherlands, pension products are group products while pure risk protection and savings and investments are necessarily individual products. The product markets to be analysed are: (i) pension products for group customers; (ii) pure risk protection products for individuals; and (iii) savings and investment products for individuals.

16. The Commission previously considered the geographic market for life insurance and its respective segments to be national in scope, as a result of national distribution channels, established market structures, fiscal constraints and specific regulatory systems among Member States; however the exact geographic market definition has been left open.[12] The market investigation in the present case has not provided any evidence that would indicate that the market for life insurance in the Netherlands should not be considered national in scope.

III.2.A.1 Pension products

17. Within pension products, the Commission has considered several distinctions which can be made, in particular between defined benefit (DB) and defined contribution (DC) pension types, and has also identified the existence of distinct accumulation and decumulation products.[13]

18. The Notifying Party contends that there is no need to consider narrower hypothetical markets, such as those described above (DB/DC schemes, accumulation/decumulation products), and submits that in the Netherlands there is one broad market for group pension products, which should not be further segmented.

Distinction between DB and DC schemes

19. Under a DB scheme, each employee is guaranteed a pension equivalent to a fixed percentage of their final or average salary earnings (depending on the terms of the scheme). Under a DC scheme, meanwhile, the employer and the employee each pay a fixed contribution (a percentage of the employee's salary), and this is then invested for the employee. The return achieved on the investment determines the value of the individual's pension at retirement age, and he/she can then purchase an annuity with this capital sum.

12 See COMP/M.5075 Vienna Insurance Group/EBV; COMP/M.5057 Aviva/UBI Vita, COMP/M.6521 *Talanx International / Meiji Yasuda Life Insurance / Warta,* COMP/M.6883 – *Canada Life/Irish Life.*

13 See COMP/M.7478 Aviva/Friends Life/Tenet.

20. The distinction between DB and DC is blurred in the Netherlands, due to the variety of different pension arrangements present on the market (see section IV.8): DB schemes offered by insurers include a guaranteed level of pension benefit but most of the industry pension funds, for example, are structured as DB pension schemes but with pension benefits that can be reduced or no longer indexed if the scheme is underfunded. Similarly, a further distinction can also be made within DC schemes between unit-linked and non-unit-linked policies: unit-linked DC policies could be described as 'pure DC' policies, as they do not offer any form of guarantees, whereas non-unit-linked DC policies incorporate aspects of DB policies, in that they include certain guarantees in respect of the value of the capital accumulated over the period up to retirement, and the risk is therefore not entirely with the members.

21. As set out below, the market investigation revealed that the most natural segmentation of the market for pension products would be between defined benefit (DB) and defined contribution (DC) products, as recognised in past Commission decisions.[14]

22. From a demand-side perspective, customers of group pension products are employers acting on behalf of their employees. The employers who responded to the market investigation appeared to be well aware of the fundamental difference between the two types of pension scheme insofar as, under a DB arrangement, the risk is borne by the employer (meaning they are liable for a pension shortfall), whereas under a DC arrangement, the risk is borne by the employee. A large majority of respondents (customers, distributors and competitors) also acknowledged that DB has largely become unaffordable for new customers in the Netherlands. This means that DB and DC schemes are only competing in cases where a customer (employer) has the choice of renewing a DB policy or moving to DC. An employer that already has a DC arrangement is highly unlikely ever to wish to move back to DB (due to the risks for the employer mentioned above). To conclude, from a demand side perspective, DB and DC pension products seem to constitute separate markets as they tend to address different needs, in particular related to risk appetite and/or the ability to incur significant costs for future benefits.

23. From a supply-side perspective, offering DB products requires an insurer to hold much higher capital levels than they have to for DC products (under solvency regulations), reflecting the higher level of risk involved. Setting aside industry and company pension funds (which are, to some extent, a closed market and which are further described in section IV.2 129 and IV.4 below), providers of pensions in the Netherlands are not necessarily present in both DC and DB. All the main six insurers have clients for both types of pension arrangements, but some only offer DB to existing DB clients (i.e. renewals) and others are thought not to be offering DB anymore at all. At the same time, the new pension vehicles that have recently been introduced on the Dutch market are very much oriented towards either DB or DC. *Premiepensioeninstellingen* (PPIs) are only licensed to offer DC pension schemes whilst *algemeen pensioenfonds* (APFs) were designed as a solution for company pension funds, whose schemes are almost always structured as DB (although without absolute guarantees). Although there are currently two APFs which also offer DC pension arrangements, the general expectation, in particular

[14] See COMP/M.7478 Aviva/Friends Life/Tenet, COMP/M.7204 Rothesay Life/Metlife Assurance.

expressed by distributors of pension products[15] seems to be that APFs will be much stronger in DB since they constitute an attractive alternative to liquidating company pension funds (OPF) most of which currently operate DB schemes.[16] From both the demand and the supply side, there therefore seems to be a strong suggestion that DB and DC pension products constitute separate markets, with different (although not mutually exclusive) sets of providers, and significantly different product characteristics.

24. For the purpose of this case, the question as to whether DB and DC pension products form separate product markets can, in any event, be left open, as the Transaction does not significantly impede effective competition on the market for pension products under any plausible market definitions based on the potential distinction between DB and DC pension schemes and the further segmentation of DC schemes into unit-linked and non-unit-linked products.

Distinction between accumulation and decumulation products

25. Pension products are comprised of two distinct phases: accumulation and decumulation, the accumulation phase being the period during which an active scheme member pays contributions into his/her pension and the decumulation phase being the payment out of the pension after retirement age, via an annuity. The distinction between accumulation and decumulation does not, however, have the same relevance in DC and DB policies.

26. DB policies do not allow an individual to move to a different provider for the decumulation phase. Accumulation and decumulation are provided as part of one DB product, i.e. neither could exist independently.

27. A member of a DC pension scheme, meanwhile, can change the provider for the decumulation phase: on reaching retirement age, each individual has the opportunity to shop around for an annuity product, which will provide a retirement income during the decumulation phase. The market investigation provided some evidence to suggest that a distinction could be made between accumulation and decumulation products within the market for DC pension products. From a demand-side perspective, the products are clearly in no way substitutable as they serve customers in distinct phases of their pension – saving for the pension, and payment out of the pension, respectively. In addition, the customer is also different, with DC accumulation schemes being purchased by employers, whilst annuities are chosen by the individual members.

28. From a supply side point of view, the two products could, in very general terms, be seen as requiring the same resources and expertise, as both are insurance products. They also require the same type of communication with pension scheme members. Insurers who provide DC schemes to employers typically also offer annuities for the

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15 "*Onderzoek Algemene Pensioenfondsen 2016*" by Sprenkels & Verschuren published in December 2016. (Sprenkels & Verschuren is an actuarial consultancy that advises pension funds, company boards, the parties to collective labour agreements, insurers, not-for-profit organisations and local government.)
Further confirmation about such general expectation on the market have been presented to the Commission during pre-notification calls and some replies to question 6.2 of questionnaire Q1 to competitors.

16 See section IV.4

members to buy on retirement. The market investigation provided an example of an insurer that had become active on the DC market recently, and therefore had not immediately offered annuities, but had subsequently introduced this product. There was no other evidence, however, of insurers choosing to only offer accumulation or decumulation products respectively. In addition, the very high percentage of customers thought to purchase an annuity from the provider of their DC accumulation scheme (usually for convenience) suggests that it would be very difficult to operate successfully in the decumulation market alone, i.e. as a provider of annuities, without also offering DC schemes. To conclude it appears that as regards the supply side a distinction between accumulation and decumulation products seems less relevant, since both categories of products require the same resources and most providers offer both of them.

29. It should, however, also be noted that a certain category of providers of DC pension products in the Netherlands (PPIs, see section IV.6 below) had not until very recently been licensed to sell any decumulation products. PPIs are not required to meet the same solvency requirements as insurers and therefore cannot take on the risks that these products involve. The recent introduction of variable annuities in the Netherlands (described in more detail in the following section) means that PPIs can now offer decumulation products, but only in the form of variable annuities. Since these products have been introduced only recently it is yet too soon to be able to predict with any certainty how popular variable annuities will become. Some respondents to the market investigation expected variable annuities to remain very much a minor product on the market, with only a small minority of customers potentially being interested. In any event, PPIs are not allowed to offer fixed annuities, which at least for the moment remain the most popular decumulation products. The fact that certain (important) category of providers of pension accumulation products, are not allowed to provide the most popular pension decumulation products, would suggest that the supply side substitutability of accumulation and decumulation products is at least limited to certain categories of providers.

30. For the purpose of this case, the question as to whether accumulation and decumulation products form separate product markets within the pensions market can, in any event, be left open, as the Transaction does not significantly impede effective competition on the market for pension products under any plausible market definitions based on the potential distinction between accumulation and decumulation products.

Fixed annuities versus variable annuities

31. The introduction of variable annuities also raises the question as to whether fixed and variable annuities are part of the same product market for DC decumulation products, or whether they each form separate product markets.

32. A customer who buys a fixed annuity is guaranteed a certain regular pension for the rest of their life. The most commonly purchased type of product in the Netherlands is an immediately effective life annuity (*direct ingaande pensioen*, DIP).

33. As of 2016, members of DC schemes can also use their capital to purchase a variable annuity product, *doorbeleggen*. Unlike a fixed annuity, a variable annuity offers no guaranteed level of benefits, but the product is converted into a fixed annuity, usually when the policyholder reaches the age of 85. A number of providers have already introduced such products and others are in the process of

doing so, meaning that customers will now be able to choose between fixed and variable annuities.

34. From a customer's perspective, the choice between a fixed and a variable annuity is largely a question of propensity for risk-taking. Depending on how markets develop, customers may be better off with a variable annuity, but could equally be worse off. Some customers may therefore prefer to purchase a fixed annuity to have the certainty of a guaranteed level of income for the duration of their retirement.

35. The Notifying Party contends that fixed and variable annuities form part of the same market. It argues that they are substitutable from a demand-side point of view, as they both provide an income stream during retirement, and it could not be said that one will perform consistently better than the other.

36. The Notifying Party further points out that the expertise required to offer a variable annuity is generally very similar to that needed for fixed annuities. The main exception is investment expertise, which is more important for variable annuities. In the Notifying Party's view, any provider, such as a PPI, which did not have such expertise in-house, could in any case make use of external consultants or investment managers.

37. Nonetheless, the difference in risk level between variable and fixed annuities suggests that they may not be entirely substitutable for all consumers. Furthermore, even if a provider of fixed annuities could easily start offering variable annuities, this does not necessarily indicate that the reverse is true. The possible range of providers of fixed annuities is more limited than that of variable annuities, due to the requirement to hold certain levels of capital and to be licensed to insure the implicit risk in a fixed annuity.

38. The results of the market investigation were not conclusive as to whether fixed and variable annuities should be considered as part of the same or as separate product markets. Variable annuities have only been sold since very recently and many market participants felt it was too early to express a definite opinion on the extent to which they will represent a genuine alternative for customers. From a supply side point of view, the competitors in response to the market investigation suggested that most major insurers have or will soon introduce variable annuities[17]. The competitors also suggested that all pension providers will be capable of offering variable annuities should they choose to do so.[18] In terms of the product characteristics, however, competitors confirmed that fixed and variable annuities have quite different features: whilst fixed annuities offer certainty, variable annuities offer the chance of a higher return, but with an element of risk.[19] Competitors' views on the extent to which variable annuities constitute an alternative to fixed annuities were mixed, but in general they seemed to think that variable annuities could be attractive to customers, but only if the variable annuity is

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17 Q9 of Questionnaire 1 to competitors: *Most insurance companies offer fixed and variable annuity products*.

18 Variable annuities imply less risk for an insurer than fixed annuities, meaning that an insurer with the capital necessary to offer fixed annuities can, at least from this perspective, easily offer variable annuities. The results of the market investigation did not reveal any other barriers to introducing fixed annuities, suggesting that, were an insurer to choose not to offer fixed annuities, this would be a strategic choice.

19 Q36 of Questionnaire 1 to competitors.

an additional pension (i.e. on top of a DB pension) or if the customer can choose an annuity which combines a fixed and a variable element.[20] This suggests that, in some circumstances, customers may not see variable annuities as a real alternative to fixed annuities, but rather a complementary product. The responses of some competitors and pension product distributors also suggested that variable annuities may only ever be popular amongst a small group of customers, typically the higher educated employees who understand variable annuities and can afford to take this type of risk.[21]

39. Competitors' responses further suggested that the current low interest rates are likely to make variable annuities more attractive to customers, because there is a chance that the value of the annuity will increase if interest rates rise in the future. Conversely, a customer choosing a fixed annuity would be locked in to a low rate.

40. For the purpose of present assessment, the question as to whether fixed and variable annuities form separate product markets within a hypothetical decumulation market can, in any event, be left open, as the Transaction does not significantly impede effective competition on the market for pension products under any plausible market definitions based on the potential distinction between fixed and variable annuities.

III.2.A.2 *Individual life* insurance

41. In previous cases the Commission has considered the existence of a hypothetical market for pure protection products.[22] These are products where, in return for a regular premium, the insurer agrees to pay a lump sum on a certain specified event such as death or serious illness. These products do not include any investment element. Pure protection policies may include mortgage protection policies, term-life insurance (i.e. protection for a defined period, where the policyholder chooses the cash sum they wish to save for to cover their families in the event of death or the expiration of the policy), whole life policies (which pay on death of the insured) and critical illness cover.[23]

42. Within the category of pure protection products, there are several different types of products that are not substitutable from a demand side perspective. In the past, the Commission has, however, also noted that there were indications of a degree of supply-side substitutability between certain pure risk protection products. Therefore, in a recent case the Commission has left it open whether pure protection products constitute one product market, or whether this market should be segmented according to various risks covered.[24]

43. In previous cases the Commission has also considered the existence of a hypothetical market for savings and investment products.[25] This market encompasses life insurance products with an investment element, which therefore serve the purpose of wealth accumulation. Any protection product that would have

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20 Q37 of Questionnaire 1 to competitors.

21 Q9 of Questionnaire 3 to distributors of pension products and Q36 of Questionnaire 1 to competitors.

22 See COMP/M.7478 Aviva/Friends Life/Tenet, COMP/M.6521 Talanx International Meiji Yasuda Life insurance/Warta, COMP/M.4701 Generali/PPF Insurance business.

23 See COMP/M.7478 Aviva/Friends Life/Tenet, COMP/M.6883 Canada Life/Irish Life.

24 See COMP/M.7478 Aviva/Friends Life/Tenet.

25 See COMP/M.7478 Aviva/Friends Life/Tenet, COMP/M.6883 Canada Life/Irish Life.

an investment element was not considered a "pure" protection product and would thus be part of "savings and investments" products. These include: tracker funds (where the investment return over a specified period is based on the performance of one or more stock market indexes), guaranteed funds (which provide a guaranteed return over a specified period), managed funds (pooled funds investing in a mix of assets such as equities, securities and property), personal investment plans and personal equity plans. In general, the products within this category differ in relation to the mechanism used to generate returns.

Pure protection products

44. The Notifying Party argues that the types of insurance policies available in the Netherlands do not fit naturally into a segmentation between pure protection and savings and investment, as the same products can be bought for different purposes by different customers.

45. However, contrary to the Notifying Party's suggestions, the replies to the market investigation did not provide any evidence which would suggest that in the present case the Commission should depart from the past practice and include pure protection products and savings and investment products in one product market. The Commission notes that the types of products that make up the vast majority of sales of pure protection products in the Netherlands – funeral insurance and term-life insurance – are sold to protect against very specific risks (term-life insurance being used to cover the cost of, most often, repaying a mortgage, or sometimes rental payments or the cost of living of the family after the death of the insured party) and these products do not include investment elements. Conversely, savings and investment products sold in the Netherlands are fiscally incentivised products through which the policyholder saves up to purchase an annuity on retirement. This annuity then provides an additional retirement income. It is thus clear that in general pure protection and savings and investment products serve different needs.

46. Furthermore, within pure protection products, one could distinguish separate markets based on the distinct risks they cover, namely for term-life insurance and for funeral insurance. For the purpose of this case, only the market for term-life insurance needs to be considered, as both Parties have ceased offering funeral insurance.

47. In view of the above, as regards pure protection products, for the purpose of this case, the Commission will assess the impact of the Transaction, on plausible relevant product markets comprising either all pure protection products or specifically term-life and funeral insurance products. The question as to whether term-life products do form a separate market within pure protection products can, in any event, be left open, as the Transaction does not significantly impede effective competition under either approach.

Savings and investment products

48. The savings and investment products available in the Netherlands are all designed as a way of saving for extra retirement income (in addition to an individual's pillar 2 pension). Some include the savings phase and the payment out of retirement benefits in one product, whilst others only comprise the savings phase, but include an obligation to purchase an annuity at the end of a fixed period. Some savings and investment products also include a term-life component, i.e. a benefit which is fixed.

These policies are therefore usually non-unit-linked, whereas all other savings and investment products are unit-linked.

49. Savings and investment life insurance products have declined sharply in popularity in the Netherlands in recent years, in particular due to misselling of unit-linked policies during the period 1990 to 2008.[26]. The negative connotations since associated with these products have led most insurance companies to cease offering them to new customers. Business for unit-linked savings and investment products is therefore largely limited to servicing of existing policies.

50. The market investigation revealed that traditionally savings and investment products are increasingly being replaced by a new type of savings product, *banksparen*, which were introduced in 2008 and are provided under a banking licence. Similarly to traditional savings and investment products, *banksparen* also benefit from favourable tax treatment as pillar 3 products[27] and are purchased in order to save up for buying an annuity on retirement, which then supplements the individual's pillar 2 pension income. [28]

51. The question therefore also arises as to whether traditional savings and investment products provided within life insurance and *banksparen* do form part of the same market.[29]

52. The range of traditional life insurance products includes both products for saving to provide income in retirement, (e.g. deferred annuities, *lijfrente uitgesteld*) and annuities (most often an immediately effective annuity, *direct ingaande lijfrente*) which are purchased on retirement. *Banksparen* is based on the same concept, with products being available for the savings phase and for payment out during retirement in the form of annuities. *Banksparen* could therefore be considered to mirror traditional savings and investment products in terms of the structure of the product range.

53. On the other hand, *banksparen* differ from traditional life insurance policies in a number of ways, most importantly: i) the annuity part of *banksparen* is of a fixed duration (usually up to a maximum of 30 years after retirement age), meaning that

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26 The affair came to light in 2006 and was the subject of ongoing media attention for a number of years, coming to be known as the *woekerpolisaffaire* ('profiteering policies affair'). The scandal related to a particular product known as *beleggingsverzekering* (a unit-linked savings and investment insurance product), which represented the majority of life insurers' business in this area

27 Under the classification by pension 'pillars', pillar 1 is understood to mean the state pension system, pillar 2 employer-based pensions to which both the employee and employer contribute, and pillar 3 voluntary retirement savings funded by the individual.

28 *Banksparen* can be used for three specific purposes: as retirement income, to repay a mortgage and to save using the compensation received as a result of termination of an employment contract. Tax advantages are now only available for new customers for retirement savings but customers who had already acquired *banksparen* for mortgage savings or to save a severance payment prior to the changes in legislation can continue to benefit from tax benefits.

29 A further consideration here is the categorisation of the annuities which have historically been bought using the capital saved up within traditional savings and investment products (*direct ingaande lijfrente*, DIL). The Notifying Party does not consider DIL to form part of the market for savings and investment products and treats them as a separate product category of their own. Whilst this may be accurate, insofar as the product is not strictly a savings product, it is important to note the link with savings and investment products, as many savings and investment products include the obligation to purchase an annuity.

the insurer does not bear longevity risk, ii) should the provider go bankrupt, capital is only covered up to EUR 100 000 for *banksparen* (whereas the full amount is recoverable under an insured policy), and iii) should the policyholder die before the end of the policy, the policy will be paid out to his/her inheritors, which is not the case for life insurance.

54. Sales of *banksparen* have grown rapidly since their introduction in 2008, and if considered as part of the individual life insurance market, currently represent over 75% of new business. Both NN and Delta Lloyd offer *banksparen* through their banking subsidiaries, as do most of the other main insurers. NN stopped offering its single premium immediate annuity product in January 2017, and the Notifying Party explains that this is in part due to the fact that this product had been marginalised by *banksparen*. It would appear that insurers in general are accepting that the traditional life insurance market is shrinking (at least insofar as concerns savings and investment products and annuities) and they are therefore devoting their efforts to winning market share in *banksparen*, to compensate for the lost revenue in individual life insurance.[30] It could thus be argued that business is simply shifting from individual life insurance to *banksparen*, with the two types of product fulfilling the same customer need.

55. In view of the above, the Commission considers that there are strong arguments to consider that *banksparen* form part of the market for savings and investment individual life insurance products.

56. The Notifying Party argues that any hypothetical market combining traditional life insurance products and *banksparen* is not a meaningful product market. The basis for this claim seems, however, to be more based on internal record-keeping (i.e. the fact that revenue for the two classes of products is recorded and assessed differently) than on any consideration of supply- or demand-side substitutability.

57. The results of the market investigation generally confirmed that market participants see *banksparen* as a direct substitute for some life insurance products. One competitor stated that *banksparen* accounted for 70% of its sales of pillar 3 savings in 2013, and are now estimated to make up almost all sales.[31] The way in which competitors describe the changes in the overall size of the market show that they automatically view banksparen as being within the same market.[32]

58. Responses to the market investigation confirmed that sales of traditional annuities have declined rapidly due to the introduction of *banksparen*, which are generally preferred by customers as they are seen as more transparent and easier to understand.[33] One distributor commented that traditional annuities are only sold to

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30 DNB, *Visie op de toekomst van de Nederlandse verzekeringssector*, December 2016, http://www.dnb.nl/binaries/DNBrapport%20Visie%20op%20de%20toekomst%20van%20de%20verzekringssector,%2013%20december%202016_tcm46-350191.pdf?2016121317.

31 Q82 of Questionnaire 1 to competitors.

32 Q85 of Questionnaire 1 to competitors. *Since the introduction of Banksparen in 2008 the total market production increased, despite the strong decline in Individual Life. However in 2013 fiscal benefits on Banksparen were limited which led to a decrease in total market production*.

33 Q85 of Questionnaire 1 to competitors.

customers for which *banksparen* for regulatory reasons are either not available or unattractive (i.e. for customers who purchased products under the 'old regime'[34]).[35]

59. Other comments on the introduction of *banksparen* also show that competitors consider them as an almost exact equivalent. One competitor stated for example that "*since 2008 banks have been allowed to offer deferred and immediately effective annuities and annuity insurance. Before that this business was exclusively reserved for insurance companies*".[36]

60. When discussing the needs served by the products, a number of competitors also refer to *banksparen* and life insurance products (in particular annuities and deferred pensions) as being equivalent.[37] The vast majority of competitors confirmed that they consider *banksparen* to be competing with traditional life insurance policies. A number of respondents also commented that *banksparen* are preferred by customers as the products are perceived to be safe and transparent.[38]

61. Competitors also point out that, in addition to serving the same fundamental customer need, *banksparen* also benefit from the same tax treatment as life insurance products. Furthermore, the savings accumulated in a *banksparen* product are not available for the customer to use at any point they choose, but instead they have to wait until the maturity date of the product. This again is a parallel with insurance products.[39]

62. In conclusion therefore, the Commission notes that *banksparen* seem to share the same fundamental characteristics and serve the same purpose as savings and investment products provided within individual life insurance, even if there are also some differences in the products.

63. Irrespective of whether *banksparen* should be considered to form one product market together with traditional insurer's savings and investment products or not, taking into account the purpose for which the different products are bought, it would appear logical to distinguish within the savings and investment products accumulation products and decumulation products. The reasons for that distinction would be similar to those described above in the context of group pension products.

64. In any event for the purpose of this case, the questions as to whether *banksparen* forms part of the savings and investment products life insurance market and whether the market should be segmented into accumulation and decumulation products can

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34 In the context of Dutch individual life insurance, 'old regime' life insurance policies are policies taken out before 16 October 1990 (or before 1 January 1992 if the policy was bought via a single premium payment). An individual who has an 'old regime' life insurance policy can technically still purchase a *banksparen* annuity product, but they would then be subject to the tax rules of the new regime, and would lose some of the flexibility allowed under the old regime, such as the possibility to pay out the annuity as a lump sum or transfer it to someone else.

35 Q10.1 of Questionnaire 4 to distributors of individual life and non-life insurance.

36 Q82.2 of Questionnaire 1 to competitors.

37 Q84 of Questionnaire 1 to competitors. *Banksparen is a direct alternative to 3rd pillar life-insurance. Banksparen serve the same needs to build-up capital with some tax advantage, but is more cost efficient*.
Banksparen, deferred pensions and deferred annuities serve similar needs
Lijfrenteverzekering and direct ingaande lijfrente are our only two alternatives for banksparen.

38 Q85 of Questionnaire 1 to competitors.

39 Q86.1 of Questionnaire 1 to competitors.

be left open, as the Transaction does not significantly impede effective competition on these markets under any plausible market definitions resulting from these distinctions.

Annuities (pillar 2 and pillar 3)

65. One area in which there may be a more blurred division between product markets than was previously identified by the Commission is in annuities. Insurers sell annuities both for the decumulation phase of DC pension schemes (i.e. as part of the pillar 2 pension system) and to individuals who have saved up through individual savings and investment products. As with the savings products themselves, the annuity purchased can either be in the traditional life insurance product range, or from the new bank savings products (*banksparen*), the main difference being that the latter are always time limited (to a maximum of 30 years), whereas the former pay out for the insured party's full lifetime.

66. From a demand-side perspective, there is no substitutability between pillar 2 and pillar 3 annuities, as regulations prevent customers from using capital saved in one pillar to buy an annuity in the other.

67. From a supply-side perspective, however, the products are very similar, as both annuities purchased within DC pension schemes and those purchased within individual life insurance involve the provider taking on interest rate and longevity risk. This is less the case for bank annuities, as these are for a fixed term and therefore do not imply any longevity risk. Furthermore, bank annuities are provided under a banking licence, meaning that, even if insurers provide these, this would be through their banking subsidiaries.

68. The Notifying Party acknowledges that any insurance company offering pillar 2 decumulation products could easily offer pillar 3 decumulation products, and most, in practice, already do. It argues, however, on the grounds of the lack of demand-side substitutability, that there should not be considered to be one market comprising pillar 2 and pillar 3 decumulation products.

69. The results of the market investigation were inconclusive as to whether pillar 2 and pillar 3 annuities could form part of the same market due to supply-side substitutability. As mentioned above, the market investigation did, however, confirm that an increasingly large proportion of pillar 3 savings and investment products sold in the Netherlands are banking products, which would limit the supply-side substitutability.

70. For the purpose of this case, the question as to whether pillar 2 and pillar 3 annuities form separate product markets within a hypothetical decumulation market can, in any event, be left open, as the Transaction does not significantly impede effective competition in the area of annuities, irrespective of whether annuities under pillar 2 and pillar 3 are considered to form separate product markets, or to be part of one distinct product market.

Conclusion

71. The market investigation confirmed that the market for life insurance products can be segmented into the following three categories: (i) pension products, (ii) pure protection products, and (ii) savings and investment products. Whether or not a further segmentation is made between group and individual products is ultimately

inconsequential, as the first category, pension products, only exists as group products in the Netherlands, while the other two categories only exist as individual products. The market investigation strongly suggested that it would also be appropriate to make a distinction between defined benefit (DB) and defined contribution (DC) pension products, and, within DC pensions, potentially between unit-linked and non-unit-linked products or between accumulation and decumulation products. Within decumulation products, there may also be separate markets for variable and fixed annuities, whilst pillar 2 and pillar 3 annuities may form part of the same product market. As regards pure protection products the Commission will consider overall market comprising all such products and possible segmentation based on categories of risks covered such as term-life insurance or funeral insurance. As regards savings and investment products, the Commission will consider overall market comprising all these products, including *banksparen* or not, and potentially segmented into accumulation and decumulation products. For the purpose of this case, the market definition can, in any event, be left open, as the Transaction does not significantly impede effective competition under any of these market definitions.

III.2.B. *Non-life insurance*

72. In past decisions, the Commission observed that, from a demand-side perspective, the market for non-life insurance could be segmented into as many product markets as there are different types of risks insured and that, from a supply-side perspective, the conditions for insurance of the different types of risks are quite similar and most large non-life insurers are active in several types of risk coverage.[40]

73. The Commission usually considers a distinction between: (i) accident and sickness, (ii) motor vehicle, (iii) property, (iv) liability, (v) marine, aviation and transport (MAT), (vi) credit and suretyship and (vii) travel insurance[41] but has to date left the exact market definition for non-life insurance products open. The Commission has also considered several alternative hypothetical segmentations for the non-life insurance market, distinguishing for instance fire insurance[42] or legal assistance[43]. In certain decisions, the Commission also considered separate product markets according to the applicable national insurance classification.[44] A further distinction could also be made between individual and group customers.

74. The Notifying Party considers the relevant market to be the overall market for non-life insurance.

75. The results of the market investigation show that insurers typically make a distinction between property and casualty insurance on the one hand, and group disability and sick leave on the other (with health insurance also potentially within the latter category, but outside the scope of this case as there is no overlap between

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40 See COMP/M.7233 Allianz/Going concern of Unipolsai Assicurazioni, COMP/M.IF P&C/TopDanmark.

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

42 See COMP/M.4844 – *Fortis/ABN Amro Assets*, Commission 3 October 2007, para. 72

43 See COMP/M.7233 Allianz/Going concern of Unipolsai Assicurazioni.

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

the Parties' activities in this area). The large insurers typically offer products across both these broad categories, but many smaller companies are more specialised, offering only, for example, property and casualty insurance, or only insurance to commercial clients (and not to individuals). In general, the market investigation did not provide any evidence to justify departing from the past Commission practice of considering separate markets for the various insurance products insuring different risks.

76. For the purpose of this case, the product market definition can, in any event, be left open, as the Transaction does not significantly impede effective competition with respect to non-life insurance, irrespective of whether products insuring different risks (e.g. travel insurance, disability insurance etc.) are considered to each form a separate product market or to together form one broader market, and irrespective of whether non-life insurance for groups and for individuals are considered to form one or separate product markets.

77. As regards the geographic market definition, in previous decisions relating to non-life insurance the Commission considered that the markets are likely to be national with the exception of certain segments, such as insurance for large commercial, industrial or environmental risks, marine, aviation and transport insurance or aerospace insurance, which are likely to be wider than national for large group customers.[45] Neither of the Parties provides insurance in these segments. For the purpose of this case, the non-life insurance market can therefore be considered to be national.

III.2.C. *Pensions administration*

78. In a previous case, the Commission considered that there exist separate product markets for retirement benefits consulting and pensions administration.[46] Pensions administration was defined as providing of facilities to allow scheme members to access their fund balances and to perform certain operations via, for example, websites.

79. The Commission considered that the geographic market for pensions administration could be national, as the nature of pensions administration systems is determined to a large extent by national regulatory frameworks and other national legislation, e.g. on social security and tax. The Commission considered also that the market could have some international characteristics. Ultimately the exact geographic market definition was left open.[47]

80. The Notifying Party does not contend the Commission's past practice, nor propose any alternative segmentation. The market investigation similarly did not present any reason to depart from past practice.

81. In any event, for the purpose of this case, the market definition can be left open, as the Transaction does not significantly impede effective competition under any plausible market definitions mentioned above.

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45 See COMP/M.5010 Berkshire Hathaway/Munich Re/GAUM, COMP/M.6217 Bâloise Holding/Nateus/Nateus Life.

46 See COMP/M.5597 Towers Perrin/Watson Wyatt, para 10-13,

47 See COMP/M.5597 Towers Perrin/Watson Wyatt, para 14-17.

III.2.D. *Provision of insurance to pension funds*

82. A market limited to the provision of insurance to pension funds has not previously been considered by the Commission, while it would appear to be relevant in this case.

83. Dutch pension funds[48] typically source a range of services from external providers, either, as is the case for insurance, because they are not licensed to perform the activity themselves, or, because they do not have the necessary expertise in-house. The main services they require are asset management, fiduciary management, pensions administration and insurance.

84. There have historically been a number of different types of insurance scheme used for outsourcing risk from pension funds. These vary in terms of, firstly, whether the whole pension contract is insured, or only specific risks (e.g. mortality or disability risk), and, secondly, in terms of the length of the contract – whether it is for a fixed or an indefinite period. Legislation introduced in 2012 in the Netherlands means that schemes insuring mortality and disability risks for a specific period can no longer be offered, but the other types of contract are still used. [49]

85. The relevant geographic market for the provision of insurance to pension funds would appear to be national, due to the presence of national legislation related to for example eligibility of various suppliers to provide certain categories of pension products (e.g. DB or DC schemes, decumulation products), existence of mandatory industry pension schemes or even to licensing of distributors and the procedures for carrying out tenders. Furthermore, the market appears to be national in scope due to the importance of expertise in assessing risks related to pension funds, which is necessary for the correct pricing of insurance offered. In addition, national providers account for at least 95% of the market, which would appear to confirm this hypothesis. The Notifying Party, however, contends that certain types of insurance (in particular for longevity risk) can be sourced on an international market. Whilst this may be true, this particular type of insurance would appear to represent a very minimal part of the insurance sourced by Dutch pension funds.

86. For the purpose of this case, the market definition can, in any event, be left open, as the Transaction does not significantly impede effective competition, irrespective of whether the market for providing insurance to pension funds is considered to be a distinct product market, or to form part of the wider market for all insurance services and irrespective of whether the market is national or wider in scope.

III.2.E. *Buy-outs*

87. Buy-outs of pension schemes have traditionally been the main way for a pension fund to transfer its liabilities to an insurer. When a company or other provider of a pension fund is either no longer able or no longer wishes to bear the longevity and investment risk associated with the pension fund, it can choose to transfer the obligations to an insurer.

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48 Industry pension funds (BPFs) and company pension funds (OPFs).

49 Pension Act 2012, Article 148a and Article 220a paragraph 1.

88. In previous cases, when considering the market for buy-outs, the Commission identified two main types of de-risking transactions which take place in relation to DB pension schemes: i) longevity swaps, whereby a pension scheme can hedge the longevity risk, and ii) bulk annuity contracts, whereby all the risk associated with the pension liabilities is transferred.[50] Within bulk annuity contracts a further distinction has been considered between buy-in and buy-out transactions. Under a buy-in transaction, the ultimate liability for the benefit payments remains with the pension scheme trustees, who hold the policy as an asset and remain responsible for paying the pensions. Under a buy-out transaction, meanwhile, the assets and liabilities of the entire scheme are transferred to the insurer.

89. The Commission concluded that longevity swaps and bulk annuity contracts should be considered to constitute distinct product markets, but left the question open as to whether there are separate markets for buy-in and buy-out transactions (within bulk annuity contracts).[51]

90. The Notifying Party submits that it is not aware of any buy-ins having taken place on the Dutch pensions market. The relevant market for the purpose of this case would therefore comprise the market for bulk annuity contracts, potentially limited to buy-out transactions.

91. In previous cases the Commission considered that the market for bulk annuity contracts is national in scope.[52] The Notifying Party does not challenge this assumption and the market investigation also did not provide any grounds to consider other possible geographic market definitions.

92. For the purpose of this case, the market definition can, in any event, be left open, as the Transaction does not significantly impede effective competition with respect to buy-outs, irrespective of whether buy-outs are considered to form a distinct market, to be part of a market for bulk annuity contracts or to be part of a wider market for de-risking transactions (including both bulk annuity transfers and longevity swaps).

III.2.F. *Insurance distribution*

93. In previous cases, the Commission has considered the existence of a downstream market for insurance distribution that involves the procurement of insurance cover for individuals and group customers (i.e. companies), through any one of a number of possible channels, including direct sales, tied agents and intermediaries such as brokers and banks.[53]

94. The Commission has discussed whether the market for insurance distribution comprises only outward distribution channels (i.e. non-owned and third party distributors such as brokers and agents) or whether it should also be considered to include the sales force and office networks of the insurer (i.e. direct sales). This question has, however, always been left open.[54]

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50 See COMP/M.7204 Rothesay Life/Metlife Assurance.
51 See COMP/M.7204 Rothesay Life/Metlife Assurance.
52 See COMP/M.7204 Rothesay Life/Metlife Assurance.
53 See COMP/M.4284 AXA/Winterthur, COMP/M.6957 IF P&C/Topdanmark.
54 See COMP/M.6957 IF P&C/Topdanmark, COMP/M.6053 CVC/Apollo/Brit Insurance.

95. The Commission has also considered whether a distinction could be made between the distribution of life and non-life products due to differences in the regulatory regimes and the fact that different actors are involved in the distribution of life and non-life insurance. Again, this question has always been left open.[55]

96. The information provided by the Notifying Party demonstrate that in the Netherlands the distribution channels for pension products are entirely distinct from those for (individual) life and non-life insurance, as only intermediaries holding a specific regulatory licence are able to distribute pension products to companies. These are usually actuarial or other consulting firms. No direct distribution takes place for pension products. The market for the distribution of pension products would consequently be restricted to outward channels, as 100% of pension products are distributed via intermediaries. It is, however, possible for an insurer to be present on this market via a subsidiary that has the required licence, as is the case for NN and its wholly owned subsidiary Zicht B.V. (Zicht).

97. Life and non-life insurance products, meanwhile, can be distributed via banks, brokers and other intermediaries, as well as via direct sales. The specific intermediaries involved in the distribution of life and non-life insurance respectively also vary to some extent. Whilst banks and brokers operating via online platforms typically offer both life and non-life insurance, more specialised intermediaries also play an important role on the distribution market. These include intermediaries who advise individual clients on the purchase of annuities and also risk consulting firms, which typically advise businesses on non-life insurance. In terms of the actors present on the market, there is therefore some differentiation according to both the type of the policy (life or non-life) and the customer (group or individual). Nonetheless, there is not the same regulatory restriction for distribution of these products as applies for pension products.

98. In view of the above, the Commission considers that it is likely that there is a separate product market for the distribution of pension products. There may also be separate markets for the distribution of group non-life insurance (in part as this is very often sold together with pensions) and for the distribution of individual life insurance, although this is less certain. Furthermore, a hypothetical market for the distribution of pension products would be *de facto* restricted to outward channels, as mentioned above.[56] The hypothetical markets for the distribution of life and non-life insurance respectively could include only outward distribution channels, or could include both outward and inward channels, as contemplated in the previous decisions of the Commission.

99. The Commission has always left the geographic market definition of insurance distribution open, while recognising the national nature of insurance distribution channels.[57]

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55 See COMP/M.4284 AXA/Winterthur, COMP/M.6957 IF P&C/Topdanmark.

56 It is, however, possible for an insurer to be present on the market for the distribution of pension products via a subsidiary that has the required licence, as is the case for NN and its subsidiary Zicht, as discussed in the competitive assessment.

57 See COMP/M.6957 IF P&C/Topdanmark, COMP/M.6053 CVC/Apollo/Brit Insurance.

100. The Notifying Party considers the Dutch insurance industry and its further product segments to constitute national geographic markets, including for insurance distribution.

101. The presence of extensive national regulation on distribution of different types of insurance product in the Netherlands would seem to support the assumption that distribution is a national market. The market investigation did not provide any evidence to the contrary.

102. For the purpose of this case, the product market definition can, in any event, be left open, as the Transaction does not significantly impede effective competition in the area of insurance distribution, irrespective of whether the insurance distribution market is considered to constitute one broad market, or whether separate product markets are envisaged for the distribution of different types of insurance, according to the type of insurance and/or the type of customer.

III.2.G. *Reinsurance*

103. Reinsurance consists in providing insurance cover to another insurer for some or all of the liabilities assumed under its insurance policies, in order to transfer risk from the insurer to the reinsurer.[58]

104. In previous decisions, the Commission distinguished the market for reinsurance from those for life insurance and non-life insurance, defining reinsurance services as the provision of insurance cover to another party for part or all of the liability assumed by it under an insurance policy it has issued.[59] It left open, however, whether a further distinction should be made between reinsurance for the life and non-life segments respectively, and whether, within the non-life segment, further segmentation according to the class of risk should be considered.[60]

105. The Commission has previously considered the market for reinsurance to be global due to the need to pool risks on a worldwide basis.[61]

106. The Notifying Party does not propose any alternative product or geographic markets. The market investigation similarly did not present any reason to depart from past practice.

107. For the purpose of this case, the product market definition can, in any event, be left open, as the Transaction does not significantly impede effective competition in the area of reinsurance, irrespective of whether the reinsurance market is considered to form one product market, or whether reinsurance for life and non-life insurance or for different risks are considered to constitute separate markets.

III.2.H. *Asset management*

108. In past cases, the Commission has described asset management as the provision and potential implementation of investment advice. It was considered that it may also

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58 See COMP/M.6743 – *Talanx International/Meiji Yasuda Life Insurance Company/HDI Poland*.

59 See COMP/M.4284 AXA/Winterthur.

60 See COMP/M.6053 CVC/Apollo/Brit Insurance, COMP/M.5083 Groupama/OTP/Garancia.

61 See COMP/M.6848 Aegon/Santander/Santander Vida/Santander Generales, COMP/M.5925 Metlife/Alico/Delam.

include the creation and managing of mutual funds which are then marketed on an "off-the-shelf" basis, including to retail customers, the provision of portfolio management services to institutional investors (pension funds, institutions and international organisations), and the provision of custody services related to asset management.

109. The Commission considered the possibility of there being a relevant product market for asset management, which would include the creation and management of mutual funds for retail clients and tailor-made funds for corporate and institutional customers, and portfolio management for private investors, pension funds and institutions.[62]

110. The Commission further considered the possible existence of separate relevant product markets for each of the types of products mentioned above.[63] In previous cases, the Commission has judged that asset management services for private individuals should be considered to be distinct from other asset management services (as they often form part of retail banking).[64] With regard to the other potential narrower markets within asset management (such as a market for custody services), the Commission has, however, always left the market definition open.[65]

111. The Notifying Party does not propose any alternative product markets and the market investigation did not suggest that there would be any reason to depart from past practice.

112. The relevant geographic market for asset management (or any narrower hypothetical market within asset management) has previously been considered to be either national or EEA wide.[66] The Commission has deemed it likely that at least some parts of the asset management market are wider than national, in particular as regards institutional clients.[67]

113. The Notifying Party considers the market for asset management to be at least EEA-wide, on the basis that competition between financial institutions that offer asset management takes place at a wider than national level.

114. The market investigation did not provide conclusive evidence as to whether the market for asset management should be considered to be national or EEA wide.

115. For the purpose of this case, the market definition can, in any event, be left open, as the Transaction does not significantly impede effective competition on the market for asset management under any plausible market definition as previously considered by the Commission.

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62 See COMP/M.6812 SFPI/Dexia, COMP/M.3894 Unicredito/HVB.

63 See COMP/M.6812 SFPI/Dexia, COMP/M.5728 Credit Agricole/Societe Generale Asset Management.

64 See COMP/M.4844 Fortis/ABN Amro Assets, COMP/M.3894 Unicredito/HVB.

65 See COMP/M.6812 SFPI/Dexia, COMP/M.4844 Fortis/ABN Amro Assets.

66 See COMP/M.6812 SFPI/Dexia, COMP/M.4844 Fortis/ABN Amro Assets.

67 See COMP/M.5728 Credit Agricole/Societe Generale Asset Management, COMP/8359 Amundi/ Credit Agricole/ Pioneer Investments.

IV. PENSION PROVIDERS IN THE NETHERLANDS

116. Further to the above section on market definition (section III) and by way of introduction to the competitive assessment (section I), the Commission considers it useful to provide a short and general description of the various types of pension product providers in the Netherlands. This background information will help to illustrate the Parties' position as insurance companies vis-à-vis the other types of pension providers active in the Netherlands, which the Notifying Party believes to exert competitive pressure on the Parties. The following section also highlights the recent regulatory changes introduced in the Netherlands that have allowed new types of pension providers to enter the market.

IV.1. **Introduction**

117. The Dutch pensions market is characterised by the presence of a wide range of providers who serve, to some extent, different parts of the market. Insurers, such as NN and Delta Lloyd, between them account for no more than 14%[68] of regular premiums paid into all Dutch pension schemes and funds. A large part of the Dutch pension market (i.e. pillar 2, the market for supplementary collective employer-based pensions) has traditionally been served by compulsory industry pension funds (*bedrijfstakpensioenfonds*, BPFs) and company pension funds (*ondernemingspensioenfonds*, OPFs), which together account for around 85% of the premiums paid on the Dutch pensions market.

118. The 14% of the pensions market occupied by insurers is in the hands of six main players (in order of market share): Aegon, NN, Delta Lloyd, ASR, Vivat and Achmea.

119. The Dutch pensions market has seen a number of significant changes in recent years, some of which are typical of the current economic environment and can be seen as part of wider international trends, and others of which are more specific to the Netherlands. As in many other countries, the Netherlands is seeing a gradual shift from defined benefit (DB) to defined contribution (DC) pension schemes. Changing demographics have made it increasingly difficult to fund DB schemes, and in recent years this has been further exacerbated by persistent low interest rates. Changes more specific to the Netherlands include in particular the introduction of two new pension vehicles: *premiepensioeninstellingen* (PPIs) in 2011 and more recently *algemeen pensioenfondsen* (APFs) in 2016. Insurers such as NN and Delta Lloyd are both active as providers of these new types of pension arrangement, via their respective PPIs and APFs they have set up. In these areas however the Parties compete also with a wider field of competitors The Parties' PPIs, for example, are competing not only with the PPIs set up by other insurance companies but also with PPIs set up by asset managers and banks. In addition, the number of company pension funds (OPFs) has decreased dramatically in recent years and is expected to fall further, primarily due to the difficulty of maintaining these schemes in the face of new stricter regulation on solvency and administration. These changes will be discussed in more detail in the sections which follow, in particular insofar as they have implications for the competitive assessment.

68 Assuming that PPIs (see section IV.6 for definition) are part of the insurers that set them up. If only insurers' own business is taken into account, excluding PPIs, the actual percentage is even lower at approximately 12%.

120. The following sections provide a brief description of the different actors present on the Dutch pensions market, the products they offer and their typical customers.

IV.2. Bedrijfstakpensioenfondsen *(BPFs)*

121. BPFs are industry pension funds that serve a particular sector of the economy. The sectors covered by BPFs include, for example, construction, retail stores and health and welfare. There are currently 63 BPFs active in the Netherlands, which together account for around 64% of the Dutch pensions market.

122. BPFs were originally set up as a mandatory arrangement for certain industries, and employers for whom membership is obligatory and who still make up the vast majority of their membership (98% of premiums). Mandatory participation for an employer means that all individual employees are obliged to be members of the fund. All members of a BPF are subject to the same terms and conditions, meaning that they pay the same fixed level of contributions for the same level of benefits.

123. More recently, many BPFs have opened up their membership to other employers within their sector or in neighbouring sectors. These employers can join a BPF on the same terms and conditions as those for whom membership is mandatory.

124. There are also nine BPFs which have been set up on the basis of voluntary membership alone. These are also, however, sector specific, and include, for example, funds for the plastic and rubber industry, the dairy and related industry and public transport.

125. The vast majority of BPFs (over 99% based on 2015 regular premiums) operate defined benefit (DB) schemes. It follows that individual members of BPFs typically remain in the BPF during both the accumulation and the decumulation phase, i.e. their pension is paid out directly from the BPF, at the level set by the BPF's terms and conditions at that point in time, and there is no possibility of shopping around for an annuity.

126. BPFs are regulated by the Dutch central bank (DNB), and are required to maintain certain minimum levels of coverage for their liabilities. Should a fund's coverage ratio fall below the prescribed threshold, the board of the BPF is required to submit a recovery plan to the DNB, setting out how it will increase funding to the required level. This will normally involve increasing contributions, and, in more extreme cases, potentially also cutting pensions. Any decisions require the agreement of the representatives of the members, however, and it can therefore be difficult to obtain approval for such changes. Therefore, BPFs' DB schemes are unlike those of insurers in that pension schemes offered by BPFs do not involve any guarantee element (other than pooling risk within the scheme and the scheme's commitment to attempt to deliver the benefit as originally defined) whereas those offered by insurers guarantee the agreed levels of benefits (and these guarantees are backed with insurers capital, protected by solvency requirements).

127. Employers who join a BPF on a voluntary basis would typically transfer their historic assets and liabilities into the pension fund. These employers may have previously had a pension scheme with an insurer or may have had a company pension fund (OPF). As such, BPFs are one of the options open to OPFs which can no longer continue to operate independently.

128. In order to join a BPF, the historic scheme being transferred in needs to meet certain requirements, and the employer is also required to agree to the terms and conditions of the BPF as they stand. In some cases this may mean that pension funds have to make an additional payment as a way of improving the coverage ratio of the assets and liabilities being transferred into the BPF.

129. Whilst OPFs (see section IV.4) that are struggling to survive often look to join a BPF, the smaller BPFs are also facing similar problems. Stricter capital requirements and increased regulation have made it increasingly difficult for smaller BPFs to operate in a cost-effective way, in particular due to higher administrative costs. This has led to a number of smaller BPFs merging.[69]

IV.3. Beroepspensioenfondsen *(BrFs)*

130. *Beroepspensioenfondsen* (BrFs) are pension funds that serve individuals in a number of specific professions, which are generally exercised independently, e.g. veterinarians and general practitioners. Participation in the BPF for their profession is usually mandatory for registered professionals. There are 11 BrFs in the Netherlands, each for a specific profession or sector, which together represent approximately 1.5% of the Dutch pensions market (measured on the basis of gross written premium (GWP) in 2015). The vast majority (90%, on the basis of 2015 GWP)) of BrFs are DB schemes.

131. Contrary to insurers, pension schemes offered by BrFs cannot entail any guarantee element. For instance, DB pension benefits offered by BrFs can be reduced or no longer indexed if the scheme is underfunded and DC offered by BrFs schemes are necessarily unit-linked.

132. BrFs will not be discussed further in this decision as their activities can be considered to be totally distinct from those of other pension providers. Membership of the BrF is obligatory for the profession in question, and not open to any other firms or individuals, meaning that there can in no way be considered to be competition between BrFs and insurers, or any other pension provider.

IV.4. Ondernemingspensioenfondsen *(OPFs)*

133. OPFs are company pension funds set up by an individual employer for its employees. There are currently 293 OPFs[70] active in the Netherlands, and it is typically large corporations which would choose to set up an OPF. Philips, Shell and KLM, for example, all have their own pension funds. OPFs account for around 20% of the Dutch pensions market (based on GWP in 2015).

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[69] The difficulties faced by smaller BPFs were confirmed in particular during a call held with a BPF as part of the Commission's market investigation.

[70] There are also three multi-OPFs currently active the Netherlands. Multi-OPFs are legal entities which administer a number of pension funds. The funds are structured into circles, each with its own capital, in a similar way as is done in algemeen pensioenfondsen (APFs) – see section IV.7. Multi-OPFs could be considered to be the predecessor to APFs.

134. Similarly to BPFs, the vast majority of OPFs (97% based on GWP) operate as DB schemes. A minority of OPFs (3%) operate DC schemes.[71]

135. Contrary to insurers, products offered by OPFs do not involve any guarantee element (other than pooling risk within the scheme and the scheme's commitment to attempt to deliver the benefit as originally defined) whereas products offered by insurers guarantee the agreed levels of benefits (and these guarantees are backed with insurers capital, protected by solvency requirements). DC schemes offered by OPFs are necessarily unit-linked.

136. In recent years, there has been significant consolidation amongst OPFs, affecting in particular the smaller funds. Stricter regulations on solvency and capital requirements, together with low interest rates on government bonds and demographic developments, have made it increasingly difficult for small OPFs to continue to operate independently, as was confirmed by OPFs contacted during the market investigation. In addition, regulation on the management of OPFs has become more onerous, requiring considerably more monitoring and reporting. For small OPFs that do not have the expertise necessary to meet these requirements in house, it has become very difficult to absorb these increased operating costs. Many OPFs have therefore either merged, or closed and transferred their historic assets and liabilities to another provider. OPFs in this situation are most often either bought out by an insurer (see sections III.2.E andV.1.F on buy-outs), with which they may then also enter into a contract for future accrual, or join a BPF, into which they also transfer their historic assets and liabilities. Since the launch of *algemeen pensioenfondsen* (APFs) (see section IV.7 below) in January 2016, OPFs have another alternative, as they can either join an existing APF or set up their own APF.

137. The different options available to an OPF have different implications for the scheme's members: a buy-out by an insurer means that the members are then guaranteed a fixed level of pension benefit, whereas under an APF or a BPF, the benefits could be cut (in the same way as was the case in the OPF). A buy-out by an insurer is therefore typically more expensive for an OPF than joining an APF or a BPF. APFs and BPFs have their own requirements for entry, and an OPF may therefore have to pay an additional premium, for example, if its coverage level is below that of the other funds in the APF or in the BPF, respectively.

IV.5. Insurance companies

138. In the Netherlands, insurance companies have traditionally served employers in all industries where membership of an industry pension fund (BPF) is not obligatory. The five sectors in which NN achieves its highest revenue are vehicle repair, industry, financial institutions, advisory and research services and business services. As discussed in the section III.2.A.1, insurers usually offer DB and DC pension schemes.

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71 These DC schemes are, however, different to those operated by insurers, as the members do not have the option to use their accumulated assets to buy an annuity elsewhere. Furthermore, some respondents to the market investigation suggested that DC schemes within OPFs typically constitute a type of second layer. They are designed for employees who participate in the standard DB scheme and have high salaries, part of which they want to invest in a DC scheme.

139. The DB schemes offered by insurers could be regarded as DB pensions in a stricter sense than those provided by BPFs and OPFs. The insurance company is contracted to provide a guaranteed level of benefit (usually defined as a percentage of the member's average salary, based on the number of years' employment). The level of benefits and contributions are determined by the insurance company using actuarial calculations but if, for example, investments perform less well than expected, or interest rates move such that the present value of liabilities increases relative to the present value of assets, the insurance company effectively covers the shortfall. It cannot increase contributions or reduce benefits to cover the loss (although it can of course offer less favourable terms for future years when the contract comes up for renewal). For this reason, insurance companies are required by solvency regulation to hold a certain level of capital in respect of DB arrangements.

140. The DC schemes offered by insurers are now mainly unit-linked policies, which involve each individual member paying contributions in order to accumulate their own 'pension pot', which is then used to purchase an annuity. PPIs (see section IV.6 below) offer very similar DC arrangements for the accumulation phase but (as explained above in section III.2.A.1on product market definition) are much more restricted in the products they can offer members on retirement. Specifically, only insurers can offer fixed annuities as the provider of such products is taking on longevity and interest rate risk, which needs to be backed by a certain level of capital. Similarly to for DB schemes, only providers licensed as insurers and subject to solvency regulation are therefore allowed to carry out these activities.

141. In view of the above, insurers' activities therefore differ from those of other actors, in part because they serve a different client base[72], and in part because at least some of the products they offer are different in nature than those of other providers.

IV.6. Premiepensioeninstellingen (PPIs)

142. PPIs are a relatively new type of pension institution that became active on the Dutch market in January 2011. They can serve all industries apart from those where participation in a BPF is mandatory. PPIs only offer DC pensions as they are not licensed to carry the risk involved in running a DB pension scheme. There are currently ten PPIs active on the Dutch pensions market, including Nationale-Nederlanden Premium Pension Institution B.V. set up by NN and BeFrank PPI N.V. set up by Delta Lloyd.

143. PPIs were originally only able to provide the accumulation phase of a DC arrangement, but since July 2016 they can also offer decumulation products, but only in the form of variable annuities. (They are not able to offer fixed annuities, as these would, again, involve bearing longevity and interest rate risk.) PPIs do, however, act as distributors of fixed annuities offered by other providers.

144. A PPI that has been set up by a party other than an insurer may not have all the expertise and/or resources in-house, and so is likely to outsource certain parts of the value chain, in particular asset management and pension administration. A PPI

72 In particular relative to BPFs and OPFs: the industries served by BPFs are defined by law, and OPFs are by definition only for their own company. OPFs have always only been a feasible option for relatively large companies, and the size needed to make an OPF sustainable appears to be increasing, in view of the number of small OPFs closing.

would also typically need to reinsure any additional risks that have been included in the package offered to pension customers, such as survivors' pensions and disability insurance. The need for these different services means that a single PPI often involves the participation of a range of companies, which can each provide different expertise, e.g. an asset manager, a pensions administration company, a bank and an insurer. In this way, PPIs could be seen as having contributed to the 'unbundling' of pension provision.

IV.7. Algemeen pensioenfondsen *(APFs)*

145. The first APFs became active in 2016, and there are currently seven providers that have obtained regulatory approval from the Dutch central bank (DNB) including De Nationale APF set up by NN and the Delta Lloyd APF. There is thought to be one further APF in the process of being set up, for which a request for authorisation has not yet been submitted to DNB (according to market intelligence available at the time of writing).

146. An APF is a type of pension vehicle which operates a number of collective pension schemes. An APF is structured as a number of 'circles', each of which contains one or more pension funds. The pension funds within each circle all carry the risk of that circle collectively, but do not share risk with pension funds in other circles. As a result, investment of the pension fund assets is also carried out at 'circle-level'.

147. An APF can operate both DB and DC circles (the two types of pension product would never be combined in the same circle), but to date most providers have set up DB circles. Only two providers, one of which is NN, offer DC circles. An employer or other pension fund wishing to join an APF typically has the choice between a number of different circles with different characteristics, in terms of premiums, investment strategy (i.e. the level of risk) and the coverage level. Alternatively, it could create its own circle, thus keeping more control over the style of the pension fund. This option would typically be of interest to larger pension funds or employers.

148. An APF can outsource various activities involved in the running of a pension scheme (including asset management, administration, fiduciary management and reinsurance). One of the main attractions of an APF for customers is that it allows pension funds to achieve economies of scale as they share these services with the other pension funds in their circle. Although an APF can theoretically outsource activities such as asset management and pensions' administration to any provider, in practice, almost all APFs have been set up by insurers, with the insurer providing these services. APFs could be seen as being simply a different business model for insurers, i.e. rather than providing pensions' administration and asset management directly to an employer as part of the contract for a pension scheme, the insurer gains this business via its own APF. As such, the different activities involved in providing a pension scheme have been technically unbundled, but are in most cases all still performed by the same small group of insurers.

149. Each of the circles within an APF is subject to the same solvency framework as individual pension funds. The APF itself is also required to hold 0.3% (or 0.2% when certain risks are insured) of assets under management as a buffer, with a minimum of EUR 0.5 million.

150. APFs can be set up by pension funds, insurers, pensions' administration organisations, banks and asset management companies. To date, of the seven APFs

which have obtained approval from the DNB, all but one[73] have involved the participation of an insurer or (in one case) a pension provider. In addition to the Parties, the following companies have gained approval for APFs: Achmea (*Centraal Beheer*), TKP[74]/Aegon (*Stap*), PPGM (*Volo*), ASR (*Het Nederlandse Pensioenfonds*) and Unilever (*Progress* and *Forward*).

151. As discussed in more detail in the section on buy-outs, APFs are considered to offer an alternative to pension funds, in particular OPFs, which would otherwise be forced to look for a buy-out. A pension fund can transfer its liabilities to an APF, but, unlike in the case of a buy-out, there remains the risk of benefits being cut should the APF not have sufficient funding. Correspondingly, a buy-out is more expensive than the transfer of liabilities to an APF as the pension fund is effectively paying the insurer to take on the risk associated with the historic liabilities.

152. Unlike BPFs, APFs are open to pension funds and employers from all sectors, but the APF can itself set entry requirements. The main requirement for entry is often that the pension fund's solvency level is similar enough to that of the other funds already in a circle.

153. As mentioned above, both NN and Delta Lloyd have recently set up APFs. NN's APF, which received approval from DNB in November 2016, is a cooperation between NN's wholly owned subsidiaries AZL (a pensions administration company) and NN Investment Partners. Delta Lloyd received approval for its APF in December 2016. The APF will outsource to [business partners A and B] and has entered into an agreement with [business partner C] for custody services.[75]

154. NN's APF currently has five multi-client circles, four of which accept DB and collective defined contribution (CDC) schemes, and one of which is for DC schemes. Delta Lloyd's APF has three DB circles. Both providers offer different risk levels, and correspondingly different return targets, in their various circles.

155. The Notifying Party submits that the merged entity would [Parties' future business strategy]. Depending on whether [strategic condition] by the time of the merger, this may [Parties' future business strategy].

IV.8. Conclusion and link with product market definition

156. To conclude, there are several types of pension product providers active in the Netherlands, including new types of pension vehicles, namely APFs and PPIs. The different regulations determine the types of pension products that can be offered by the different actors. The different actors and the products they offer are summarised

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73 The APF created by Unilever is the only one not created by an insurer or a pension provider. Unilever's APF is a specific case, as it serves as Unilever's in-house pension provision for its own employees, i.e. it is not open to other pension funds. It thus functions more like an OPF, although it has the legal structure of an APF.

74 TKP is a pensions administrator that has a number of joint ventures with Aegon, including a PPI and an APF.

75 [Business partner B] already cooperates with [business partner C] in relation to custody services. As a provider of services to Delta Lloyds APF, [business partner B] will also outsource asset administration and reporting to [business partner C]. (For these services there is, however, no direct agreement between the APF and [business partner C].)

in the table below, which also reflects the possible segmentation of pension products as introduced in section III.2.A.1. of the market definition.

Pension products as delineated in section III.2.A.1			Insurers	BPFs / OPFs / BrFs / APFs	PPIs
DB schemes			Yes (with hard guarantees)	Yes (without hard guarantees)	No
DC schemes	DC accumulation	Non-unit linked	Yes	No	No
		Unit-linked	Yes	Yes	Yes
	DC decumulation	Fixed annuities	Yes	No	No
		Variable annuities	Yes	Yes	Yes

157. As can be seen from the table above, insurers are the only type of providers to offer the full range of possible pension products as segmented in the product market definition. The following section on the competitive assessment will consider, *inter alia*, the extent to which the different types of pension providers are likely to exert competitive pressure on the Parties.

V. COMPETITIVE ASSESSMENT

V.1. Horizontal assessment

V.1.A. Life insurance

158. The Parties' market shares on the market for life insurance (group and individual products) provided by insurers are as follows:

Table 1: Life insurance provided by insurers, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Aegon	Vivat	ASR	Achmea	Others
2013	18 269	[10-20]%	[10-20]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
2014	17 465	[10-20]%	[10-20]%	**[30-40]%**	[20-30]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
2015	14 690	[10-20]%	[10-20]%	**[30-40]%**	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%

Source: DNB data (table 29 of Form CO)

159. The Parties' market shares on the market for life insurance (group and individual products) provided by insurers and PPIs are as follows:

Table 2: Life insurance provided by insurers and PPIs, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Aegon	Vivat	ASR	Achmea	Others
2013	18 381	[10-20]%	[10-20]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
2014	17 845	[10-20]%	[10-20]%	**[30-40]%**	[20-30]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
2015	15 372	[10-20]%	[10-20]%	**[30-40]%**	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%

Source: NN best estimates, DNB data and data from annual reports (table 30 of Form CO)

160. As can be seen from the tables above, the Parties' and their competitors' market shares are very similar in the markets for life insurance excluding and including PPIs (due to the relatively small size of PPIs relative to this market as a whole). The Parties' combined market share in both scenarios amounts to [30-40]%, with an

increment of approximately [10-20]% brought by Delta Lloyd. This means that post Transaction the merged entity would become a market leader, followed by Aegon having a market share of approximately [10-20]% and three other relatively large players: Achmea, ASR and Vivat, each of them having [10-20]% market share on the life insurance market.

161. The Notifying Party notes that, following the merger, a number of other competitors would remain active on the life insurance market, including the four other main insurers, which are all well established in the Netherlands. The Notifying Party argues that these market players would be able to exert sufficient competitive pressure on the merged entity. It also puts forward the argument that, even if other players such as OPFs, BPFs and PPIs are not considered to be part of the same market (they are not included in the market shares data in tables 1 and 2 above), they will continue to exert competitive pressure on the Parties. The Notifying Party points to the shrinking of the life insurance market in recent years as evidence of the effect of the competitive pressure exerted by these other players. The Notifying Party considers that post-Transaction this competitive pressure will continue to work.

162. In view of the conclusions of the above discussion on the different types of life insurance products available in the Netherlands, the Commission will assess the impact of the Transaction on the markets for pension products and for individual life insurance (pure protection products and savings and investment products) separately. As will be illustrated below, the Transaction does not raise competition concerns on any of the markets within life insurance. The Commission therefore concludes that the Transaction does not significantly impede effective competition on the overall market for life insurance.

V.1.A.1 Pension products

163. The Parties' market shares on the market for pension products provided by insurers are as follows:

Table 3: Pension products provided by insurers, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Aegon	ASR	Vivat	Achmea	Others
2013	8 568	[10-20]%	[10-20]%	**[30-40]%**	[30-40]%	[5-10]%	[10-20]%	[5-10]%	[0-5]%
2014	8 742	[10-20]%	[10-20]%	**[30-40]%**	[30-40]%	[5-10]%	[10-20]%	[10-20]%	[0-5]%
2015	6 788	[20-30]%	[10-20]%	**[30-40]%**	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[0-5]%

Source: DNB data (table 56 of Form CO)

164. The Parties' market shares on the market for pension products provided by insurers and PPIs are as follows:

Table 4: Pension products provided by insurers and PPIs, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Aegon	ASR	Vivat	Achmea	Others
2013	8 680	[10-20]%	[10-20]%	**[30-40]%**	[30-40]%	[5-10]%	[10-20]%	[10-20]%	[0-5]%
2014	9 122	[10-20]%	[10-20]%	**[30-40]%**	[30-40]%	[5-10]%	[10-20]%	[10-20]%	[0-5]%
2015	7 470	[20-30]%	[10-20]%	**[30-40]%**	[20-30]%	[10-20]%	[10-20]%	[5-10]%	[0-5]%

Source: NN best estimates, DNB data and data from annual reports (table 57 of Form CO)

165. As can be seen from the tables above, in 2015 the merged entity had a market share of [30-40]% on the overall market for pension products (comprising all categories of schemes and both accumulation and decumulation products). An increment of [10-20]% is brought by Delta Lloyd. Following the transaction, the merged entity will be the market leader, followed by Aegon with a market share of around [20-30]%, ASR with a market share of [10-20]%, Vivat with [10-20]% and Achmea with [10-20]%. As such, it appears that the merged entity will have a strong position as market leader, but that four other relatively strong competitors will also remain present on the market.

166. The Notifying Party underlines that the remaining four strong competitors active on the market will have a disciplining effect on the merged entity.

167. In addition, the Notifying Party maintains that NN and Delta Lloyd are not particularly close competitors, as demonstrated by the switching patterns of customers leaving the two providers. Of customers who had a DB scheme with NN, and who switched providers when the scheme came up for renewal in 2015, [10-20]% (of those for whom the new provider is known) moved to Delta Lloyd (or BeFrank, Delta Lloyd's PPI). The equivalent percentage for NN's DC customers is [30-40]%. Of customers who had a DB scheme with Delta Lloyd, and who switched providers when the scheme came up for renewal in 2015, [10-20]% (of those for whom the new provider is known) moved to NN. [0-5%] of Delta Lloyd's DC customers for whom the new provider is known switched to NN in 2015.[76] These percentages are generally lower than would be expected, given the Parties' market shares.[77]

168. The Notifying Party also points out that all sales of pension products in the Netherlands are realised through intermediaries (primarily actuarial consultants or other advisory firms), who are licensed under Dutch regulation. These intermediaries are required to solicit at least three proposals from different pension providers when offering pension products to customers, which, according to the Notifying Party, allows customers to make a well informed choice and increases buyer power in the market. The Notifying Party also mentions that, thanks to the services provided by intermediaries, when a pension contract expires customers can easily check if they could get a better offer elsewhere.

169. The Notifying Party submits that the increasing unbundling of pension products seen in recent years has made it easier for customers to switch parts of their coverage to other providers, restricting the ability of insurance companies to increase prices on the ancillary policies provided with the pension scheme (e.g. group disability and unemployment insurance).

170. In the Notifying Party's view, the pensions market is, in part, a bidding market, meaning that all competitors can easily and quickly increase their market share. The Notifying Party argues that this is particularly true for DC schemes, where competitors are not restricted in their ability to compete for new policies by solvency or capital requirements.

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76 It should be noted that these percentages are estimates prepared by the Parties on the basis of the relatively small proportion of lost customers for whom they know the identity of the new provider.

77 The sole exception being customers switching from NN's DC product, where a slightly higher proportion than would be expected moved to Delta Lloyd.

171. Further to the above, the Notifying Party emphasises that most new policies being taken out are now DC policies, and that insurers face additional competition in this area as PPIs can also offer DC schemes. The Notifying Party submits that the DC products offered by PPIs are, from a customer perspective, very much equivalent to those provided by insurers. Although PPIs cannot bear any biometric risks, they can outsource this to third party providers and are therefore able to offer the same risk riders (e.g. survivor's pensions and disability insurance) as insurers.

172. The Notifying Party maintains that there is no risk of coordinated effects arising after the Transaction, as the merged entity will be one of five main insurance companies competing on the market, and will also be subject to competitive pressure from other pension providers, namely OPFs, BPFs, PPIs (including those set up by banks and asset managers) and APFs.

173. Lastly, the Notifying Party points out that NN wins a much lower proportion of new business than would be suggested by its market share. In terms of newly written premium (NWP), NN has a market share of [5-10]% in pension products (compared to [20-30]% in GWP).[78] In the Notifying Party's view, this demonstrates that NN's market position is less strong than it might first appear.

174. The results of the market investigation generally confirmed the Notifying Parties' claims, whilst often painting a slightly more nuanced picture. The Commission notes in particular the following points.

175. The market investigation confirmed that actuarial consultants play an important role as intermediaries in the pensions market. They organise tenders for customers interested in finding a pension provider and have extensive knowledge of all the products available on the market. An actuarial consultant would typically do a full scan of all the products of the type a customer is interested in (e.g. DC schemes) before preparing a longlist of possible providers, based on a number of criteria, such as the price of the scheme, communication with members and the investment performance of the provider. The consultant would then, in conjunction with the customer, prepare a shortlist of usually three providers, who would be invited to present their products to the client. The actuarial firm would advise the customer on their final choice of provider and negotiate any changes to the terms proposed by the insurance company.

176. In view of the above, it can be concluded that customers are able to compare all the products available on the market, and benefit from greater buyer power than they would otherwise have as a result of the actuary's role in negotiating for them. The results of the market investigation confirmed that while some customers may suggest that switching cost may be high, the majority of respondents considered that there were no significant obstacles to switching.[79] For example, when asked to identify any obstacles that could deter them from switching pension provider

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78 NWP correspond to the total premiums (direct and assumed) written by an insurer before deductions for reinsurance and ceding commission (e.g. agent or distributor costs, commissions and/or payments for reinsurance), limited to the premium associated with products/policies that originated in a particular year. NWP exclude renewals, i.e. renewals are not considered to be "newly" written premiums. GWP comprise the same categories of premiums written by insurer, the only difference being that they are not limited to premiums written in a given year.

79 Pre-notification calls with customers and distributors and replies to Q5.1 of Questionnaire 2 to pensions customers.

customers provided the following responses "*no obstacles except some additional admin work*", "*we have not encountered any obstacles*", "*we haven't had any obstacles in the past and don't foresee these any in the future*".[80] Overall, respondents generally confirmed that there are no barriers to switching, even if a minority of them suggested that it may imply certain administrative costs.[81]

177. There is evidence that even those companies which consider insurers to be the only option do regularly hold tenders to see if another provider would offer them a more attractive price.[82] Furthermore, respondents who have stayed with the same insurer for a fairly long period have in many cases held tenders every time the contract comes up for renewal.[83]

178. The Notifying Party submitted that contracts expire every three to five years. The majority of DC customers who responded to the market investigation have five-year contracts but some also have shorter contract periods.[84] The Notifying Party noticed that switching between different providers of DB schemes is a lengthy and complicated process, if it concerns moving the past assets and liabilities (an actuarial valuation has to be carried out to confirm the equivalence of the two arrangements as regards the past, guaranteed benefits). At the same time, however, it appears that customers can switch provider for the future accumulation, leaving their accumulated capital with the old supplier, which is much less complex.[85] Furthermore, a large proportion of the current switching between pension scheme providers occurs when customers are also moving from DB to DC. Even more so in such cases they tend to leave the historic assets and liabilities from their old DB scheme with the previous provider, and have no difficulty in setting up a new DC scheme. The Notifying Party explained and the results of the market investigation confirmed that switching to a new provider for the future accrual is significantly less complex than moving the historic assets.

179. Indeed the information regarding the Parties switching indicate that customers do switch provider relatively frequently. [The switching data submitted by the Parties supports this conclusion.][86] [The switching data submitted by the Parties supports this conclusion.] In view of these data the Commission considers that the market for group pension products is relatively dynamic, and customers (employers) do monitor the market and do not seem to be deterred from switching by the cost of the length of the switching process.

180. Insurers' share of new business (as measured by newly written premiums, NWP) can fluctuate more from year to year, and gives, arguably, a better indication of competitor's current market position. As submitted by the Notifying Party, in 2015 in overall pension products NN had a much lower share of NWP (only [5-10]%) than in GWP ([20-30]%). The Commission considers that this could indicate that

80 Q5.1 of Questionnaire 2 to pension customers.

81 Q5.1 of Questionnaire 2 to pensions customers.

82 Q5 and Q5.1 of Questionnaire 2 to pensions customers: "*Every five years when the contract expires a tender is organised to select new provider or stay with current provider.*"

83 Q5.1 of Questionnaire 2 to pensions customers. "*For every renewal quotes were obtained from a number of insurers. Delta Lloyd always had the best offer.*"

84 Q4 of Questionnaire 2 to pensions customers.

85 Form CO, minutes of the call with one of competitors of 11 January 2017.

86 […].

NN's role in active acquisitions of pensions is more limited (while showing that NN has a relatively large accumulated book due to its historical role as a major player on the Dutch pensions market). The Parties had a combined market share in NWP of [30-40]%, thus lower than their combined market share in GWP of [30-40]%. In view of the above the Commission considers that the combined entity will certainly not have a position any stronger than that suggested by its market share in GWP.

181. The market investigation largely confirmed the Notifying Party's claim that it is possible for customers to purchase the additional insurance policies (such as group disability insurance) from another provider. At the same time, and more importantly neither distributors (actuarial companies) nor customers attach particular importance to these additional products that might be included in the package when choosing a pension provider. Customers commented on the convenience of purchasing their pension scheme and the additional insurance policies from the same provider, and a relatively high proportion did appear to have insurance policies (mainly disability insurance) from their pension provider, but it did not seem that the presence or absence of these policies would have a significant influence on their choice of insurer for the company's pension scheme. Most confirmed that they could easily purchase such an insurance policy elsewhere if necessary.[87] Similarly, when describing their process of preparing long- and shortlists of pension providers for customers, actuarial companies did not consider these additional insurance policies to be amongst the deciding criteria.[88]

182. The market investigation strongly confirmed that customers and distributors consider DC schemes offered by PPIs and by insurers to be largely equivalent. This will be analysed in more detail in the section below on the potential market for DC pension products. When considering a potential market for all pension products, this means that at least on part of the market – DC pension schemes – insurers are facing competitive pressure from another type of actor. The importance of this competition is all the greater in view of the fact that the majority of new business is in DC.

183. The Notifying Party further maintained that other actors, namely OPFs, BPFs and APFs, would also exert competitive pressure on the merged entity. However, in view of the very conclusive evidence that the number of OPFs is decreasing rapidly, and that the companies who are having to close their OPFs are looking for other solutions, it would seem highly unlikely that OPFs can in any way act as a competitive constraint on the merged entity (i.e. in the current climate, no company which does not already have an OPF would consider setting one up). BPFs, meanwhile, could offer an alternative for a small proportion of insurers' customers, but the fundamental differences in the product itself (as described above in the section IV.2 on BPFs) mean that the number of customers who would view a BPF as a real possibility would remain very limited. Furthermore, the market investigation confirmed that the vast majority of BPFs are in no way actively seeking to attract new customers, and their role on the market cannot therefore be assimilated to that of a genuine competitive force.[89] Lastly, APFs possibly offer the most realistic alternative for some insurers' customers, although it should be noted, first, that the main customers of APFs are expected to be companies closing their OPFs rather than former clients of insurance companies, and, second, that almost all

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87 Q12 and Q12.1 of Questionnaire 2 to pensions customers.

88 Prenotification calls.

89 Replies to Questionnaire 5, pension funds.

the commercially active APFs have been set up by insurance companies (arguably with the intention of transferring their DB business to a more profitable alternative). In conclusion, therefore, the competitive pressure exerted by other actors, with the notable exception of PPIs, is likely to remain very limited.

184. As mentioned above, the majority of respondents to the market investigation confirmed that there will remain sufficient choice on the market for pension products but a small number did voice concerns. In particular, one major competitor stressed that the reduction in the number of players active on the market for insurance products may be more significant than it would appear at first sight, in view of the fact that at least one and potentially two of the six main insurers are no longer active in traditional DB and DC pension products.[90] A minority of other participants also had concerns about the number of providers that will remain active on the market, some of which related specifically to DB pension products. These will therefore be discussed in more detail in the section below on the market for DB products.

185. In relation to pension products more generally, other competitors and distributors also confirmed that insurers are likely to concentrate increasingly on their APFs and PPIs, at the expense of their traditional DB and DC products. One competitor commented that competition will be limited on the market for pension products due to the current low interest rates and longevity risk (factors which are less important for APFs and PPIs).[91] A small number of customers also commented on the lack of choice they will have following the merger. A DC customer claimed that the company would only have three providers to choose from when its contract next comes up for renewal.[92] It should however, firstly, be noted that the majority of respondents consider PPIs to be an alternative to insurers' DC products. There is no indication in the responses to the market investigation which would suggest that customers prefer to choose an insurer rather than a PPI for objective reasons.

186. Secondly, as demonstrated by […] and some responses to the market investigation, insurers' growing tendency to direct customers towards their PPIs and APFs at the expense of their classic DB and DC products, if such is the case, is taking place irrespective of the Transaction. Independent industry reports have also picked up on this trend[93] and, as this appear to be a change which insurers are forced to make in order to remain profitable, it will be highly likely to continue at the same pace whether the Transaction takes place or not.

187. A second concern voiced by a number of participants was that the loss of Delta Lloyd could be particularly damaging to the market due to the role that Delta Lloyd has played as an innovator and as an aggressive competitor on price. One distributor

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90 Prenotification meeting with one of competitors.

91 Q120.1 of Questionnaire 1 to competitors. *Due to low interest environment and longevity risk we don't expect strong competition in this market*.

92 Q31.1 of Questionnaire 2 to pensions customers. *In our last tender we identified four serious parties, of which one (Delta Lloyd) is now being taken over by NN group. That leaves only three parties when our contract is up for renewal after 2020*.

93 Onderzoek Algemene Pensioenfondsen 2016" by Sprenkels & Verschuren published in December 2016.

commented, for example, that Delta Lloyd's innovative capability would be "sorely missed".[94]

188. The responses of other respondents, however, provide a more nuanced picture. Furthermore, evidence provided by Delta Lloyd proves that these concerns are not substantiated. One distributor, for example, explains that Delta Lloyd was a "price fighter" in DB, but that as this market is disappearing anyway, the effect will be "almost marginal".[95] More importantly Delta Lloyd confirmed that it used to compete mainly on price, but this has changed in the last two years. Therefore, Delta Lloyd's reputation would appear to be based, to some extent at least, more on its past performance rather than its current strategy. A distributor also comments that Delta Lloyd is not seen as a top player in any particular market.[96]

189. Delta Lloyd's overall position on the insurance market, and in particular claims from a small number of respondents that it plays an important role as an innovative competitor, are discussed in more detail in section V.1.D, following the analysis of the narrower markets within insurance.

190. In conclusion, the Commission considers that the merged entity's position on a hypothetical market for overall pension products will not be such as to significantly impede effective competition. The general shift from DB to DC means that most new business is in DC products, where the merged entity will face competition from PPIs in addition to from the other main insurers. Switching providers is not infrequent and when customers do decide to move their pension scheme, they are well served by actuarial consultants, who have extensive knowledge of the market and can advise customers on the best product to meet their needs. Buyer power therefore plays an important role, as customers have a wide choice of products to choose from and are well-informed as to the options available.

191. In view of the above the Commission considers that the Transaction does not significantly impede effective competition in the market for pension products offered by insurance companies.

V.1.A.2 DB pension products

192. As explained above, one of the plausible relevant markets is the market for pension products limited to DB products only.

193. The Parties' market shares on the market for DB pension products provided by insurers are as follows:

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94 Q43.1 of Questionnaire 3 to distributors of pension products.

95 Q34.4 of Questionnaire 3 to distributors of pension products. "*DL was a price fighter in the market for insured DB, so the bottom pricing is taken out of the market. However, since we expect insured DB plans to be replaced by soft DB plans (APFs/BPFs) or DC plans, the actual impact will be almost marginal".*

96 Q34.4 of Questionnaire 3 to distributors of pension products. "*NN and DL have not been excelling in any markets*."

Table 5: DB schemes, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Aegon	Achmea	ASR	Vivat	Others
2013	3 261	[20-30]%	[10-20]%	**[30-40]%**	[15-25]%	[10-20]%	[10-20]%	[10-20]%	[0-5]%
2014	2 995	[20-30]%	[10-20]%	**[30-40]%**	[15-25]%	[10-20]%	[10-20]%	[10-20]%	[0-5]%
2015	2 681	[20-30]%	[10-20]%	**[30-40]%**	[15-25]%	[10-20]%	[10-20]%	[10-20]%	[0-5]%

Source: DNB, CVS[97] and company analysis data (table 69 of Form CO)

194. As can be seen, on a hypothetical market limited to DB products offered by insurers, the Parties would have a combined market share of [30-40]%. The merged entity would then become the clear market leader, with the second strongest player, Aegon holding a market share of around [20-30]%.

195. The Notifying Party firstly points out that the Parties' combined market share on the market for DB pension products is slightly lower than their market share on the overall market for pension products. It further emphasises that the DB market has now been in decline for a number of years and is expected to shrink further in the coming years. In 2015, only around [20-30]% of insurers' new business was in DB products, with the remainder being in DC. The Notifying Party explains that insurers are required under Solvency II requirements to maintain higher capital levels in respect of DB products than DC products.

196. The Notifying Party argues that the DB segment is largely closed to insurers. It claims that DB schemes have become very expensive due to the current low interest rates and that, as a result, employers are increasingly opting for DC schemes – a trend which the Notifying Party expects to see accelerate in the coming years. In addition, the Notifying Party submits that when companies' contracts with insurance companies come up for renewal, they are increasingly choosing to end their DB contracts and move to DC arrangements.

197. The Notifying Party further argues that the shift from DB to DC is the underlying driver of other changes being seen in the insurance market: the number of competitors on the market is increasing because DC can be offered by a wider range of providers; the nature of the product means that DC schemes are more transparent and comparable; barriers to entry are lower as providers of DB schemes are required to meet certain capital requirements (including Solvency II), which do not apply to providers offering DC schemes only (such as PPIs).

198. Delta Lloyd provided further information on the shift from DB to DC, both in relation to Delta Lloyd's own business plans and the market as a whole. Delta Lloyd demonstrated that the decline of the DB market is inevitable in the Netherlands, and will not be reversed even if interest rates were to rise. The main arguments put forward in evidence of this claim are: i) that the capital levels required to offer DB products are prohibitive for insurers, [Parties' strategic assessment]; ii) that customers are showing an increasing preference for DC

97 *Het Centrum voor Verzekeringsstatistiek (*Centre for Insurance Statistics*).*

products[98]; and iii) that demographic changes mean that DB is no longer a viable alternative.

199. The Notifying Party further argues that the desire for lower cost pension solutions with more flexibility means that DC is consistently favoured over DB. The fall in costs for DC schemes seen in recent years (as a result of the introduction of PPIs) has therefore further contributed to the shift from DB to DC.

200. The Notifying Party also comments on the general acceptance within the Dutch insurance industry, and within Dutch society more widely, that the move towards DC is essential for maintaining a sustainable pension system. In particular, the national financial supervisory authority (AFM) commented in a recent position paper[99] on the advantages of personal pension savings, of the style of DC plans, over group savings plans.

201. Extensive internal documentation provided by Delta Lloyd[100] appears to confirm that, irrespective of the Transaction, its strategy has been to [Delta Lloyd's business strategy], and that [Delta Lloyd's assessment of market conditions]. In addition, it should be noted that Delta Lloyd is known to […], thus, irrespective of the Transaction, Delta Lloyd was likely to scale down its activity in the DB area. NN's internal documentation also shows that [NN's business strategy].

202. The results of the market investigation generally confirmed that insurers are no longer keen to offer DB products. A number of competitors commented on the reduction in activity that has already been seen in this market, with some insurers only continuing to offer DB to existing clients and certainly not actively looking for new DB business.[101] As mentioned above in recital 183, there is also a perception that insurers are trying to move their DB clients into their APF, a solution which allows the insurer to avoid the high capital requirements associated with DB pensions. This is publicly known to be the case for Achmea, which announced in December 2015 that it would no longer be offering 'classic' DC and DB products, and is also true to varying degrees for other providers. One customer reported having changed to DC as its provider was no longer prepared to offer DB on the same terms.[102]

203. The majority of customers who responded to the market investigation consider DB schemes to be too expensive to be a realistic option. Customers who mention having

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98 Several reasons explain this trend: DB products entail a higher risk for employers than DC schemes, whose costs are more predictable; changes in accounting rules oblige employers to reflect the pension scheme liabilities on their balance sheet; there is increasing concern around the possible consequences for DB pension provision of insolvency of the company.

99 *Geef elke Nederlander een persoonlijke pensioenrekening*, AFM, 24 June 2016. Available at https://www.afm nl/nl-nl/professionals/nieuws/2016/jun/position-paper-pensioen.

100 Including internal documents on capital planning for 2015-2020, the annual report for 2015, strategic plans for 2015-2019 and a presentation to investors.

101 Q7 of Questionnaire 1 to competitors. "*No insurers are actively pushing DB today*"
Q9 of Questionnaire 1 to competitors. "*We see that there is little on offer in terms of guaranteed DB pensions. Some insurers don't offer these products at all any more or only very defensively.*"
"*Tendency is more focus on DC in order to avoid interest and longevity risk.*"
Q23.1 of Questionnaire 1 to competitors "*A lot of insurers have stopped offering DB contracts with hard guarantees (except Aegon, NN, Delta Lloyd)*"

102 Q5.1 of Questionnaire 2 to pensions customers. "*We were no longer allowed to continue the scheme under the same conditions fiscally, so we moved to defined contribution.*"

moved from DB to DC clearly do not envisage moving back to DB at any point in the foreseeable future.[103] The responses provided also showed that employers are very aware of the risk that the employer bears for DB schemes, and are not keen to take on these risks again.[104] One employer also commented on the difficulty of transferring DB pension rights between employers when an employee changes jobs.[105] Competitors also note that the cost of DB schemes leads many employers to consider moving to DC.[106]

204. Actuarial companies also seem to generally expect DB schemes to disappear over the coming years. One commented, for example, that they expect insured DB schemes to be replaced by solutions offered by APFs and BPFs. Another predicted that DB may be entirely replaced by APF's and DC solutions within 5-10 years.[107] Actuarial companies appear to share the opinion that DB pension schemes have simply become too expensive for most employers, who are now obliged to look for alternatives.[108] One distributor does comment that Delta Lloyd was a "price fighter" on the DB market, but explains that it does not, however, expect the Transaction to have any significant impact on this market for the very reason that DB products are being replaced by the BPFs, APFs and insurers' DC plans.[109]

205. One competitor expressed the opinion that the merged entity would be able to control prices on the DB market (contrasting this with the situation on the DC market where, in its view, there is much more competition). No further explanation was given, however, as to how or why the merged entity would be able to exercise such power, beyond its having a market share of [30-40]%, as shown in the table above. No other competitors expressed similar views. To the contrary most competitors seemed to be of the opinion that all insurers are simply trying to move as much business out of DB as possible.

206. The Commission notes that the Parties' market shares in the area of DB products measured by NWP are estimated to amount to around [10-20]% in 2015[110], clearly much lower than the market share calculated on the basis of GWP which takes into account the legacy premium. The Commission considers that this information, could indicate not only that DB schemes are becoming less relevant (as explained above), but also that within this shrinking market for DB pension products in the recent years the Parties have not been particularly strong.

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103 Q8 of Questionnaire 2 to pensions customers. "*DB costs are too uncertain for the future.*"
"DB is unrealistic as it is too expensive"
"A DB scheme would be our first choice, but it is unaffordable. That's why we've chosen a DC arrangement."

104 Q7 of Questionnaire 2 to pensions customers.

105 Q8 of Questionnaire 2 to pensions customers.

106 Q7 of Questionnaire 1 to competitors.

107 Q30 of Questionnaire 3 to distributors of pension products. *If interest rates stay low for another 5 to 10 years we believe that the entire insured DB market (hard guarantee) will be replaced by either APF DB (no guarantee) or DC plans.*

108 Q30 of Questionnaire 3 to distributors of pension products.

109 Q34.4 of Questionnaire 3 to distributors of pension products.

110 In the Form CO, NN provided NWP data for 2015 for overall non-unit linked pension products that is pension products offering hard guarantees. Since the market investigation confirmed that none of the major 6 insurers provided non-unit linked DC products in 2015, this market data can be used as a proxy for the NWP for DB pension products, which in view of the results of the market investigation remain the only existing category of non-unit linked pension products.

207. One customer also voiced a specific concern about the amount of choice that would remain in the DB market following the merger.[111] Whilst it may be true that the products offered by the different insurers are not identical, and the Transaction will limit the choice within DB products offered, the Commission notes that there is overwhelming evidence to suggest that in the coming years there will be even less demand for any DB products anyway, and that irrespective of the Transaction insurers will be reducing their presence on the DB market.

208. In addition, the difficulties associated with changing DB provider (as described above) means that the vast majority of existing DB schemes will almost invariably stay with their current provider for the historic assets and liabilities, even though they may move to a new provider (either DB or DC) for future entitlements. In addition, there appears to be almost no genuinely 'new' DB business (i.e. business from clients looking for a pension scheme for the first time). As such, market shares on the DB market are likely to remain fairly stable as the market gradually declines, and the proposed transaction will have little or no effect on this.

209. In view of the above the Commission considers that the Transaction does not significantly impede effective competition in the market for pension products limited to DB schemes offered by insurance companies.

V.1.A.3 DC pension products (accumulation)

210. Insurers have traditionally been the main providers of DC pensions on the Dutch market.

211. The main development in DC pensions in recent years has been the introduction of PPIs, which, as described in section IV.6, offer exclusively DC pension schemes and have seen significant growth since their introduction on the market in 2008. There are currently ten PPIs registered with the Dutch Central Bank (DNB).[112] Most of the six major Dutch insurers, including NN and Delta Lloyd, have set up their own PPIs namely NN's being Nationale-Nederlanden Premium Pension Institution B.V. (NN PPI) and Delta Lloyd's BeFrank PPI N.V. (BeFrank). The remaining PPIs have been set up by institutions such as banks and asset managers, including Robeco, ABN Amro/APG and Towers Watson. PPIs still account for only a very small part of the Dutch pensions market (just under 2% in 2015 based on regular GWP), but have grown rapidly since their introduction, with regular GWP increasing from EUR 112 million in 2013 to EUR 682 million in 2015 (+509% over the period 2013-2015). Over this period, new actors have become active, in particular Zwitserleven PPI N.V. (Vivat) and Stichting Towers Watson PPI in 2014.

212. At present, only two of the six commercial APFs which have been granted approval offer DC circles (and each only has one DC circle), and it seems likely that APFs will play a more important role in DB than in DC. Furthermore, as mentioned

111 Q23 of Questionnaire 2 to pensions customers. *The choice available will certainly be reduced in the area of insured DB (average salary pensions). Only Zwitserleven, Aegon, ASR and NN/DL will then offer average salary pension schemes. The question is whether this is sufficient. They don't all offer the same alternatives, so for certain requirements in the area of insured DB, it could be the case that there will remain no or very little choice or competition.*

112 PPIs can also be set up as cross-border IORPs (Institutions for Occupational Retirement Provisions), a type of European pension fund, but this has not as yet had any notable impact on the market as a whole.

above, there is not yet any market share data available for APFs, but their role will be taken into account, insofar as is relevant, in the qualitative part of the competitive assessment.

213. Although there are some DC schemes amongst those offered by BPFs, BrFs and OPFs, these account for a tiny part of their GWP, and, for the reasons discussed above, these actors cannot be considered as genuinely present on the market in any competitive sense.

214. As outlined in the introduction to the competitive assessment for pension products, a number of different product markets could therefore be envisaged within DC pension products, in particular: (i) a narrow product market including only DC schemes offered by insurers; and (ii) a wider product market including DC schemes offered by insurers and PPIs.

215. In parallel, it would also be possible to make a distinction between unit-linked DC schemes ('pure' DC schemes with no element of guarantees) and non-unit-linked DC schemes (which contain some element of guarantees), with DC schemes offered by PPIs and APFs all belonging to the market for unit-linked DC schemes.

216. Tables 6-9 below show the Parties' market shares on various possible product markets that could be considered within a market for DC pension products.

Table 6: DC accumulation products provided by insurers, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Aegon	Vivat	ASR	Achmea	Others
2013	1 735	[10-20]%	[10-20]%	**[30-40]%**	[15-25]%	[20-30]%	[5-15]%	[5-10]%	[0-5]%
2014	1 619	[10-20]%	[10-20]%	**[30-40]%**	[20-30]%	[20-30]%	[5-15]%	[5-10]%	[0-5]%
2015	1 575	[10-20]%	[20-30]%	**[40-50]%**	[20-30]%	[20-30]%	[5-15]%	[5-10]%	[0-5]%

Source: DNB data and Parties' best estimates (tables 70-72 of Form CO)

Table 7: DC accumulation products provided by insurers and PPIs, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Aegon	Vivat	ASR	Achmea	Others
2013	1 847	[10-20]%	[10-20]%	**[30-40]%**	[15-25]%	[20-30]%	[5-15]%	[5-10]%	[0-5]%
2014	1 999	[10-20]%	[10-20]%	**[30-40]%**	[20-30]%	[15-25]%	[5-15]%	[5-10]%	[0-10]%
2015	2 257	[10-20]%	[20-30]%	**[30-40]%**	[20-30]%	[10-20]%	[5-15]%	[0-5]%	[10-20]%

Source: Parties' data, NN's best estimates, DNB data, data from annual reports (table 73 of Form CO)

Table 8: DC accumulation products unit-linked provided by insurers, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Aegon	Achmea	ASR	Vivat	Others
2013	1 345	[10-20]%	[20-30]%	**[30-40]%**	[20-30]%	[0-5]%	[5-10]%	[25-35]%	[0-5]%
2014	1 219	[10-20]%	[20-30]%	**[30-40]%**	[20-30]%	[0-5]%	[5-10]%	[25-35]%	[0-5]%
2015	1 175	[10-20]%	[30-40]%	**[40-50]%**	[20-30]%	[0-5]%	[5-15]%	[25-35]%	[0-5]%

Source: Parties' data, NN's best estimates and DNB data (tables 79-81 of Form CO)

Table 9: DC accumulation products unit-linked provided by insurers and PPIs, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Aegon	Achmea	ASR	Vivat	Others
2013	1 457	[10-20]%	[20-30]%	**[40-50]%**	[15-25]%	[0-5]%	[5-10]%	[25-35]%	[0-5]%
2014	1 599	[10-20]%	[20-30]%	**[30-40]%**	[20-30]%	[0-5]%	[5-20]%	[20-30]%	[0-10]%
2015	1 857	[10-20]%	[20-30]%	**[40-50]%**	[20-30]%	[0-5]%	[5-15]%	[15-25]%	[10-20]%

Source: Based on tables 73 and 79-81 of Form CO

217. Of the various possible market definitions discussed above, the highest combined market share for the merged entity is found on the market for unit-linked DC accumulation products, offered by insurers, where the merged entity would hold [40-50]% of the market, with the next closest competitor Aegon capturing [20-30]% of the market.

218. The market shares are slightly lower but similar under the other possible market definitions, such as those including PPIs. From the tables 6-9 above, it can be noted, that the category for 'other' competitors becomes relatively more important when the market for DC accumulation products is considered under the broader definition including DC products provided by PPIs. This reflects the fact that, in addition to insurers who are the traditional players in the DC market, new entrants such as actors from the banking or asset management sectors have been able to enter the market for DC accumulation products by setting up a PPI, and have been able to compete successfully in this market. Over the period 2013-2015, these actors have gained in importance, which is reflected in the increase in market shares for 'others'[113].

219. A product market for non-unit-linked DC accumulation products is not considered further for the purpose of this Decision as Delta Lloyd only offers unit-linked DC products and therefore no overlaps arise in a possible market for DC non-unit linked products. Furthermore, the market investigation revealed that non-unit linked DC products are of marginal importance and are not perceived as exerting any

113 From [0-5]% in 2013 to [10-20]% in the overall market for DC accumulation products provided by insurers and PPIs, and from [0-5]% to [10-20]% in the narrower market for unit-linked DC accumulation products provided by insurers and PPIs.

meaningful competitive pressure on unit-linked DC products (or on DB products)[114].

220. The Notifying Party submits that market shares based on GWP do not provide an accurate representation of the Parties' competitive position on the market, as they take into account their legacy portfolios. The Notifying Party considers market share data based on NWP to be more representative of current market conditions. On this basis, the merged entity would have a combined market share of [40-50]% (NN [5-10]%, Delta Lloyd [30-40]%)[115] in DC pension products provided by insurers, and of [30-40]% (NN [10-20]%, Delta Lloyd [20-30]%)[116] in DC pension products provided by insurers and PPIs. The Commission notes that these market shares are not significantly different to those calculated on the basis of GWP, and in a market restricted to insurers' DC products, the market share based on NWP is in fact higher than that based on GWP. This suggests that the market shares based on GWP are also generally representative of the new business being won by the Parties.

221. The Notifying Party also submits that the Parties are not particularly close competitors on the DC market (irrespective of whether their PPIs are included in the market definition), as demonstrated by the switching patterns of customers who leave the two providers. Of customers who had a DC scheme with NN, and who switched providers when the scheme came up for renewal in 2015, [30-40]% (of those for whom the new provider is known) moved to Delta Lloyd (or BeFrank). Of customers who had a DC scheme with Delta Lloyd, and who switched providers when the scheme came up for renewal in 2015, [0-5%] (of those for whom the new provider is known) moved to NN.[117]

222. The Commission notes that the percentage of DC customers moving from NN to Delta Lloyd (or BeFrank) is therefore slightly higher than would be expected based on market shares, but that the percentage of Delta Lloyd customers moving to NN is significantly lower than would be expected.

223. The Notifying Party also submits, as a general comment referring to the overall life insurance market, that four other strong competitors will remain active on the market, which will exert significant competitive pressure on the merged entity. In addition, the Notifying Party maintains that, irrespective of whether PPIs are considered to form part of the same product market as insurers' DC products, they can be considered as an important competitive force, all the more so because there are significantly lower barriers to entry for a company wishing to set up a PPI than for a new insurer trying to enter the market. This is both because PPIs do not require an insurers' licence and because the set-up costs are lower.

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114 Q7.1 of Questionnaire 3 to distributors of pension products. *Since almost all DC products in the Netherlands are unit linked the main distinction remains between DB and DC.*
Q33.1 of Questionnaire 1 to competitors.
For us, DC is unit-linked and DB is non-unit-linked.
The DC market mainly consists of unit-linked products. Most suppliers have stopped offering DC based on guaranteed capital.

115 Next to Aegon [20-30]%, Vivat [10-20]%, ASR [10-20]%, Achmea [5-10]% and other competitors ([0-5]%).

116 Next to Aegon [15-25]%, Vivat [5-10]%, ASR [10-20]%, Achmea [5-15]% and other competitors ([5-25]%).

117 It should be noted that these percentages are estimates prepared by the Parties on the basis of the relatively small proportion of lost customers for whom they know the identity of the new provider.

224. The Notifying Party argues that insurers' DC products should be viewed as being part of a wider overall DC market, i.e. including PPIs and APFs, or that, even if these actors are not included in the same market, the competitive pressure they exert on insurers should at least be taken into account.

225. The Notifying Party submits that PPIs are able to offer competitive terms for pensions due to their low administrative costs. It argues that, from a customers' point of view, there is little difference between choosing a DC scheme from an insurer and a PPI for the accumulation phase. Although the PPI will need to source insurance for the risk riders (such as survivors' pensions and disability insurance) from a third party provider, this will not have a direct effect on the customer.

226. Delta Lloyd developed some of these arguments and pointed out that the introduction of PPIs on the Dutch insurance market has enabled banks and asset managers to enter the market for DC products, which has significantly changed market dynamics. It further highlighted the rapid growth that PPIs have seen since they first become active in January 2011. Internal documents provided by Delta Lloyd show that [supporting evidence].[118]

227. The Notifying Party also emphasises the effect of competition from BPFs and APFs (although without specifying whether this relates specifically to the DC or the DB market). The Notifying Party refers to several external sources which have reported on the changes being seen on the Dutch pensions market, in particular the expansion of certain BPFs' membership beyond the industries with which they are strictly associated[119], and the increasing pressure being exerted on insurers by APFs and PPIs[120].

228. The results of the market investigation indicate that the Parties are not particularly close competitors on the DC market. Delta Lloyd and NN are sometimes mentioned by other insurers as close competitors on the pensions market, but no more often than the other main providers, in particular Aegon, which seems to be considered as NN's closest competitor.[121] NN and Delta Lloyd are often mentioned amongst the top competitors for DC products, but again, alongside other major competitors such as Aegon, Vivat (Zwitserleven), ASR, Achmea, and other providers of PPIs (such as ABN Amro and Brand New Day). In terms of strengths and weaknesses associated with the insurers, NN and Delta Lloyd do not appear to be especially close: competitors typically describe Delta Lloyd as an aggressive player in terms of price strategy (although now less so than in the past). Its PPI BeFrank is seen as a strong brand, whilst its main weakness is considered to be its capital position. A number of competitors also commented on the flexibility of its products and its good administration. NN, meanwhile, was typically rated poorly on these last two points, but regarded as having a strong capital position and a large portfolio, giving it stability.

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118 Based on data used in an internal presentation given on […] 2016: […].

119 *Pensioenfonds zorgverzekeraars breidt uit in financiële sector*, Het Financieele Dagblad, 10 March 2017, https://fd nl/economie-politiek/1191687/pensioenfonds-zorgverzekeraarsbreidt-uit-in-financiele-sector.

120 *Toekomstbestendigheid levensverzekeraars onder de loep*, Dutch Central Bank, 26 November 2014, https://www.dnb.nl/nieuws/nieuwsoverzicht-en-archief/dnbulletin-2014/dnb315467.jsp.

121 Q22 of Questionnaire 1 to competitors.

229. Distributors' perceptions of the Parties appear to be fairly similar to those of competitors. Both are regarded as being among the top providers of DC products, alongside a range of other suppliers including Aegon (as an insurer and as a PPI), ASR, Achmea, Brand New Day, Vivat (Zwitserleven) and ABN Amro's PPI.[122] Distributors generally regarded Delta Lloyd as an innovative player, its main weakness again being its poor solvency position, whilst NN is seen as a large, established actor, with poor performance in terms of administration.[123] Distributors regard NN and Delta Lloyd as close competitors, but see Aegon as closer to both than they are to each other. One distributor also pointed out that in DC, the closeness of competition depends more on each individual customer's requirements, and that it is therefore difficult to generalise.[124]

230. A number of customers also commented on NN's poor service levels, although most equally recognise NN's strengths as one of the largest providers, commenting on the overall quality of the products and its financial strength. Delta Lloyd, meanwhile, was generally seen as more service-orientated.[125]

231. It can be concluded from the above that NN and Delta Lloyd are not particularly close competitors, when considered in the context of the group of five main insurers which would remain following the Transaction. Their strengths and weaknesses, as perceived by market participants, appear to be quite different, and whilst being rated amongst the main providers for DC, they are not mentioned more often or consistently more highly than other providers, including PPIs.

232. The opinions expressed by respondents to the market investigation largely corroborated the view of the Parties in terms of the closeness of competition between insurers' DC products and PPIs. Actuarial consultants (i.e. distributors of pension products) were unanimously of the view that PPIs compete with insurers, at least for DC products.[126] They also stated quite categorically that they would routinely propose PPIs alongside insurers' DC products when compiling long- and shortlists of possible providers for their clients. They evaluate DC products based on various criteria, such as price, communication with members and investment lifecycles, but the fact whether the product is provided by an insurer, by a PPI set up by an insurer or by another PPI does not have any bearing on the advice they give to their clients.[127]

233. The information provided by customers on the tender processes used to select their current provider also confirmed that PPIs and insurers' DC solutions often appear on the same shortlists.[128] In addition, the market investigation demonstrated that competitors consider PPIs and traditional DC products to be competing for the same business. All pension providers who expressed an opinion on this point saw insurers and PPIs as alternative providers of the same type of DC solution.[129] Moreover, a

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122 Q21 of Questionnaire 3 to distributors of pension products.
123 Q22 of Questionnaire 3 to distributors of pension products.
124 Q23 of Questionnaire 3 to distributors of pension products.
125 Q21 of Questionnaire 2 to pensions customers.
126 Q29 and Q29.1 of Questionnaire 3 to distributors of pension products.
127 Views expressed during prenotification calls with actuarial companies.
128 Q9 of Questionnaire 2 to pensions customers.
129 Q6.2 of Questionnaire 1 to competitors.

number of responses suggested that at least some of the Parties' competitors are looking to direct their DC business as far as possible towards their PPI, again demonstrating the substitutability of the products.[130] More general comments from both customers and competitors also demonstrated that PPIs are considered to constitute a genuine alternative to insurers' DC products.[131]

234. Nonetheless, the market investigation did also show that customers perceive there to be certain differences between PPIs and insurers. Although opinions were somewhat varied, there appeared to be a general, albeit rather subjective, conviction that PPIs constituted a cheaper alternative to insurers' products. Some respondents also viewed PPIs as being more flexible and offering better online portals for members to manage their pensions, although these views were by no means shared by all respondents. Insurers, meanwhile, were associated with reliability and respectability, although service levels were not always judged to be very high due to the inflexibility of their systems.[132] In addition, a small number of respondents pointed out that PPIs cannot offer decumulation products, and that they cannot therefore fully replicate the product range offered by insurers.[133] Viewed in the context of the overall results of the market investigation, these differences do not put in question the clear conclusion that DC products provided by PPIs exert significant competitive pressure to DC products provided by insurers.

235. In addition to the above, the results of the market investigation also confirmed that there are a sufficient number of PPIs competing on the market to offer a good level of choice for customers. Actuarial companies submitted that there are often a number of PPIs that would meet any particular client's needs.[134] The majority of customers also expressed the view that the introduction of PPIs has led to more choice and increased competition on the Dutch market.[135]

236. Furthermore, the introduction of PPIs is widely thought to have brought prices down in the DC market. As explained in the introductory section, PPIs are not required to hold the same levels of capital as insurers operating DC schemes, and also do not have the same level of historic liabilities on their balance sheets, meaning that they can offer lower prices to new customers. This was strongly confirmed by actuarial companies in particular who commented on PPI's low pricing and efficient administration, suggesting that prices on the DC market as a whole had fallen since

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For SME and large companies with DC schemes the PPI can be an alternative for the insurance company.

Insurance companies and PPIs compete directly in the pension market (with respect to DC).

130 Q14 of Questionnaire 1 to competitors *No renewals from DC to DC as our default for a DC renewal is PPI* (major competitor). Q18.1 of Questionnaire 1 to competitors *Some insurance companies do not offer DC anymore other than their PPIs* (major competitor).

131 Q13.1 of Questionnaire 2 to pensions customers *Besides the big pension insurance companies, the number of alternatives (PPI, APF) is growing over the years.*

Q120.1 of Questionnaire 1 to competitors *The DC market has […] competition from PPIs, APFs …*

132 Q19 of Questionnaire 2 to pensions customers

133 Q22 of Questionnaire 2 to pensions customers.

134 Q41.1 of Questionnaire 3 to distributors of pension products *There are several PPIs for most of the customers in DC schemes*

135 Q22 of Questionnaire 2 to pensions customers. *With the introduction of PPIs and APFs there is more choice for employers on the pension market.*

the introduction of PPIs.[136] As mentioned above, the responses of customers also showed that they find PPIs to be generally cheaper than insurers' DC products.

237. When considering the effect of the introduction of PPIs, it is important to note that all of the main six insurance companies have set up, or are closely involved in, a PPI.[137] As mentioned above, the market investigation also provided evidence that at least some of the major insurers may be trying to re-route their DC business into their PPIs. For NN and Delta Lloyd, it is largely true to say that they have a similarly strong position in PPIs as in DC products provided under their insurance brands.[138] The same is not, however, the case for the other insurers in the 'big six" (with Aegon, for example, having a significantly higher market share in 2016 in the market for PPIs than in the market for insurers' DC products, and the reverse for Vivat). More importantly, the proportion of the market not captured by the 'big six' is considerably higher in PPIs than in DC products provided by insurers, at [30-40]% compared to only [0-5]%. This illustrates the fact that the introduction of PPIs has made it possible for other players from outside the insurance sector, in particular banks and asset managers to successfully enter the DC market. The PPI set up by ABN Amro Bank and APG (a small Dutch pension provider and asset manager) had a market share of around [10-20]% in 2015, whilst the PPIs created by Rabobank and pensions administrator PGGM, and by actuarial consultancy Towers Watson have also become serious contenders.[139]

238. In conclusion, the market investigation generally confirms that there will continue to be sufficient choice on the market for DC pension products, in particular due to the new competitors that have entered the market by setting up PPIs. The introduction of this new pension vehicle has significantly lowered barriers to entry, and is therefore also likely to ensure that the market remains competitive in the foreseeable future. The presence of the five main insurers which would remain following the merger, and the currently ten PPIs will, in any case, be sufficient to ensure competition and choice for customers.

239. In view of the above, the Commission considers that the Transaction does not significantly impede effective competition in the market for pension products limited to DC schemes.

V.1.A.4 DC decumulation products

240. When a member of a DC pension scheme reaches retirement, they use the capital built up in the accumulation phase to purchase an annuity. Each individual is free to purchase an annuity from any provider, irrespective of which insurance company,

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136 Q28 of Questionnaire 3 to distributors of pension products. "*PPIs have caused a dramatic decrease in pricing of DC schemes both for the employer [. . .] and for the employee [. . .].* "

137 NN, Delta Lloyd, Aegon and Vivat (through its subsidiary Zwitserleven) have all set up PPIs. The Notifying Party also considers Achmea to have a PPI (Stichting International Pension Solutions) but Achmea regards this as a separate entity, in respect of which it only provides services. ASR is a party to the joint venture behind the Brand New Day PPI (for which ASR covers the biometric risks).

138 Market shares (GWP, source Form CO) as follows: 2015: NN DC [10-20]%, NN PPI [10-20]%, Delta Lloyd DC [20-30]%, Delta Lloyd PPI [10-20]%; 2016: NN DC [10-20]%, NN PPI [20-30]%, Delta Lloyd DC [20-30]%, Delta Lloyd PPI [20-30]%.

139 Source: Form CO. It should be noted that PPIs set up by non-insurers usually involve the participation of an insurer, as the PPI itself cannot bear the biometric risk. The PPIs set up by Towers Watson and Robeco (an asset manager), for example, both have contracts with Achmea.

PPI or APF provided the accumulation phase, i.e. the employer's DC scheme. In some cases, the provider of the accumulation phase may not even offer annuities (as was the case until relatively recently for PPIs).

241. The providers of DC schemes are legally obliged to contact members individually prior to their retirement date to inform them that the accumulation phase of their contract is due to expire, and to explain their options for the decumulation phase. Customers can then shop around for an annuity if they choose to. They can do this independently, e.g. by comparing the annuities they could buy for the sum of capital they have available using online price comparison sites, or can go to an advisor, i.e. an intermediary, who will research the market on their behalf. Advisors in the Netherlands charge customers a fixed fee for this service, as commission payments are no longer legally permitted. Some employers also pay for each employee to be given advice as part of the service they receive from their actuarial consultant, who advises them on the choice of provider for their DC scheme.

242. As discussed in the section on product market definition in section III.2.A.1 (sub-section *Fixed annuities versus variable annuities*), there may be separate markets for fixed and variable annuities. The competitive assessment will therefore consider, first, a product market for decumulation products, which has, to date, included only fixed annuities. No market share data is yet available for variable annuities, but a possible product market for all decumulation products (i.e. including variable annuities) and a possible product market for variable annuities only will also be considered, insofar as is possible.

A product market including fixed annuities only

243. The Parties' combined market shares on a market for DC decumulation fixed annuity products are as follows:

Table 10: DC decumulation schemes (fixed annuity products), GWP

<table>
<tr><th></th><th>Market size (EUR million)</th><th>NN</th><th>Delta Lloyd</th><th>Combined</th><th>Aegon</th><th>Vivat</th><th>Achmea</th><th>ASR</th><th>Others</th></tr>
<tr><td>2013</td><td>1 400</td><td>[20-30]%</td><td>[10-20]%</td><td>[30-40]%</td><td rowspan="3">[30-40]%</td><td rowspan="3">[5-15]%</td><td rowspan="3">[0-10]%</td><td rowspan="3">[0-10]%</td><td rowspan="3">[0-5]%</td></tr>
<tr><td>2014</td><td>1 440</td><td>[20-30]%</td><td>[10-20]%</td><td>[30-40]%</td></tr>
<tr><td>2015</td><td>1 500</td><td>[10-20]%</td><td>[20-30]%</td><td>[30-40]%</td></tr>
</table>

Source: Parties' data, DNB data and NN's best estimates (table 82 of Form CO)

244. As can be seen from table 10, the merged entity would become one of the two main providers, with a market share of [30-40]%, alongside Aegon which would have a very similar position. The next largest player, Vivat, would be some distance behind with a market share of at most [10-20]%.

245. The Notifying Party argues that there are a large number of strong competitors competing for business on the decumulation market. In addition to the established market players shown in table 10, there are a number of newer entrants, including Allianz, which the Notifying Party expects to see win a significant proportion of business from customers who decide to switch providers. The Notifying Party also stresses that providers such as Interpolis (Achmea) and Reaal and Zwitserleven (Vivat), which are not particularly strong in DC accumulation products, are nonetheless serious competitors in the annuities market.

246. The Notifying Party contends that market shares based on gross written premium (GWP) do not provide a true reflection of the strength of the various providers active on the market. It explains that companies such as Allianz, which have only recently entered the market, do not appear to be significant players when the market is assessed based on GWP, because GWP captures both the retention of customers from the accumulation phase and the acquisition of new customers for decumulation. Market shares based on NWP reflect only the acquisition of new decumulation customers and therefore, in the Notifying Party's view, provide a more accurate representation of competitors' relative positions on the market.

247. Further to the above, the Notifying Party indicates that it would expect NN's market share based on NWP to be less than [5-10]%. On the basis of market intelligence, the Notifying Party also believes Allianz and Vivat (through its brands Reaal and Zwitserleven) to have performed particularly strongly in 2016.

248. The Notifying Party submits that the market for decumulation products is volatile, as illustrated by the relatively significant change in NN and Delta Lloyd's respective market shares between 2014 and 2015. In the Notifying Party's view, this is a consequence of customers' increasing tendency to shop around for their annuity and to compare offers from various providers. The Notifying Party estimates that customers representing approximately [20-30]% of capital choose to change provider at the point of purchasing an annuity (i.e. purchase an annuity from a provider other than the provider of their DC scheme), and expects this to increase in the coming years as individuals now reaching retirement age are accustomed to using price comparison sites.

249. The Notifying Party also observes, however, that customers with higher levels of capital are more likely to switch provider, as they will have more to gain by doing so. This means that, whilst customers accounting for [20-30]% of capital may switch providers, the actual percentage of customers switching is likely to be even lower. This is reflected in the figures provided by the Notifying Party on the Parties' DC customers. Of NN's DC customers, approximately [10-20]% by number, representing [30-40]% of capital, chose to purchase an annuity from a provider other than NN in 2016.[140] Of Delta Lloyd's customers, approximately [30-40]% by number and [40-50]% in terms of value of capital switched to a new provider for their annuity in 2016.[141]

250. Given that, until very recently, PPIs were not able to offer their own decumulation products but could distribute annuities from other providers, it would be reasonable to expect that insurers' PPIs would also serve as a source of business for the insurer's own annuities. This seems to be true to a certain extent for NN and Delta Lloyd, as the Parties do capture far more of the decumulation business from their PPI customers than their respective market positions would suggest, i.e. more than they would be expected to in case all their PPI customers were shopping around. Nonetheless, the amount of retained business is not as high as for the insurers own DC customers, implying that PPI customers perhaps do not see the insurer as 'their' provider, or are by nature more inclined to shop around. Of NN's PPI customers,

140 The equivalent percentages for 2014 and 2015 for NN are as follows: 2014: [5-10]% of customers, [5-10]% of capital; 2015: [10-20]% of customers, [30-40]% of capital.

141 The equivalent percentages for 2014 and 2015 for Delta Lloyd are as follows: 2014: [20-30]% of customers, [30-40]% of capital; 2015: [10-20]% of customers, [20-30]% of capital.

approximately [30-40]% (representing [50-60]% of capital) bought an annuity from a different provider (i.e. not from NN) in 2016. In 2015, however this was only [20-30]%, representing [10-20]% of capital. Of Delta Lloyd's PPI customers, approximately[80-90]% (representing [80-90]% of capital) bought an annuity from a different provider (i.e. not from Delta Lloyd) in 2016. In 2015, the proportion of customers switching was lower, at [40-50]%, representing [60-70]% of capital.

251. The results of the market investigation confirmed that customers have a very strong tendency to stay with the same provider between the accumulation and decumulation phases of a DC scheme.

252. Approximately two thirds of competitors stated that customers of their DC schemes would be likely to purchase an annuity from them on reaching retirement.[142] The main reason for this, according to competitors, is the ease and convenience of purchasing from the same provider. The current provider will typically send the customer information on its annuities a couple of months before the retirement date, and simply accepting this offer is by far the simplest course of action. As such, customers feel that they have not had to make an active choice. Competitors also mentioned that some customers find it reassuring to purchase from a provider they know. In addition, a couple of respondents acknowledged that insurers often offer different prices for 'internal' and 'external' customers, meaning that staying with the same provider is often the most attractive option. One competitor also stated that the differences between the various providers' offers, in particular in terms of price, are not significant enough to motivate customers to switch. In this competitor's opinion, customers generally only move to a different provider if they have several pension pots to combine. A small number of competitors (typically those outside the six major insurers) did, however, state that clients are likely to shop around for the best offer.[143]

253. The Parties' main competitors typically estimated that around 20-30% of customers switch to another provider when purchasing an annuity, which is roughly in line with the information provided by the Notifying Party. One main competitor did also express the view that customers' switching behaviour may change in the coming years,[144] which would seem to support the Notifying Party's argument that customers are becoming more active in shopping around for the best offer.

254. The responses provided by pension product distributors were largely in line with those of competitors. They estimated that between 75% and 90% of customers remain with the same provider for the decumulation phase.[145] The reasons mentioned were largely similar to those given by competitors, but distributors also emphasised the costs associated with changing and customers' perception that this is a more risky choice.[146] One distributor also mentioned customers' unwillingness to pay for advice as a reason for the overwhelming tendency to purchase the annuity offered to them by the provider of the DC scheme. This suggests that relatively few employers pay for their employees to receive advice, and also that individuals do

142 Q15 of Questionnaire 1 to competitors.

143 Q15.1 of Questionnaire 1 to competitors.

144 Q16.1 of Questionnaire 1 to competitors.

145 Q17 of Questionnaire 3 to distributors of pension products.

146 Q17.1 of Questionnaire 3 to distributors of pension products. *Employees find it difficult to compare between different providers and feel staying where they are is the safest and easiest choice*.

not generally have the expertise or confidence to make the decision to change providers independently. This respondent did, however, also comment that the number of DC scheme members looking for advice is growing. Two distributors also highlighted that communication with scheme members is becoming a more important part of the role of actuarial consultants responsible for DC schemes, and that employees are being provided with more information, thus allowing them to make a more informed choice.[147]

255. One distributor also mentioned that more highly educated employees, and particular those working in the financial industry, are more inclined to shop around for an annuity.[148] This is generally consistent with the Notifying Party's view that customers with a higher value pension pot are more likely to compare providers.

256. The responses to the market investigation therefore confirm that a high proportion of customers purchase an annuity from the provider of their DC scheme, without really shopping around to compare other offers. This clearly gives competitors that are strong in DC accumulation products an advantage in the decumulation market. Nonetheless, it would not be correct to assume that insurers' positions on the DC accumulation market are necessarily replicated in decumulation. NN, for example, had a market share of 18% in DC accumulation in 2015 but only [10-20]% in decumulation, and Vivat accounted for [20-30]% of the DC accumulation market, but only won [5-15]% of business in decumulation.

257. The nature of an annuity product would tend to mean that customers who do shop around, whether independently or with the help of an advisor, are likely to choose primarily on the basis of price, i.e. simply by comparing the benefits that different providers could offer for a certain level of accumulated capital. The Notifying Party submits that the low proportion of new business won by NN is a result of its relatively uncompetitive rates for annuities in recent years, which appears to be borne out by data from a comparison site for annuities provided by the Notifying Party. As can be seen in table 11, NN rarely appears in the top three providers for annuities being paid out from 1 January 2017, with Delta Lloyd, Vivat and De Goudse consistently having the best offers. For an annuity to be paid out from January 2018, meanwhile, NN is amongst the top providers, but Delta Lloyd no longer appears, while Allianz also features strongly. Overall, the movement in the top three providers would appear to confirm that the proportion of new business won by different insurers can fluctuate significantly over a relatively short period of time. Furthermore, the presence of competitors such as De Goudse and Allianz amongst the providers with the most attractive offers shows that insurers from outside the 'big six', i.e. the main providers of accumulation products, can still compete effectively in the decumulation market.

147 Q17 of Questionnaire 3 to distributors of pension products.
148 Q17.2 of Questionnaire 3 to distributors of pension products.

Table 11: DC decumulation schemes (fixed annuity products), GWP

Distribution as of:	Benefits paid	Top three providers (in order)		
1 January 2017	*Monthly*	Delta Lloyd	Vivat	De Goudse/NN
	Quarterly	Delta Lloyd	Vivat	De Goudse
	Annually	Vivat	De Goudse	Delta Lloyd
1 January 2018	*Monthly*	NN	Allianz	Vivat
	Quarterly	NN	Allianz	Vivat
	Annually	Allianz	NN	Vivat

Source: www.pensioenkoers.nl[149]

258. In view of the above, there would also appear to be little reason to suppose that Delta Lloyd and NN are particularly close competitors in the market for decumulation. Any of the main competitors may have the best offer at a particular point in time, and other characteristics of the provider are unlikely to play a significant role in customers' choices. This is largely confirmed by data on customers switching between the Parties. Of customers switching away from NN for the decumulation phase, [10-20]% purchased an annuity from Delta Lloyd in 2016.[150] Of customers leaving Delta Lloyd, [5-10]% purchased an annuity from NN in 2016.[151] These figures are fairly consistent with the Parties' overall market position, and potentially even slightly lower than might be expected.

259. In conclusion, although the merged will have a relatively strong position on the market for decumulation products (fixed annuities), with a market share of just below [30-40]%, there will remain at least five other competitors active, including Aegon which will have a similar market share. The proportion of new business won by the various competitors appears to fluctuate quite significantly, according to which providers have the best offers at a particular point in time, and it is therefore possible for newer, smaller providers to compete effectively on the market. Furthermore, the general expectation seems to be that customers will be better informed about their choices on retirement and will increasingly shop around for their annuity, meaning that the advantage associated with being a strong provider in the DC accumulation market will lessen over the coming years.

260. In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards DC decumulation fixed annuity products.

A product market including fixed and variable annuities

261. NN started offering variable annuities on 1 January 2017, and, at the time of notification, Delta Lloyd planned to introduce its product on 1 March 2017. Both

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149 The Notifying Party used the comparison website www.pensioenkoers.nl to generate the expected returns on accumulated capital. Pensioenkoers.nl does not yet compare the offerings of all providers in the Netherlands and there may therefore be other providers which distribute benefits based on the accumulated capital criteria chosen for which results were not available. The website was accessed, and comparisons made, on 14 December 2016, on the basis of a male individual born on 1 January 1950, with accumulated pension capital of EUR 250 000, EUR 500 000, EUR 1 000 000 and EUR 1 500 000 (results averaged), which has been accumulated at an "other/unknown" company and for direct distribution on the dates as given in the table.

150 The equivalent figures for 2014 and 2015 are [10-20]% and [40-50]% respectively. Although the figure for 2015 is somewhat higher than might be expected, this would seem to reflect the general fluctuation in providers' share of new business as referred to above. In 2014, for example, [40-50]% of NN's lost customers moved to Aegon.

151 The equivalent figures for 2014 and 2015 are [10-20]% and [10-20]% respectively.

Aegon and Allianz have also already launched variable annuities, and Zwitserleven, which currently offers its variable annuity only to customers of its PPI, will make this available to switching customers as of January 2018. Other providers are also expected to enter the market. The main differentiating factors between providers' offers are the risk level (i.e. the level of equity exposure) and the structure of the product (in terms of how the variable annuity is converted into a fixed annuity). Some products also allow customers to combine fixed and variable annuities, such that they retain part of the fixed pension payments that they would have received under a fixed annuity, and effectively only take a risk with the remaining proportion of their pension. The main specificity of NN's variable annuity is that it insures customers against changes in life expectancy, and it transfers the capital gradually into a fixed annuity, thus reducing the risk level progressively. Delta Lloyd's variable annuity product will include a fixed benefit, and will give the customer the choice between different levels of risk.

262. The Notifying Party points out that the introduction of variable annuities will widen the market, as competitors such as PPIs, which are not able to offer fixed annuities, can now enter the market. The Notifying Party also mentions that variable annuities may change the nature of competition: whilst on the market for fixed annuities, providers compete on a range of characteristics, of which price (or the level of benefit offered for a certain amount of capital) is only one, alongside more qualitative aspects such as customer service, competition amongst providers of variable annuities is expected to be more strongly focused on the financial benefits. The nature of the product means that the providers' investment expertise is more relevant, and the Notifying Party expects companies with a good track record in this area to have an advantage.

263. The market investigation confirmed that a number of the main insurance companies already offer both variable and fixed annuities, and that others, including PPIs, are planning to enter this market.[152]

264. A number of responses to the market investigation suggested that the introduction of variable annuities may further contribute to the trend of employers providing more support to employees in their choice of annuity. The overall choice available to customers will increase as more providers start offering variable annuities and this may increase the level of communication around the selection of annuities.[153]

265. On the other hand, a small minority of respondents was of the opinion that variable annuities would increase the probability that customers stay with their current provider, as the customer has to start making choices in relation to the annuity much longer in advance of retirement.[154] This does not, however, prevent the customer from switching at retirement, should they wish to.

266. It should be acknowledged that variable annuities will not be considered a realistic choice by all customers, even if they are considered part of the same product market as fixed annuities. Competitors confirmed that fixed and variable annuities have

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152 Q8.1 and Q9 of Questionnaire 1 to competitors.

153 Q17.2 of Questionnaire 3 to distributors of pension products.

154 Q15.1 of Questionnaire 1 to competitors. *We expect that due to DC with variable annuities individual customers will be more likely to stay. The main reason for this is that the journey starts long before retirement age and goes on after retirement age*.

quite different characteristics[155] and that variable annuities may only be attractive to certain types of customers (typically those who are better informed and can afford to accept a certain level of risk)[156] or in certain circumstances (e.g. if the customer also has a DB pension)[157]. Nonetheless, even for customers who only consider fixed annuities, the choice of products available which meet their needs would not be narrower on a wider market for fixed and variable annuities than it is on a market for fixed annuities only.

267. In conclusion, competition on a market for either variable annuities or for all decumulation products (including both variable and fixed annuities) will always be at least as strong as on a market for fixed annuities, and is likely to include a wider range of competitors, due to the fact that PPIs can also offer variable annuities. In view of this, it is highly unlikely that the merged entity would have a stronger position on a market including variable annuities than it does on the market for fixed annuities. Being amongst the first providers to have launched variable annuities, NN and Delta Lloyd may capture a relatively high proportion of new business in the very short term, but as other competitors enter the market, this is likely to fall to similar or lower levels than their market shares in the market for fixed annuities.

268. In conclusion, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in respect of a hypothetical market for DC decumulation products including fixed and variable annuities, or variable annuities only.

V.1.A.5 Possible market for annuities

269. As mentioned in the product market definitions, it would also be possible to envisage a wider market for annuities, including all annuities provided in pillar 2 and pillar 3. Within pillar 2 (i.e. DC decumulation), the standard product is an immediate pension (*direct ingaande pensioen*, DIP), and within pillar 3 (individual life insurance) there are both traditional life insurance annuities (*direct ingaande lijfrente*, DIL) and annuities from within the new banking products (*banksparen*) available. Customers can only purchase pillar 2 annuities with the capital accumulated in a DC scheme whilst pillar 3 annuities can be purchased either with capital they have accumulated in a pillar 3 savings product (most commonly a *lijfrenteverzekering*), or with capital they have available independently of pillar 2 or pillar 3 savings

270. Table 12 shows the Parties combined market shares on a hypothetical overall market for annuities.

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155 Q36 of Questionnaire 1 to competitors.

156 Q9 of Questionnaire 3 to distributors of pension products and Q36 of Questionnaire 1 to competitors.

157 Q37 of Questionnaire 1 to competitors.

Table 12: market shares for all annuities (pillar 2 and 3) in the Netherlands, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Others
2014	15 442	[10-20]%	[10-20]%	**[20-30]%**	[70-80]%
2015	15 685	[10-20]%	[5-10]%	**[20-30]%**	[70-80]%

Source: CVS data and Parties' data (table 128 of Form CO)[158]

271. As can be seen from table 12, the merged entity would have a market share of around [20-30]%. The Parties' market shares are, as would be expected, similar to their shares on the markets for DC decumulation ([30-40]%), and for pillar 3 decumulation (life insurance and *banksparen* annuities, [20-30]%). Given that there has not been found to be any reason to suppose that the merged entity's position would significantly impede effective competition on these markets, the same conclusion can be drawn for a hypothetical market including both pillar 2 and pillar 3 decumulation products. In particular, the merged entity is likely to face growing competition in both areas, due to the introduction of variable annuities in pillar 2 and the shift towards products provided under a banking licence in pillar 3.

272. In conclusion, the Transaction does not give rise to serious doubts as to its compatibility with the internal market in respect of a hypothetical market for all annuities provided under pillar 2 and pillar 3 in the Netherlands.

V.1.B. Individual life insurance

V.1.B.1 Pure protection products

273. The main types of pure protection product available in the Netherlands are term-life insurance and funeral insurance. Both NN and Delta Lloyd have ceased offering funeral insurance, and have only a very small residual presence on this market (just over [0-5]% combined market share). The competitive assessment will therefore focus on term-life products. Term-life insurance is by definition a non-unit-linked type of policy (as it guarantees a certain payment on a given event) and is paid for by regular premiums (usually on a monthly basis).

274. As of 1 January 2017, NN no longer offers its own term-life insurance product, but is considering outsourcing the production of term-life. It plans to offer a term-life insurance product from [business partner] (a term-life specialist), to be distributed primarily via [distribution channel]. NN also continues to serve existing customers of its own product, and thus continues to receive regular premiums in respect of existing contracts. Delta Lloyd also offers term-life insurance. The Notifying Party mentions that it may therefore also consider distributing [potential future business plans].

275. The market for individual life insurance in the Netherlands has reduced considerably in size in recent years. Nonetheless, pure protection products, in particular term-life have been much less affected by this largely due to the fact that term-life insurance is obligatory for the majority of individuals taking out a mortgage.

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158 Due to the lack of availability of data for this combined market, the Notifying Party has estimated the percentages in this table, and is not able to provide equivalent information for competitors.

276. The Parties' combined market share on the market for pure protection products amounts to [5-10]% (with an increment of [0-5]% brought by NN) and on the market for term-life insurance [10-20]%, with an increment of [5-10]% brought by NN. These markets are thus not affected by the Transaction. The area of individual life insurance will, however, be discussed further in section V.2.A below, due to its links to bank distribution, an area in relation to which some respondents to the market investigation expressed a certain level of concern.

V.1.B.2 Savings and investment products

277. The savings and investment products available in the Netherlands are all designed as a way of saving for extra retirement income (in addition to an individual's pillar 2 pension). Some include the savings phase and the payment out of retirement benefits in one product, whilst others only comprise the savings phase, but include an obligation to purchase an annuity at the end of a fixed period. Some savings and investment products also include a term-life component, i.e. a benefit which is fixed. These policies are therefore usually non-unit-linked, whereas all other savings and investment products are unit-linked.

278. As mentioned in the product market definition, the savings and investment product market could be considered to also include *banksparen* products. Table 13 shows the products included in accumulation and decumulation, within traditional life insurance and *banksparen* respectively.

Table 13: Classification of individual life insurance and banksparen products in accumulation and decumulation phases

	Accumulation	Decumulation
Traditional life insurance	Savings insurance (*spaarverzekering*) Deferred annuities (*lijfrente uitgesteld*) Deferred pensions (*pensioen uitgesteld*)	Immediately effective annuities (*direct ingaande lijfrente*)
Banksparen	*Banksparen* products related to the saving of a severance payment *Banksparen* products for retirement savings	*Banksparen* products related to the payment out of savings from a severance payment *Banksparen* products for the payment out of retirement savings

279. The Parties market shares are as follows on the markets for traditional life insurance only (<u>excluding *banksparen*</u>):

Table 14: savings and investment products (accumulation) within traditional life insurance, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Achmea	Vivat	ASR	Aegon	Others
2014	2 921	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[20-30]%
2015	2 269	[10-20]%	[10-20]%	**[30-40]%**	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[20-30]%

Source: Parties' data, CVS data and NN's best estimates (tables 49-50 of Form CO)

Table 15: annuities (decumulation) within traditional life insurance, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Others
2014	910	[40-50]%	[5-10]%	**[40-50]%**	[50-60]%
2015	843	[20-30]%	[5-10]%	**[30-40]%**	[60-70]%

Source: Parties' data and CVS data (table 101 of Form CO)

280. The Parties market shares are as follows on the markets for savings and investment products <u>including *banksparen*</u>:

Table 16: savings and investment products (accumulation), traditional life insurance and banksparen, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Others
2014	7 962	[10-20]%	[10-20]%	**[20-30]%**	[70-80]%
2015	8 756	[10-20]%	[5-10]%	**[20-30]%**	[70-80]%

Source: Parties' data and CVS data (table 127 of Form CO)

Table 17: annuities (decumulation), traditional life insurance and banksparen, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Others
2014	15 442	[5-10]%	[5-10]%	**[10-20]%**	[80-90]%
2015	15 685	[10-20]%	[5-10]%	**[20-30]%**	[70-80]%

Source: Parties' data and CVS data (table 128 of Form CO)

281. The Parties' market shares on the product markets comprising <u>*banksparen* only</u> are as follows:

Table 18: overall *banksparen* market, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Others
2013	24 029	[5-10]%	[5-10]%	**[10-20]%**	[80-90]%
2014	26 860	[5-10]%	[5-10]%	**[10-20]%**	[80-90]%
2015	29 870	[10-20]%	[5-10]%	**[10-20]%**	[80-90]%

Source: Parties' data and DNB data (table 271 of Form CO)

Table 19: *banksparen* for severance payments, decumulation phase, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Others
2013	1 095	[10-20]%	[0-5]%	**[20-30]%**	[70-80]%
2014	1 045	[20-30]%	[0-5]%	**[20-30]%**	[70-80]%
2015	1 082	[20-30]%	[0-5]%	**[20-30]%**	[70-80]%

Source: Parties' data and DNB data (table 268 of Form CO)

Table 20: *banksparen* for retirement income, decumulation phase, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Others
2013	4 957	[5-10]%	[10-20]%	**[10-20]%**	[80-90]%
2014	6 007	[5-10]%	[10-20]%	**[20-30]%**	[70-80]%
2015	6 831	[10-20]%	[10-20]%	**[20-30]%**	[70-80]%

Source: Parties' data and DNB data (table 269 of Form CO)

282. As can be seen from the tables above, the Parties would have the largest combined market share of just over [30-40]% in the accumulation market and just over [30-40]% in the decumulation market on the market comprising traditional individual life insurance products only, i.e. excluding *banksparen*. Although the Parties' combined market share were very high in 2014 in life insurance decumulation products ([40-50]%) Delta Lloyd has brought a relatively modest increment of less than [5-10]%, and, more importantly the combined market share decreased significantly to [30-40]% in 2015.

283. On the markets comprising *banksparen* (separately or together with traditional life insurance products) the combined market shares of the Parties at most reach [20-30]% on the market for *banksparen* for severance payments and in this case the increment brought by Delta Lloyd is very small, [0-5]%. In general, when *banksparen* are included in the market, the Parties combined market shares are moderate.

284. The Commission will thus concentrate on the assessment whether the Transaction could significantly impede effective competition in the market comprising individual life insurance products only, as on this hypothetical market the Parties' shares are the largest.

285. The Notifying Party argues that the Parties' combined position in savings and investment products will not lead to any competition concerns, firstly because, as mentioned above, NN's activities in this market are limited to 'closed book business', i.e. NN is not selling policies to new customers in this area. In addition, the Notifying Party submits that there would be four other strong players active on the market following the merger, which would exert significant competitive pressure on the merged entity.

286. The Notifying Party also confirmed that customers who have saved up for an annuity within the traditional savings and investment range of products can also choose to purchase a *banksparen* annuity. They are not therefore tied in.[159]

287. The results of the market investigation generally confirmed that the market for traditional savings and investment products and annuities is shrinking rapidly. A large proportion of competitors stated that they have seen the overall size of their life book reduce significantly in recent years, and that the main products they do

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159 The responses to the market investigation would seem to suggest, however, that there is an exception to this. For customers who have savings products under the old tax system (traditional individual insurance) it is much more difficult to change providers. In general, however, it is confirmed that there is no 'tie-in' between the accumulation and decumulation phases.

still sell in this area are term-life policies, and to a much lesser extent annuities.[160] The reasons they give for this change largely mirror those put forward by the Notifying Party, namely changes in legislation (including new rules banning commission on insurance sales), reduction of fiscal incentives, loss of trust in financial institutions and the introduction of *banksparen*.[161] Thus, the respondents to the market investigation generally confirmed that the market for traditional savings and investment products is becoming less relevant.

288. In responses to the market investigation NN and Delta Lloyd were both mentioned a number of times by competitors as being amongst the top five players in individual life insurance, but they were not consistently the highest placed, nor were they mentioned more frequently than other competitors (including Vivat, Aegon, ASR and Achmea). Distributors also named a wide range of competitors active in this area, including, in addition to those already mentioned, Allianz, Amersfoorste, Generali and Legal&General.[162] Most distributors considered Aegon to be NN's main competitor on the individual life insurance market, whilst NN and Aegon were mentioned equally often as Delta Lloyd's main competitor.[163]

289. Competitors indicated that it could be difficult to switch providers for some of the older style savings and investment policies, in particular for tax reasons. This means that a customer is often obliged to go to an advisor, which can significantly increase the cost of switching.[164] Distributors views on the difficulties associated with switching were quite varied, but most confirmed that it would be possible, even if it would entail additional costs.[165]

290. A small number of competitors were of the opinion that the Transaction could have an impact on the market for individual life insurance. Their responses mainly, however, generically referred to the fact that the merged entity would become the largest player, and that it is preferable to have more, and evenly-matched players. The only concern which related specifically to savings and investment products and annuities was about the fact that companies are stopping offering some of the products from under the old tax regime. Customers of these products are not always able to switch to the new regime, and so with fewer providers offering the old-style products, they could see their choice reduced. NN's (pre-Transaction) decision to stop offering these products was therefore considered to have a negative effect on customers' choice.[166] Whilst this may be true, this was a decision taken by NN prior to the Transaction does not therefore threaten to further reduce choice.

291. A significant number of competitors emphasised the need for consolidation in this market, in particular in view of the fact that the market has already shrunk significantly. A number of competitors also commented that there will remain

160 Q82 and Q82.1 of Questionnaire 1 to competitors.
161 Q82.2 of Questionnaire 1 to competitors.
162 Q7 of Questionnaire 4 to distributors of individual life and non-life insurance.
163 Q21.1 and Q22.1 of Questionnaire 4 to distributors of individual life and non-life insurance.
164 Q94 of Questionnaire 1 to competitors.
165 Q15, Q15.1 and Q15.2 of Questionnaire 4 to distributors of individual life and non-life insurance.
166 Q99.1 of Questionnaire 1 to competitors.

sufficient choice.[167] The vast majority of distributors also confirmed that there is plenty of choice available on the individual life insurance market.[168]

292. One respondent referred to NN and Delta Lloyd being direct competitors in savings and investment products and annuities. This distributor described Delta Lloyd as an “innovator” and a “challenger”, and therefore sees the loss of Delta Lloyd as harmful for the market. [169] As discussed in section V.1.D above, it is doubtful whether Delta Lloyd is still really playing the role of innovator, in view of [Delta Lloyd's business strategy]. Furthermore, in view of the fact that the market for traditional savings and investment products has shrunk so considerably in recent years, it is not certain that any insurer would really be looking to innovate or to win new business at all in this specific market.

293. Finally, as confirmed by the results of the market investigation, even if the relevant market were to comprise only the traditional insurance savings and investment products, it is clear that the neighbouring market of *banksparen* will exert a competitive pressure on this narrowly defined market.

294. In conclusion therefore, the Commission considers that the Transaction does not significantly impede effective competition on product markets limited respectively to savings and investment products and annuities.

295. As regards the individual life insurance market including *banksparen*, the Commission notes the following.

296. Firstly, it can be noted that the merged entity has a relatively modest position on the combined markets including traditional life insurance and banksparen – around [20-30]% on the accumulation market and around [20-30]% on the decumulation market. The market investigation confirmed the Notifying Party’s claims that the large Dutch banks, in particular ABN Amro, Rabobank and SNS are all strong competitors in *banksparen*. Respondents to the market investigation mentioned both banks and insurers as amongst the top competitors in *banksparen*, and Rabobank and ABN Amro were often mentioned as the strongest players.[170]

297. On wider accumulation and decumulation markets comprising traditional insurance products and *banksparen*, the merged entity will therefore face a much wider range of competitors, including not only the other major insurers but also the major Dutch banks, which have an established reputation and strong customer base.

298. Lastly, given that there is not deemed to be any significant threat to competition on the narrower markets for savings and investment products and for annuities (within traditional life insurance), as described above, and that the markets in question here are wider markets, where the merged entity will have a lower market share and face a wider range of strong competitors, it seems clear that the Transaction cannot create any concerns on these hypothetical markets.

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167 Q120.2 of Questionnaire 1 to competitors.

168 Q15.3 of Questionnaire 4 to distributors of individual life and non-life insurance.

169 A small number of distributors suggested that the Transaction could have an impact on the market for individual life insurance, mentioning reduced choice and increased prices, but without providing any further explanation. Q29 and Q29.1 of Questionnaire 4 to distributors of individual life and non-life insurance.

170 Q89 of Questionnaire 1 to competitors.

299. In conclusion therefore, there does not appear to be any reason to suppose that the Transaction would threaten to significantly impede effective competition on product markets comprising savings and investment insurance products and *banksparen* products.

300. The market investigation also revealed that the Transaction could not significantly impede effective competition in the market limited to *banksparen* products only.

301. As submitted by the Notifying Party there is a wide range of competitors active in the market for *banksparen*, including a number of competitors that are sufficiently large to exert competitive pressure on the merged entity, in particular Aegon, Achmea, ABN Amro, SNS Bank and Rabobank. [171]

302. The Commission notes, furthermore that it is objectively true that the market for *banksparen* is open to a much wider range of competitors than the traditional individual life insurance market, as both insurers (through their banking subsidiaries) and banks can offer these products.

303. The vast majority of respondents to the market investigation were of the opinion that the Transaction would not have any impact on the market for *banksparen* and majority of respondents confirmed that there would still be plenty of choice.[172] [173] It is clear that there will remain sufficient competitors active to ensure a wide choice of products for consumers, and that the merged entity's position would not be such as to allow it to in any way control prices on the market.

304. In view of the above, the Commission considers that the Transaction does not significantly impede effective competition on product markets limited respectively to accumulation and decumulation products, both including traditional life insurance and *banksparen* products.

V.1.C. *Non-life insurance*

305. The Commission has in past cases tended to consider separate markets within non-life insurance according to the different risks covered, whilst also acknowledging, from a supply-side perspective, the quite similar conditions for insuring some types of risks, as explained in section III.2.B.

306. In the Netherlands, the number of players active in the market for non-life insurance is higher than for life-insurance, leading to a relatively more fragmented market structure.

307. On the overall market for non-life insurance, the Parties' combined market shares is [10-20]% in 2015 and remains below 20% over the period 2013-2015 in terms of GWP. Post-transaction, the combined entity would become second-largest player,

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[171] Q89 of Questionnaire 1 to competitors.

[172] Q29.1 of Questionnaire 4 to distributors of individual life and non-life insurance.

[173] One respondent expressed concern about the loss of Delta Lloyd from the *banksparen* market, describing Delta Lloyd as an "innovator" and a "challenger" (Q29 and Q29.1 of Questionnaire 4 to distributors of individual life and non-life insurance). It is noted that Delta Lloyd market share in banksparen remains modest (around [5-10]%) and it is doubtful that whether Delta Lloyd is still really playing the role of an innovator and aggressive competitor, in view of [Delta Lloyd's business strategy].

behind Achmea ([20-30]%). The other major insurers (ASR [10-20]%, Vivat [5-10]% and Aegon [5-10]%), will remain active on the market, in additional to a number of other competitors more specialised in non-life insurance such as Atradius ([5-10]%), Univé ([0-5]%) and Amlin ([0-5]%).

308. The Notifying Party has also estimated combined market shares in terms of NWP for the period 2012-2014[174]. Following this approach, the market for non-life insurance would be an affected market in 2012 ([20-30]%) and 2013 ([20-30]%) but not in 2014 ([10-20]%). It should, however, be noted that market data for non-life insurance based on NWP can fluctuate considerably from year to year. This is due to the relatively short duration of non-life insurance policies, which allows customers to switch frequently. The Notifying Party explains that customers are making increasing use of price comparison websites, which allow them to shop around more easily.

309. In the area of non-life insurance, the Parties identify the following hypothetical segments where overlaps exist: motor vehicle, property, home, liability, legal assistance, accident, disability, fire, travel and cash insurance. Affected markets arise in liability, disability, fire and travel insurance (taking both GWP and NWP market shares into account).

Table 21: Market shares for market segments within non-life insurance for which the market shares based either on GWP or NWP exceed 20% in the most recent year for which information is available (2015 or 2014)

Affected markets in non-life insurance		Year	Market size (M€)	NN	Delta Lloyd	Combined	Largest competitor, *market share*	2nd largest competitor, *market share*
Non-life	GWP	2015	14 698	[10-20]%	[5-10]%	[20-30]%	Achmea, *[20-30]%*	ASR, *[10-20]%*
	NWP	2014	1 063	[5-10]%	[10-20]%	[10-20]%	Achmea, *[20-30]%*	ASR, *[10-20]%*
Liability	GWP	2015	1 033	[10-20]%	[10-20]%	**[20-30]%**	Achmea, *[20-30]%*	Amlin, *[10-20]%*
	NWP	2014	104	[5-10]%	[5-10]%	[10-20]%	Achmea, *[20-30]%*	Amlin, *[5-10]%*
Disability	GWP	2015	3 503	[10-20]%	[5-10]%	**[20-30]%**	ASR, *[20-30]%*	Achmea, [20-30]%
	NWP	2015	198	[20-30]%	[5-10]%	**[20-30]%**	ASR, *[20-30]%*	Achmea, *[10-20]%*
Fire	GWP	2015	3 456	[10-20]%	[10-20]%	**[20-30]%**	Achmea, *[20-30]%*	ASR, *[5-10]%*
	NWP	2014	175	[10-20]%	[10-20]%	**[20-30]%**	Achmea, *[20-30]%*	ASR, *[5-10]%*
Travel	GWP	2015	569	[5-10]%	[5-10]%	[10-20]%	Achmea, *[10-20]%*	ASR, *[5-10]%*
	NWP	2014	37	[5-10]%	[10-20]%	**[20-30]%**	*Data not available*	

Source: Parties' data, DNB data, CVS data, NN's best estimates (based on tables 195, 196, 210, 211, 221, 222, 230, 231, 237 and 238 of Form CO)

310. As mentioned in the product market definition, each of the narrower product markets within life insurance (in this case liability, disability, fire and travel insurance) could be further segmented into group and individual products. The Parties' combined market shares in the most recent year for which information is

[174] The Parties could not provide equivalent market data for 2015.

available (2014 or 2015 as displayed in table 21) and in the respective sub-segments for individual or group customers, remain, however, very similar to the figures provided in table 21 (with the highest combined market share of [20-30]% occurring in *individual* fire insurance in 2014, based on NWP). Neither of the Parties is active in the market for travel insurance provided to corporate entities.

311. As can be seen from table 21, the merged entity would have moderate combined market shares (never exceeding [20-30]%) and would continue to face strong competition in non-life insurance overall and in each of the hypothetical segments considered in table 21. In each of the segments considered for the purpose of the present case except disability insurance, the combined entity and Achmea would become the two largest competitors, and would be of similar size. In disability insurance, the combined entity would become the largest player, closely followed by ASR and Achmea. A significant number of smaller players, some of which are specialised in specific types of non-life insurance, will also continue to exert competitive pressure on the merged entity post-transaction.

312. The majority of respondents to the market investigation confirm that the Transaction would have only a limited impact on the market for non-life insurance, as there will still be sufficient suppliers active on the market, and customers will continue to benefit from a choice of products.[175] Some competitors even consider that "*a combination of these two parties is expected to lead to large synergy effects, which means that they will become more competitive. These could put downward pressure on the commercial tariffs in the market and therefore on the profitability*"[176] or, similarly, that "*the transaction will lead to further consolidation with the Dutch non-life insurance market. Processes of Delta Lloyd are potentially further automated, driving cost down. Other insurers will be forced to follow, but especially smaller insurers will struggle and potentially be acquired by larger firms*".[177]

313. A small number of competitors and distributors did, however, highlight the fact that the merged entity will become an important player in the market for non-life insurance due to its relatively high market share and the already limited number of providers. A minority of distributors feared that the transaction will reduce choice on the non-life insurance market, one also adding that the gap created by the loss of Delta Lloyd is unlikely to be filled by another player. In addition, a distributor voiced a particular concern about the potential effect of the transaction on the market for underwriting[178], where it expects to see a reduction in competition. It should be noted that the Commission has never considered sales by mandated brokers as a distinct channel, and from the point of view of the end customer, a reduction in the choice on offer via one particular distribution channel could not be seen to be particularly harmful when a number of other distribution channels are all open and just as easily accessible (e.g. independent intermediaries, online platforms, banks and direct sales from the insurer).[179]

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175 Q120.3 of Questionnaire 1 to competitors. "*There would remain a sufficient number of suppliers and customers would continue to enjoy sufficient choice." "there are still – enough – competitors left".*

176 Q120.3 of Questionnaire 1 to competitors.

177 Q120.3 of Questionnaire 1 to competitors.

178 A mandated broker distributes insurance policies on behalf of an insurance company and with the risk borne by the insurance company, but under the mandated broker's own brand.

179 Q30 and Q30.1 of Questionnaire 4 to distributors on individual life and non-life insurance.

314. More generally, the comments referred to above relating to a potential reduction in choice and competition appear to be unsubstantiated, in particular given the large number of providers active on the non-life insurance market. Moreover, the DNB's recent study of the insurance market[180] reports that non-life premiums have been under considerable pressure in recent years and are expected to fall further, which suggests that competition is strong. The DNB also predicts that technological changes allowing insurers to better assess risks will increase competition, as will the entry on the market of more international competitors.

315. In view of the above, and in particular of the merged entity's relatively limited combined market share on the market for non-life insurance and on the possible sub-segments of this market (never exceeding [20-30]%), the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards the market for non-life insurance or any of its hypothetical sub-segments for liability, disability, fire and travel insurance considered in overall or further segmented into individual and group customers.

V.1.D. Delta Lloyd's overall position on the insurance market

316. In general, the market investigation confirmed that there will remain sufficient choice for customers on the insurance market following the merger, even though the loss of Delta Lloyd will inevitably reduce the number of competitors. With regard to pension products, customers mentioned the introduction of new pension vehicles as a development which has increased the choice of products available. In individual life insurance, meanwhile, many of the traditional products have been replaced by new types of products sold under a banking licence, which has, again, significantly widened the range of competitors on the market. Lastly, the market for non-life insurance is already more fragmented, and the merged entity would have a more modest combined market share.

317. Notwithstanding the above, a small number of respondents to the market investigation expressed concern that the loss of Delta Lloyd could be particularly damaging to the market due to the role that Delta Lloyd has played as an innovator and as an aggressive competitor on price. A minority of pension product customers considered Delta Lloyd, and particularly its PPI, to be very price competitive[181] in this market, and distributors of individual life and non-life policies also mentioned price as one of the company's strengths.[182] A small number of distributors (of pension products and life insurance) also commented on Delta Lloyd's innovative

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"NN and Delta Lloyd are both big players on the non-life-insurance market. The takeover will see one of them disappear and, if the trend seen in recent years continues, the gap will not be filled by new players. Given that they both offer a wide range of products, the merger will have an effect on virtually all available products. In particular, we want to stress the impact on the market for underwriting. Due to the reduction in the number of providers and also a certain homogeneity in market behaviour, this market already started becoming less competitive a little while ago. The takeover therefore has two consequences: the combination of NN and Delta Lloyd will become very dominant in terms of market share and competition will be further reduced."

180 DNB, *Visie op de toekomst van de Nederlandse verzekeringssector*, December 2016, http://www.dnb nl/binaries/DNBrapport%20Visie%20op%20de%20toekomst%20van%20de%20ver zekringssector,%2013%20december%202016_tcm46-350191.pdf?2016121317.

181 Q21.3 and Q21.4 of Questionnaire 2.

182 Q20.1 of Questionnaire 4.

capabilities.[183] A distributor of individual life insurance, suggested that "the impact of the transaction will be all the greater because Delta Lloyd has in recent years shown itself to be a challenger and an innovator".[184]

318. In view of these comments, the Commission further investigated whether there would be grounds to consider that Delta Lloyd is able to exert an influence on competition over and above what would be suggested by its market share.

319. The Commission notes first that the comments mentioned above should be interpreted within the context of market participants' overall view on the Transaction, which is that it is expected to have no or only a very limited impact on the market. In particular, even the pension products distributor who suggested that Delta Lloyd could have been an innovative supplier in fact also stated that the overall impact of the transaction would be "limited". Other responses also suggested that the importance of Delta Lloyd as an innovative and low-priced competitor might not be what it once was, due to changes in both Delta Lloyd's own position and in the market more generally. One distributor, for example, explains that Delta Lloyd used to be a "price fighter", specifically in DB, but that as this market is disappearing anyway, the effect of the Transaction will be "almost marginal".[185] A distributor also comments that Delta Lloyd is not seen as a top player in any particular market.[186]

320. Most importantly, Delta Lloyd demonstrated that its reputation as an innovative competitor must be based, to some extent at least, […]. In an additional submission provided on 17 March 2017, Delta Lloyd demonstrated that, [Delta Lloyd's business strategy]. Contemporary internal documents provided by Delta Lloyd[187] confirm that it [Delta Lloyd's strategic decision]. Delta Lloyd also provided reports conducted by independent consultants which show that [strategic assessment].[188] Further internal documents provided by Delta Lloyd showed that the company has, at various points, considered [strategic assessment].[189]

321. In addition to the above, Delta Lloyd also argues that the strong regulation around pensions and insurance products means that it would be difficult for any one competitor to achieve any kind of innovation which others could not also easily replicate. Delta Lloyd considers its attractiveness as a brand to be based on its level of service and good relationships with customers and advisors rather than on particular innovations or having the lowest prices.

322. In view of the above, the Commission considers that the isolated concerns expressed by some market participants, as described in recital 317 above, do not seem to reflect the reality of the current situation on the market. This conclusion is

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183 Q43.1 of Questionnaire 3.

184 Q29.1 of Questionnaire 4.

185 Q34.4 of Questionnaire 3 to distributors of pension products. "*DL was a price fighter in the market for insured DB, so the bottom pricing is taken out of the market. However, since we expect insured DB plans to be replaced by soft DB plans (APFs/BPFs) or DC plans, the actual impact will be almost marginal".*

186 Q34.4 of Questionnaire 3 to distributors of pension products. "*NN and DL have not been excelling in any markets".*

187 Including a strategy document from November 2015 and a presentation to investors from May 2016.

188 Reports by Schenkel & Verschuren and Moneyview.

189 Commercial analysis of Delta Lloyd's DC product.

additionally supported by the fact that the Parties' sales and market share data (as presented in the competitive assessment of the various product markets) show that Delta Lloyd has not seen a significant increase in market share in recent years. Furthermore, the Parties' submissions demonstrate that Delta Lloyd has not in recent years offered prices significantly lower than those of its competitors and has not systematically been the lowest price provider in any particular market.[190] The responses to the market investigation, from both customers and distributors, generally confirmed this view.

323. The Commission therefore concludes that the disappearance of Delta Lloyd from the market does not in itself lead to significant impediment of effective competition nor does it in any way bring into doubt the validity of the conclusions drawn in the competitive assessment for the various product markets within insurance. As concluded above, the Transaction does not give rise to serious doubts as to its compatibility with the internal market as regards life insurance and non-life insurance markets and any of their plausible segments discussed above.

V.1.E. *Insurers as service providers on the pensions market*

324. The Parties and their competitors currently provide services to pension funds (OPFs and BPFs) involving the insurance of specific risks, namely mortality and morbidity risks (see section III.2.D). Other types of insurance products, for example contracts insuring the whole pension contract, also used to be provided to pension funds, but these are being phased out.

325. Table 22 shows the Parties' market shares on a hypothetical market for the provision of insurance services to pension funds.

Table 22: market shares for insurance provided to pension funds in the Netherlands, GWP

	Market size (EUR million)	NN	Delta Lloyd	Combined	Aegon	Achmea	ASR	Others
2013	708	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[30-40]%	[0-5]%	[0-5]%
2014	571	[20-30]%	[10-20]%	[30-40]%	[50-60]%	[5-10]%	[0-5]%	[0-5]%
2015	361	[10-20]%	[20-30]%	[30-40]%	[50-60]%	[5-10]%	[0-5]%	[0-5]%

Source: Parties' internal analysis and DNB data (table 106 of Form CO)

326. As can be seen in the market share table 22, the providers of insurance services to pension funds are exclusively the main Dutch insurers, i.e. it is the same set of competitors as are present on the market for insured pension products (with the exception of Vivat, which is not active in the provision of insurance products). Delta Lloyd and NN have a combined market share of almost [30-40]%, and would be the second largest actor on the market, behind Aegon. ASR has a limited market presence and Achmea lost significant market shares between 2013 and 2014. Following the proposed transaction, the combined entity and Aegon would account for [80-90]% of the total market.

327. It should be noted that insurance services provided to PPIs and APFs have not been considered as part of this market. Where PPIs and APFs are part of insurance groups (as is the case for the majority of APFs and around half of the PPIs currently active on the market), insurance is almost always provided by the group itself, e.g. NN provides insurance to its PPI and its APF. Whilst some insurers do also provide insurance to third party PPIs and APFs, neither NN nor Delta Lloyd is active in this area. Both only provide insurance services to their own PPI and APF, and do not therefore compete on a genuine market for the provision of such services.

328. The Notifying Party submits that the sourcing of insurance by pension funds has been declining rapidly in recent years, and that the Parties have also seen their premiums reduce. The Notifying Party adds that [Parties' market position] for providing insurance to pension funds in 2016.

329. The figures for the overall market size appear to confirm that the market has shrunk rapidly, almost halving in size between 2013 and 2015. In addition, the merged entity will not be the largest player on the market, as Aegon will have a considerably larger market share of [50-60]%.

330. The results of the market investigation did not suggest that the proposed transaction would have any significant effect on the market for insurance services provided to pension funds. Not all of the pension funds used an external provider for insurance,[191] suggesting that there are alternative ways of setting up the pension funds, and the vast majority stated that there was sufficient choice of service providers available (for insurance, asset management and pensions administration).[192]

331. Just over half of the pension funds which responded to the market investigation stated that it would be difficult for them to change provider, mainly due to contractual terms, however, rather than to any reduction in choice which may come about as a result of the merger.[193] They generally had fairly little knowledge of the providers active on the market, but a couple mentioned elipsLife (owned by Swiss Re) and Zwitserleven (Vivat) amongst the companies they would consider. The Parties' competitors also seemed to have fairly limited knowledge of this market, but elipsLife and Zwitserleven were again mentioned ahead of NN and Delta Lloyd (which were named only once)[194], suggesting that the Parties' strength on this market may be declining, as claimed. Only one pension fund suggested that the transaction might have any effect on the market for insurance services to pension funds, and this opinion was not substantiated beyond commenting on the size of the merged entity.[195] No competitors thought that the transaction would have any effect.[196]

332. In view of the above, it would appear that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the hypothetical market for insurance services to pension providers.

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191 Q7.1 of Questionnaire 5 to pension funds.

192 Q10 of Questionnaire 5 to pension funds.

193 Q8 of Questionnaire 5 to pension funds.

194 Q52 of Questionnaire 1 to competitors.

195 Q11.1 of Questionnaire 5 to pension funds.

196 Q54 and Q54.1 of Questionnaire 1 to competitors.

V.1.F. *Buy-outs*

333. Both NN and Delta Lloyd are active on the market for buy-outs.[197]

334. In the Netherlands, the type of pension funds that would be interested in a buy-out are primarily company pension funds (*ondernemingspensioenfondsen*, OPFs), and to a lesser extent industry pension funds (*bedrijfstakpensioenfonds*, BPF). An OPF would, however, also have a number of other options, such as joining an *algemeen pensioenfonds* (APF) or a *bedrijfstakpensioenfonds* (BPF). A BPF could also merge with another BPF.

335. The Notifying Party claims that a buy-out is usually more expensive for a pension fund than joining an APF. This is because, when a pension fund is transferred to an insurer, the insurer would take on the assets and liabilities on the basis of providing the scheme members with a guaranteed level of pension benefits. When a pension fund joins an APF, however, the benefits could be cut if at some point in the future the APF does not have sufficient funding. A buy-out is therefore more expensive, as the pension fund is effectively paying the insurer to take on the longevity and investment risk associated with its obligations.

336. A pension fund considering a buy-out is required under Dutch legislation to organise a tender process, whereby at least three providers would submit their proposals, specifying the single premium to be transferred by the pension fund. The pension fund would then choose the most advantageous offer. This process is usually organised by an actuarial consultant (or other broker), who would publicise the opportunity and negotiate with insurers.

337. The Notifying Party claims that there has been relatively limited buy-out activity in recent years, and no activity in 2016, due to the low interest rates seen over this period. It also argues that the introduction of APFs in 2016 has created an alternative to buy-outs, and therefore contributed to the decline seen in this market. Further reasons for the lack of activity on the buy-out market put forward by the Notifying Party include insurers' low solvency ratios and the coverage ratios of OPFs, which are sometimes below the regulatory minimum for transferring assets and liabilities. Recent statistics seem, however, to suggest that all of the main six Dutch insurers have solvency ratios well above the minimum required level, with NN having the highest solvency ratio by some distance, at a level more than comfortably above the regulatory minimum.

338. Buy-outs can be of interest to insurance companies as they offer a way of acquiring a relatively large volume of assets in a single transaction, which the company can then invest. Buy-outs of DC arrangements may be particularly attractive, as solvency and capital requirements for buy-outs of this kind are not such as to restrict any insurer's ability to compete in the tender.

339. In addition, the insurance company also acquires new customers as it would typically take on the future accrual for the pension scheme (providing, of course, there are still active members in the scheme). A buy-out does, however, entail a certain level of risk, and an insurer will take this into account when deciding

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[197] Both are active exclusively as insurers, i.e. their respective PPIs and APFs have not carried out any buy-outs.

whether to compete in a particular tender. Its assessment of the risk level will typically be based on the size and demographics of the scheme and the capital accrued. In deciding whether to compete for a buy-out, an insurer would also need to consider its own financial situation.

340. Although the buy-out market has not seen a lot of activity in the last couple of years, NN and Delta Lloyd are both present on this market. Due to the volatile nature of the market, we have looked at market shares over a period of five years, 2011-2015. [Confidential information about buy-outs in 2016].

Table 23: Market shares in the market for buy-outs, 2011-2016

Year	2011		2012		2013		2014		2015		2016	
	No. of buy-outs	Market shares	No. of buy-outs	Market shares	No. of buy-outs	Market shares	No. of buy-outs	Market shares	No. of buy-outs	Market shares	No. of buy-outs	Market shares
NN	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[20-30]%	[…]	[0-5]%
Delta Lloyd	[…]	[60-70]%	[…]	[10-20]%	[…]	[20-30]%	[…]	[10-20]%	[…]	[0-5]%	[…]	[0-5]%
Combined		**[60-70]%**		**[10-20]%**		**[20-30]%**		**[10-20]%**		**[30-40]%**		**[0-5]%**
Total size of market (EUR million)	1 522		3 269		1 892		3 743		1 368		NA	

Source: Parties' best estimates (tables 108-112 of Form CO)

341. The data provided in table 23 shows that the market share of any particular insurer can vary quite considerably from year to year, due to the 'lumpy' nature of the market. Nonetheless, it is clear that NN and Delta Lloyd do both have the capacity to compete on the market for buy-outs should they choose to. Internal documentation provided by NN (dated June 2015) shows that NN is [NN's strategic assessment]. It refers to the buy-out market as "[quote of internal documents]" and explains that buy-outs [NN's strategic assessment]. The Notifying Party has also stated that NN is [NN's strategic assessment]. Delta Lloyd, […], appears to be now less active on the buy-out market than it has been in the past. Its internal documents (including a business plan for 2017-2019 and an update on capital planning for 2015-2020 from Q3 2015) show that it [Delta Lloyd's strategic decision].

342. The Notifying Party claims that data on the value of buy-outs won or competed for is irrelevant, because every buy-out is different and the interest of the buy-out will depend on each individual insurer's own position, e.g. an insurance company that has a high-risk portfolio will be more interested in buying out a low risk pension fund, and vice-versa.

343. The market investigation revealed mixed views as to the future of the buy-out market and the possible effects of the proposed transaction on competition on this market. Some respondents considered the buy-out market to be largely inactive, and saw no prospect of this changing in the foreseeable future. One competitor, for example, was of the opinion that by the time the buy-out market becomes active again, the OPFs that might have been candidates for buy-outs will have already merged or joined APFs.

344. Most of the pension funds (OPFs and BPFs) which responded to the market investigation appeared to have very little knowledge of and/or interest in buy-outs. Of the few respondents who had any view on potential candidate purchasers for their own fund, none mentioned NN or Delta Lloyd, and none appeared to be aware of NN and Delta Lloyd being active in this market.[198] It should, however, be mentioned that the other main insurers were also very rarely mentioned, and the answers may therefore reflect a more general lack of knowledge, rather than implying that NN and Delta Lloyd are not strong on this market. None of the pension funds which responded to the market investigation thought that the proposed transaction could have an impact on the market for buy-outs.[199]

345. An OPF which the Commission spoke to during the prenotification phase was, however, concerned about the effect of the transaction on the market for buy-outs. The fund may at some point in the near future need to consider a buy-out and was therefore worried that the proposed transaction could reduce its choice of insurer and lead to it having to pay a higher single premium to be bought out. It would appear that this view is based on Delta Lloyd and NN's past activity on the buy-out market, both having been active in recent years. [Confidential strategic decision of Delta Lloyd refuting these concerns]

346. Of the competitors who responded to the market investigation, around two thirds had competed in buy-outs in the last three years[200], and at least some of the major insurers plan to compete in tenders in the next two years[201]. Several respondents did, however, also express doubt as to whether there will be many tenders to compete in, mentioning that OPFs are increasingly looking for other alternatives and that the low interest rate environment makes buy-outs unattractive.[202] Most competitors agreed that buy-outs could be an attractive way for an insurer to gain scale, but added that this very much depends on both the economic environment, the risk characteristics of the pension fund and the insurer's own financial position.[203] Both competitors and actuarial companies were of the opinion that significant levels of capital and expertise were needed to compete successfully in the market for buy-outs, meaning that only the larger insurers are likely to be serious contenders in this area.[204] Competitors generally perceived NN, ASR and Aegon to be the main competitors in the market for buy-outs.[205] Actuarial companies mentioned the same companies, plus a number of others including Vivat.[206] Delta Lloyd was only mentioned once (by a competitor), which is consistent with its very limited activity in 2015 and 2016. It is also well known in the industry that Delta Lloyd has the weakest solvency of the main insurers, and competitors are therefore likely to be able to conclude that it will not be in a position to compete on the market for buy-outs.

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198 Q14 and Q14.0 of Questionnaire 5 to pension funds. One OPF spoken to during the prenotification calls did, however, seem to consider both Delta Lloyd and NN as potential purchasers, should the fund end up having to be bought out.

199 Q19 of Questionnaire 5 to pension funds.

200 Q41 of Questionnaire 1 to competitors.

201 Q46 of Questionnaire 1 to competitors.

202 Q43 and Q46 of Questionnaire 1 to competitors.

203 Q44 of Questionnaire 1 to competitors.

204 Q36 of Questionnaire 3 to distributors of pension products, Q47 of Questionnaire 1 to competitors.

205 Q48 of Questionnaire 1 to competitors.

206 Q37 of Questionnaire 3 to distributors of pension products.

347. Some competitors do, nonetheless, consider that the transaction could have an effect on the market for buy-outs.[207] This is mainly based on the fact that both NN and Delta Lloyd have experience on this market, and that the only reason for Delta Lloyd not competing in tenders in the last couple of years has been [Delta Lloyd strategic assessment]. NN is known to have a strong capital position and, with its combined resources and expertise, the merged entity is therefore viewed by competitors as having the potential to be a strong player on the buy-out market.[208] None of the actuarial companies which responded to the market investigation considered that the transaction could have an impact on the market for buy-outs.[209]

348. Whilst it may be true that, despite […], the merged entity would benefit from the combined expertise of the two parties, there is no evidence to suggest that this would allow it to act in any way which would harm competition. Delta Lloyd's [strategic decision] clearly indicates that [consequences of Delta Lloyds' strategic decision]. The nature of the market means that market shares are not necessarily the best measure of the different actors' strength, but the Parties' combined market shares in previous years are not, in any case, such as to suggest that it would be able to increase prices for buy-outs. The results of the market investigation confirm that at least three other strong competitors remain interested in the market for buyouts. Were the merged entity to artificially increase the single premiums it is prepared to accept for a buy-out, there would therefore be enough other competitors willing to accept a lower price, meaning that it could not successfully pursue such a strategy.

349. In view of the above, the Commission concludes that the transaction does not give rise to serious doubts as to its compatibility with the internal market.

V.1.G. *Coordinated effects*

350. According to the Commission's Guidelines on the assessment of horizontal mergers,[210] a merger in a concentrated market may significantly impede effective competition, through the creation or the strengthening of a collective dominance position, because it increases the likelihood that firms are able to coordinate their behaviour in this way and raise prices. Coordination is considered to be more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination (such as keeping prices above competitive level, limiting production or by dividing the market) and where the economic environment is less complex and more stable. According to the Guidelines on horizontal mergers three conditions are necessary for coordination to be sustainable: ability to monitor competitors' behaviour, existence of a deterrent mechanism which could be activated if deviation is detected and current and future competitors not participating

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207 Q49 of Questionnaire 1 to competitors. *Do you think that the Transaction will have an impact on the market for buy-outs?* (2 yes, 1 no, 3 don't know).

208 Q49.1 of Questionnaire 1 to competitors. "*Delta Lloyd was very active in this field but because of low solvency is no longer active. But they still have the expertise. NN has the required solvency. Together they can have a very strong presence in this market*".

209 Q38 of Questionnaire 3 to distributors of pension products.

210 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 05.02.2004, paragraph 39), "Guidelines on horizontal mergers".

in the coordination, as well as customers, should not be able to jeopardise the results expected from the coordination

351. The Commission considers that in the present case the above conditions are not met, and thus the Transaction will not result in the creation or strengthening of coordination leading to significant impediment of effective competition on any of the markets concerned by the Transaction. The Commission considers so for the following reasons.

352. First, in the present case the market investigation has not revealed any indication or evidence that coordinated effects currently take place on any of the markets discussed in the present decision.

353. Second, the market investigation revealed that the markets affected by the Transaction undergo important changes driven by economic conditions or initiatives of the regulators. In particular, pension products and individual life insurance products have been going through significant structural changes, which lead to the introduction of new categories of players on these markets, making coordination even less plausible. Furthermore, the current environment of low interest rates is causing an important decline of most of the markets where insurers are active, in particular the market for DB pension products[211] and the market for buy-outs.

354. As regards the regulatory changes, as explained in section V.1.A the market for group pension products experienced significant opening of the market, which allowed new categories of pension providers to compete on the pension products market. More specifically PPIs and APFs can offer pension products, while they do not need to have insurance license. As regards the individual life insurance, as explained in section V.1.B, the scandal related to misselling of unit-linked policies[212], the regulatory changes which followed and the introduction of new category of products *banksparen*[213] have resulted in important changes in the market for traditional individual life insurance savings and investment products.[214] Also in this area competitors do not need to have insurance licence to offer competing products (in relation to *banksparen* they must have a banking licence).

355. The Commission notes, that while before these changes insurers were effectively competing only amongst themselves, currently on the market for pension products they face PPIs which can be set up by asset managers or banks and on the market for individual life insurance products they compete with banks offering *banskparen*.

356. As regards the remaining markets which have not been directly affected by the recent changes, namely fixed annuities or non-life insurance products the Commission notes the following. As regards the fixed annuities (decumulation pension products offered only by insurers) the market investigation revealed that international competitors such as Allianz have entered the market. Furthermore, the data regarding market shares presented in table 11 above, confirms the absence of coordinated effects among competitors by illustrating important switching in the top

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211 See section V.1.A.1, in particular comment on actuarial companies who expect the sales of DB products to disappear in the coming years.

212 See section III.2.A.2

213 See section V.1.B.2

214 See section V.1.B.2

three providers of DC decumulation products and the presence of actors outside of the 'big 6' traditional Dutch insurers, namely de Goudsee.

357. Similarly, the market for non-life insurance (in which the Parties' combined market share never exceeds [20-30]% under any possible market definition (section V.1.C) cannot be considered to be particularly concentrated and counts an important number of different providers. This is also confirmed by the DNB's recent study of the insurance market[215] which highlights the strong competition in the market for non-life insurance.

358. Third, the Commission considers that the Transaction may make potential coordination less plausible and less sustainable, in view of the market shares data. Inevitably, the Transaction reduces the number of competitors in each of the affected markets analysed in sections V.1.A to V.1.F, but does not impact the market conditions in such a way that terms of coordination could be reached more easily post-Transaction. More specifically, in all the affected markets, except for DC decumulation products, the Transaction will create a rather asymmetric market structure with the merged entity being the market leader, and the remaining main players strong but having significantly smaller market shares. As regards the market for DC decumulation pension products, post-Transaction the main two players would be of similar size but the Commission considers that coordination in this areas is unlikely due to the larger pool of players offering these products.

359. Fourth, the Commission notes that as regards the market for group pension products specifically, which in theory could seem to be most prone to coordination, the role played by intermediaries such as actuarial consultancy reinforces effective competitive market conditions. The market investigation revealed that pension providers prepare bespoke offers for each tender and often actuarial consultants negotiate with pension providers better terms for employers. Clearly if contracts and are concluded and prices set following such a non-transparent closed procedure, coordination and detection of deviations would be very difficult. Finally the Commission notes that products offered by various pension providers are not particularly homogeneous products and will be further diversified following the introduction of APFs. As explained in section IV.7 each APF can offer several risk polling circles having different characteristics as regards the risk level and expected returns. The Commission considers that the introduction of APFs, will make potential coordination even less likely on the Dutch pension market.

360. In general, the results of the market investigation did not raise any concerns about potential coordinated effects. More specifically, the results confirmed that insurers do not tend to target particular customer group[216] or to limit their product offering[217] and serve very different types of customers (both in terms of activity sector and company size), which indicates that no coordinated effects related to the potential restriction of insurance production or the potential division of the customer base exist.

[215] DNB, *Visie op de toekomst van de Nederlandse verzekeringssector*, December 2016, http://www.dnb nl/binaries/DNBrapport%20Visie%20op%20de%20toekomst%20van%20de%20ver zekringssector,%2013%20december%202016_tcm46-350191.pdf?2016121317.

[216] Replies to question 26 and 34 of questionnaire Q1 to competitors.

[217] Replies to question 9 and 91 of questionnaire Q1 to competitors

361. In view of the above, the Commission concludes that the Transaction does not lead to coordinated effects which could significantly impede effective competition in any of the affected markets as assessed in sections V.1.A to V.1.F.

V.2. Non-horizontal assessment

V.2.A. Vertical overlap between insurance production and distribution

362. The Transaction would create markets where the Parties would have combined market shares of above 30%, namely the markets for overall life insurance, pension products and savings and investment products, and their respective potential segments. There is therefore a vertically affected market between each of these markets and the respective markets for their distribution.

363. On the downstream market for insurance distribution, the Transaction does not give rise to horizontally affected markets, under any of the plausible market segmentations as previously considered by the Commission.

364. The Notifying Party provided market data based on NWP on the market for insurance distribution. In the most recent year for which market information is available, the Parties' combined market share does not exceed [10-20]% under any plausible market segmentation as previously considered by the Commission. No horizontal overlap arises in the market segment for distribution of pension products, as only NN is active on this segment through its subsidiary Zicht.

Table 24: Insurance distribution, NWP, 2014

Distribution of:	Outward channels only				All distribution comprising outward channels and direct sales			
	Market size (M€)	NN	Delta Lloyd	Merged entity	Market size (M€)	NN	Delta Lloyd	Merged entity
Overall insurance	[…]	[0-5]%	[0-5]%	[5-10]%	[…]	[0-5]%	[0-5]%	[5-10]%
Life-insurance	[…]	[0-5]%	[0-5]%	[5-10]%	[…]	[0-5]%	[0-5]%	[5-10]%
a) Group life insurance (pension products)	[…]	[0-5]%	[0-5]%	[0-5]%	[…]	[0-5]%	[0-5]%	[0-5]%
b) Individual life insurance	[…]	[5-10]%	[0-5]%	[10-20]%	[…]	[5-10]%	[0-5]%	[10-20]%
Non-life insurance	[…]	[0-5]%	[5-10]%	[5-10]%	[…]	[0-5]%	[5-10]%	[10-20]%

Source:Based on data provided in Form CO and Parties' reply to Commission's RFI of 13 March 2017

365. With respect to specific insurance products where the merged entity would achieve a relatively strong position (above 30% market share), namely pension products (and its segments) and individual life insurance, the position of the merged entity in distribution will not be significant. As can be seen in table 24, the combined market shares in distribution are not sufficient for any particular product to allow the merged entity to exercise any significant level of market power.

366. The Notifying Party points out that NN's wholly owned distribution subsidiary Zicht B.V. (Zicht) is prohibited under Netherlands legislation from receiving inducements from NN for acting as an intermediary for complex products, such as pension products. In view of this, the Notifying Party argues that Zicht's market share should not be attributed to NN as the regulatory restrictions prevent NN from exerting any influence over Zicht's market conduct in relation to the distribution of

pension products. Whilst acknowledging this argument, the Commission notes that in any event even if Zicht's market share is attributed to NN the analysis below remains valid.

367. A large number of competitors will remain active in the distribution of pension products[218], life insurance and non-life insurance respectively, many of whom have a stronger position than NN and Delta Lloyd.

368. In light of the Parties' limited combined market shares in the downstream market for the distribution of insurance products, the Commission considers that the merged entity is unlikely to be able or to have the incentive to reduce competitors' access to its distribution network (input foreclosure). Furthermore, the Commission considers that the merged entity could not afford to pursue the strategy of customer foreclosure, which in this case would mean distributing its products only via Zicht and through direct sales. In view of the importance of the outward distribution channels in the Netherlands, the Parties' marginal position on this channel and the fact that the pension products in the Netherlands can only be distributed by specialised external advisors, such strategy could not be effective.

369. The Commission therefore considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards vertical links between the insurance production and insurance distribution.

Distribution of insurance products via banks

370. Both NN and Delta Lloyd have exclusive distribution agreements with major banks: NN with ING and Delta Lloyd with ABN Amro. ING and ABN Amro are two out of the three main banks in the Netherlands. NN's current agreement with ING was concluded in 2012, for a period of 10 years. ING receives […] for distributing NN's policies. Delta Lloyd is involved in a joint venture with ABN Amro, in which Delta Lloyd holds 51% of shares and ABN Amro 49%. This was launched in 2003 and is scheduled to run until [year].

371. Until the end of [year], ING distributed both life and non-life insurance policies for NN, but as NN ceased offering life insurance to new customers in January 2017[219], the arrangement now only covers non-life insurance. The proportion of NN policies sold by ING varies considerably between the different types of non-life insurance, for example from [0-5]% for motor insurance to [10-20]% for legal assistance insurance.

372. The proportion of Delta Lloyd's sales that are achieved by ABN Amro is typically higher, but also shows significant variation across the types of policy, ranging from [0-5]% in disability insurance to [80-90]% in financial loss insurance.

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218 A number of large and well-established international players remain active on the market for pension products, some of which are part of global consulting groups (such as AON Captive Services (Nederland) B.V., Willis Towers Watson and Marsh B.V. (part of Mercer)).

219 This may only be temporary as NN is considering outsourcing the production of term-life. It plans to offer a term-life insurance product from [business partner] (a term-life specialist), to be distributed primarily via [distribution channel]. The product would initially be sold under the [business partner] brand but may later be sold as [NN's strategic plans]..

373. Overall, [0-20]% of NN's non-life insurance policies are sold by ING and [20-30]% of Delta Lloyd's non-life insurance policies are sold by ABN Amro.

374. In the replies to the market investigation, several competitors mention that the combined entity will become very strong as a result of its large distribution network via banks. Competitors suggest that distribution agreements with banks provide easy access to customers, in particular for term-life insurance (which are typically purchased simultaneously with mortgages), disability and annuities.[220] Competitors recognise that distribution via banks is not very important compared to distribution via intermediaries, direct sales and internet platforms such as comparison websites, but some of them argue that it may become more important in the future. No market participants other than competitors raise concerns about the insurance distribution via banks. Most distributors of individual life and non-life insurance products confirm, however, that they consider a link with a bank to make it easier for an insurer to sell certain types of non-life insurance products.[221]

375. In past decisions, the Commission has never considered distribution via banks to be a separate market[222] and it appears that also in the present case, there is no particular reason to depart from the previous practice on insurance distribution. The Commission notes that post-transaction, the market would still include a wide range of intermediaries (in particular brokers and professional intermediaries). Furthermore, more specifically product tying and bundling between mortgage products and insurance products is not permitted under the Dutch law[223], meaning that the bank channel is not particularly privileged when compared to other outward channels, when selling products related to mortgages.

376. The Notifying Party explained that banks can only offer insurance products to customers of the bank, i.e. customers which have an account with the bank. As the majority of individuals are only customers of one bank, any particular individual can choose to either purchase insurance from their bank, or via another channel (e.g. online, from a broker or directly from the insurer), but not from another bank. Whilst it is conceivable that a customer may switch to another bank if the terms that bank is offering for a mortgage are more favourable, given the relative value of, for example, a term-life policy and a mortgage, it is highly unlikely that a customer would switch banks for their mortgage in order to have access via the bank to a cheaper term-life policy, in particular given that they could purchase this same term-life policy independently (i.e. via another sales channel), and thus choose their bank on the basis of where they can find the best offer for a mortgage or the most attractive package for a current account. This means that, as a distributor of insurance, each bank is directly competing with entities offering term-life policy through other channels, but not with other banks. In this sense, the fact that the merged entity will have exclusive distribution agreements with two banks is less meaningful than it might at first appear to be. The customers of each of the two banks will still have exactly the same choice of distributors of insurance to choose

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220 Responses to questions 109.1 and 120.4 in questionnaire Q1 to competitors.

221 Responses to question 28 in questionnaire Q4 to life and non-life insurance distributors.

222 Distribution via banks was considered to be either part of a market comprising all third-party outward distribution channels (brokers, agents and banks), or part of a broader market including, in addition, insurers' own direct (captive) sales force.

223 Article 7:121 of the Dutch Civil Code (*Burgerlijk wetboek*).

from, and distribution through banks cannot be seen as forming a separate distribution market, set apart from the other channels.

377. Some respondents to the market investigation suggested that the merged entity could have a competitive advantage on the market for term-life insurance, due to the distribution agreements with banks they have.[224]

378. The link between term-life and bank distribution arises due to the fact that term-life insurance is mainly bought at the point of taking out a mortgage. Although banks (and other parties issuing mortgages) are not legally allowed in the Netherlands to offer customers any discount or more favourable rates for buying the two products together, they would almost always offer their term-life policy (or the term-life policy they distribute) to their mortgage customers. It is obligatory for the vast majority of customers taking out a mortgage to have a term-life policy which means that if a customer does not take the term-life product offered to them by their mortgage provider, they would need to shop around to find another, better product. In many cases, it may therefore be easier and more convenient to purchase from the mortgage provider.

379. Around [70-80]% of NN's term-life policies are sold to cover mortgage debt, and the Notifying Party estimates that the percentage is similar (between [60-70]% and [70-80]%) for the market as a whole.

380. The results of the market investigation confirmed that, in the vast majority of cases, term-life is purchased together with a mortgage. Distributors estimated that between 75% and 100% of customers purchasing term-life insurance do so at the point of taking out a mortgage.[225] A number of other reasons for taking out term-life insurance were, however, also mentioned, including: i) general saving for the future; ii) providing income after the death of the policyholder, including for paying rent, and financing children's study; iii) in the case of divorce to cover the maintenance payment if the ex-partner dies; iv) insuring business risks such as the death of a key figure in a business; and v) covering other financial needs for SMEs.[226]

381. Since NN and Delta Lloyd both provide mortgages themselves, and have the exclusive distribution agreements with ING Bank and ABN Amro Bank the merged entity could be considered to have a particularly strong position in terms of access to potential term-life customers. Table 25 shows the market shares of NN, Delta Lloyd, ING and ABN Amro in the market for mortgage services, although it has to be underlined that as regards providing mortgages these four companies are currently in competition and post-Transaction the merged entity will have combined market share of [5-10]% on that market. The Parties' exclusive agreements with the two banks concern only the distribution of insurance products and do not prevent these banks from competing on the market for mortgages. The table only serves as an illustration to indicated that post-Transaction, entities having in total almost [30-

224 Responses to questions 120.3 and 120.3 in questionnaire Q1 to competitors.

225 Q14 of Questionnaire 4. According to competitors 60 to 90% of customers purchasing term life insurance do so in the context of taking out a mortgage (Q92 of Questionnaire 1)

226 Q93 of Questionnaire 1 and Q15 of Questionnaire 4

40]% of the market for mortgage services in the Netherlands will be all distributing insurance products of the merged entity.[227]

Table 25: market shares for mortgage services

	Market size (EUR million)	NN	Delta Lloyd	ING	ABN Amro	Combined	Rabobank	Aegon	Achmea
2015	65 029	6.7%	[0-5]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[5-10]%	[5-10]%

Source: NN's best estimates and data from land registry (table 280 of Form CO)

382. The Notifying Party contends that the Parties are not particularly strong in the supply of term-life insurance, in particular due to the distribution channels via which the mortgages are sold. Furthermore, the Notifying Party maintains that the merged entity would not be able to raise prices for term-life insurance, as it is too easy for customers to obtain term-life insurance from another provider, especially when they are buying their mortgage through an intermediary.

383. The Commission notes that approximately [90-100]% of NN and all of Delta Lloyd's mortgages are sold via intermediaries, meaning that the intermediary will offer the customer its preferred term-life policy, and not necessarily that of NN or Delta Lloyd, respectively. Similarly, around [70-80]% of ING's mortgages are sold by intermediaries.[228]

384. NN estimates that around [5-10]% of ING mortgage customers and [0-5]% of NN mortgage customers also have an NN term-life policy. For Delta Lloyd and ABN Amro customers the Notifying Party has not provided equivalent data, but does indicate that only [20-30]% of customers that have bought mortgages *directly* from ABN Amro also have term-life insurance from the ABN Amro-Delta Lloyd joint venture (discussed in more detail below). The Notifying Party expects that the proportion of all ABN Amro customers that have term-life insurance from the joint venture would not be higher than this, as customers buying through intermediaries are less likely to have purchased the joint venture's term-life insurance. In addition, Delta Lloyd estimates that approximately [0-5]% of all ABN Amro mortgage customers also have Delta Lloyd's own (i.e. not the joint venture's) term-life insurance. Overall, it would therefore appear that at the very most around [20-35]% of ABN Amro's mortgage customers might have term-life insurance from either Delta Lloyd or the ABN Amro-Delta Lloyd joint venture.

385. As regards the Notifying Party's argument that the merged entity could not raise prices because customers can easily compare insurance products and buy them anywhere, the Commission consider that indeed the above data indicating the significance of intermediaries on the Dutch market, supports this Notifying Party's claim. Furthermore, the Commission notes that due to the specific rules prevailing on the Dutch insurance distribution market, intermediaries do not have any incentive to encourage a customer to buy a term-life product from the same provider from which they are purchasing their mortgage. As of January 2013, intermediaries are

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[227] In fact this is a simplification, since ABN Amro [...] products of the JV, which is currently owned by ABN Amro and Delta Lloyd, and post-Transaction [strategic plan] [Information on business arrangements].

[228] The Notifying Party did not provide equivalent information for ABN Amro.

not allowed to receive commission payments from the insurance companies' whose products they sell, and it is therefore not legally possible for insurance companies to in any way motivate intermediaries to favour a particular combination of their products. Furthermore, intermediaries are required by law to inform customers, before proceeding to give advice, which insurers they work with. Were an intermediary to reduce the number of different insurers' products it offers, customers would be likely to go elsewhere.

386. The Commission considers that the Parties' modest current combined market share in term-life insurance ([10-20]% combined, while having exclusive distribution agreement with two out of three major banks in the Netherlands) shows that customers can and do shop around to find better prices.

387. The fact that NN distributes [40-50]% of its term-life policies via ING, which is significantly higher than the proportion of individual life insurance overall that is distributed via ING (around [10-20]%), could indicate that as regards the term-life insurance the access to the banking channel gives NN a tangible competitive advantage.

388. Notwithstanding the above, the Commission notes that in any event NN's modest market share in term-life insurance, which amounts to only [5-10]%, shows, first, that NN has not been able to use their own and respectively ING's position in mortgages to gain significant influence in selling term-life insurance and second, that in fact banks channel is not of significant importance.

389. The Commission notes that the Parties' combined market shares in term-life have remained very stable in recent years (between [10-20]% and [10-20]% over the years 2013-2015), which also demonstrates that the introduction of NN's distribution agreement with ING in 2012 did not help to increase sales. Moreover, sales of new term-life policies (as illustrated by market shares in NWP) show that NN is not currently a major player in this area (with market shares in NWP of around [0-5]% over the period 2013-2015). Furthermore, as mentioned in the section V.1.B.1, NN has decided to cease offering its own term-life product and to offer a 'white label' policy, insured by another provider. Internal documentation[229] shows that this is [NN's strategic assessment]. Given in particular NN's relatively weak position in term-life, it is therefore unlikely that, as a result of the Transaction, the merged entity could use its distribution links with banks which sell mortgages, or its own position in the mortgage market, to influence competition in the market for term-life insurance.

390. The respondents to the market investigation who expressed concern about the merged entity's distribution agreements with banks were mainly competitors. One competitor explained, for example, that having a strong network of tied distributors (such as banks with which the insurer has an exclusive agreement and mandated brokers) is "*always important for products such as term-life insurance which is mainly sold tied to mortgages or other products*", but also acknowledged that it is easy for customers to purchase such products online, or to get advice from an independent broker.[230] This competitor regarded customers as being "locked-in"

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229 External analysis performed for NN, January 2016; strategy presentation and meeting minutes, September 2016.

230 Q109.1 of Questionnaire 1 to competitors.

when they purchase via a tied agent, such as a bank distributor. The Commission notes, however, that in view of the figures presented and analysed above, the vast majority of the Parties' mortgages and those of their partner banks are not sold in this way. The above concern therefore does not reflect the market reality.

391. To conclude, the Commission considers that, contrary to some competitors' claims, the distribution of insurance products via banks cannot be leveraged, even for products that are typically purchased together with banking products, such as term-life insurance, which is often purchased at the point of taking out a mortgage. Overall, only 6% of all insurance, and around 16% of individual non-life insurance are distributed via banks in the Netherlands. As regards individual life insurance products 75% of them are distributed via intermediaries, the remaining 25% of products are distributed directly by insurers or by banks[231] . Furthermore the Commission notes that Dutch law prevents providers from tying or bundling insurance products with mortgages and from offering better prices on any of these products if bought together.[232] This fact was also confirmed by the respondents to the market investigation, who clearly indicated that there is no possibility of offering better prices for combinations of insurance products with banking products.[233] Finally, in view of the increasing importance of online sales in the Netherlands, the Commission considers it unlikely that the bank channel could become stronger in the near future. The Commission considers that customers will therefore continue to have choice between several insurance products and several distribution channels.

392. In view of the above the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards the link between the upstream market for insurance production and the downstream market for insurance distribution.

V.2.B. *Vertical overlap between insurance production and asset management*

393. NN and Delta Lloyd are both active on the market for asset management, thus creating a vertical link between this upstream market and their downstream activities in the production of insurance. Insurance companies source asset management services in order to manage their investments. The Notifying Party explains that most insurers have set up their own asset management subsidiaries.

394. NN is present in asset management through its asset management brand NN Investment Partners, which is active in several European countries and outside Europe. Delta Lloyd is active through its subsidiary Delta Lloyd Asset Management, which operates in the Netherlands only. Both NN and Delta Lloyd offer asset management services to corporate and institutional investors, to mutual funds serving retail customers, and to pension funds, institutions and international organisations. The Notifying Party therefore submits that the asset management market is an international market.

231 The Notifying Party was not able to provide an exact figure for distribution via banks.
232 Burgerlijk Wetboek Boek 7 Artikel 121.
233 Pre-notification calls with competitors and a distributor of insurance products.

395. The market for asset management is very fragmented with several large international competitors such as BNP Paribas IP, BlackRock, AXA Investment Managers and Allianz Global Investors also active in the Netherlands.

396. The Parties' combined market share comes to [10-20]% (with an increment of [0-5]% brought by Delta Lloyd) in the overall market for asset management if the market is considered to be national, and to [0-5]% if the market is considered to be EEA-wide.

397. The Commission considers it extremely unlikely that this position would allow the merged entity to exert any significant market power given the presence of other strong players on the market. Were the merged entities' subsidiaries for asset management to limit access to competing insurers by raising costs, no input foreclosure could possibly arise as sufficient competitors remain active on the upstream market for asset management. Similarly, the merged entity is unlikely to have the incentive to purchase all of its asset management services from its own subsidiaries and no customer foreclosure could possibly arise.

398. For the above reasons, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the vertical links between the market for asset management and the downstream market for insurance production.

V.2.C. *Vertical overlap between insurance production and reinsurance*

399. Both Parties are active on the upstream market for reinsurance and provide reinsurance to external clients for life and non-life risks.

400. On the global market for reinsurance, the Parties would have a *de minimis* combined market share of less than [0-5]%, and there appears to be no risk of customer or input foreclosure in this market.

401. The Notifying Party contends that NN and Delta Lloyd's reinsurance needs are very small in the context of the market. As a result, the Parties' reinsurance companies would have no incentive to provide their services exclusively to the merged entity as there would not be sufficient business. Likewise, the merged entity procuring all its reinsurance services from the Parties' reinsurance companies would have no effect on other potential customers. There is thus no risk of either input or customer foreclosure.

402. For the above reasons, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the vertical links between the upstream market for reinsurance and the downstream market for insurance production.

V.2.D. *Vertical overlap between insurance production and pensions administration*

403. NN is active on the market for pensions administration through its wholly owned subsidiary AZL N.V., which provides services to approximately 58 pension funds with 900 000 participants. Delta Lloyd is also active in this market, but has only a very minor presence. There is therefore a horizontal overlap between the Parties' activities in pensions administration (but not such as to create an affected market) and also a potential vertical overlap between the Parties' activities on the upstream

market for pensions administration and on the downstream market for the provision of pension arrangements.

404. AZL currently provides pension administration services to NN's captive pension schemes (NN's APF and PPI) and to OPFs and BPFs. It does not provide pension administration services to other insurance companies, and in particular does not provide services to Delta Lloyd. The Notifying Party estimates AZL's market share on the Dutch market for pensions administration to be [0-5]%.

405. The Notifying Party maintains that there is no risk of either input or customer foreclosure: even if the merged entity were to procure all of its pension administration services from AZL, other providers of pensions administration would continue to have sufficient business to compete for. Likewise, if AZL were to provide its services exclusively to the merged entities, other potential customers (e.g. BPFs and OPFs) would continue to have sufficient choice of providers.

406. In view of the above, and particularly the number of strong competitors that would remain on the market, it is highly unlikely that NN's position on the upstream market for pensions administration would significantly impede effective competition in relation to the vertical link between the upstream market for pension administration and the downstream market for insurance production.

V.2.E. *Conglomerate effects*

407. The merged entity's combined strength in related markets could potentially lead to conglomerate effects in a number of areas, in particular due to the fact that certain products are typically sold concurrently. Dutch legislation typically prohibits 'bundling' in relation to insurance products for individuals (e.g. as described in the section on term-life insurance), but pension products sold to employers may be sold as part of a package including, for example, group disability insurance. The following combinations of products are the most common in the Netherlands, and thus most relevant in relation to conglomerate effects:

    i. Cross-selling various types of group non-life insurance, in particular group disability insurance with pension scheme contracts;
    ii. Selling term-life and/or home and contents or fire insurance with mortgages; and
    iii. Selling various types of non-life insurance together, in particular fire and liability insurance.

408. In general, the Notifying Party maintains that it would not be in a position to adopt any sort of bundling or tying strategy, through which it could increase prices, as customers could easily switch to alternative suppliers. The Notifying Party further notes that customers' ability to switch is strengthened by the role of intermediaries and price comparison websites.

409. With respect to point (i) above, the Notifying Party asserts that neither NN nor Delta Lloyd actively engage in cross-selling of group non-life insurance products with pension products. The Parties estimate that at most [10-20]% of NN pension customers also have NN group non-life insurance products, and approximately [0-5]% of Delta Lloyd pension customers also have Delta Lloyd group non-life insurance. Furthermore, the results of the market investigation strongly suggests that additional insurance offered as part of the pension package is only a very minor consideration when choosing a pension provider.

410. Point (ii) above has already been discussed with regard to term-life insurance, and very similar arguments hold in relation to any potential bundling of home and contents or fire insurance with mortgages. Although NN, Delta Lloyd and their partner banks, ING and ABN Amro hold, together, a large part of the mortgage market, the fact that a high proportion of mortgages are sold via intermediaries significantly lessens the Parties' ability to cross-sell other products, as illustrated by the Parties' relatively modest combined market share in term-life and the various non-life policies. It is clear that, prior to the Transaction, the Parties were unable to use their exclusive distribution agreements with banks to strengthen their position in the relevant non-life insurance markets.[234] Moreover, there is no evidence to suggest that their combined position in non-life insurance following the Transaction will allow them to benefit from these exclusive agreements to any greater extent, and as such, there are no grounds to suppose that the combination of the merged entity's exclusive agreements with two banks, and its position in non-life insurance would allow it to artificially inflate prices for non-life insurance. Lastly, non-life insurance policies are possibly even easier than individual life insurance policies to purchase online or via another channel, without any need for particular advice. It is therefore almost impossible to envisage that customers of ING and ABN Amro would be 'locked in' to buying non-life insurance policies from the merged entity.

411. In relation to point (iii) above, it does appear that customers in the Netherlands very often purchase several types of non-life insurance together. Nonetheless, given that the Parties' combined market share is relatively modest in all types of non-life insurance (around [20-30]% in the affected markets, and lower in others), it seems unlikely that the merged entity would be able to raise prices in this area through a bundling strategy, especially given the wide range of competitors also present (both the other large insurers and smaller niche players).

VI. CONCLUSION

412. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

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234 The Parties' combined market share in fire insurance has remained stable at around [20-30]% over the period 2013-2015. Their combined share of new business (NWP) has fallen from just below [30-40]% in 2012 to just above [20-30]% in 2014.