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 9(3)
Date: 7/4/2017

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

EUROPEAN
COMMISSION

Brussels, 7.4.2017
C(2017) 2403 final

PUBLIC VERSION

COMMISSION DECISION

of 7.4.2017

**relating to Article 9 of Regulation (EC) No 139/2004
referring to case M.8257 - NN GROUP / DELTA LLOYD**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (the "TFEU")[1],

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings[2] (the "Merger Regulation"), and in particular Article 9(3) thereof,

Having regard to the notification made by NN Group N.V. ("NN", the "Notifying Party") on 22 February 2017, pursuant to Article 4 of the said Regulation,

Having regard to the Referral Request of the Netherlands, via the Netherlands *Autoriteit Consument & Markt* (Authority for Consumers and Markets, "ACM") of 7 March 2017,

Having informed the Notifying Party of the Referral Request on 9 March 2017,

Having given the Notifying Party the opportunity to make known its views on the request of the Netherlands of 7 March 2017 and having regard to the Notifying Party's observations of 13 March 2017,

Whereas:

(1) On 22 February 2017 the Commission received notification of a proposed concentration by which 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., also of the Netherlands by way of a public bid announced on 2 February 2017 ("the Proposed Transaction").

(2) The Netherlands received a copy of the notification, via the ACM, on 27 February 2017.

(3) By letter dated 7 March 2017 and received on 8 March 2017, the Dutch authorities via the ACM submitted that the Proposed Transaction threatens to significantly affect competition in several insurance markets in the Netherlands, which present all the characteristics of distinct markets in accordance with Article 9(2)(a) of the Merger Regulation. The Dutch authorities requested to refer partially the Proposed Transaction to its competition authority with a view to assessing it under national

[1] OJ C115, 9.8.2008, P.47.
[2] OJ L 24, 29.1.2004, p.1. 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.

competition law (the "Referral Request"). The Dutch authorities submitted further comments concerning the Referral Request by letter of 3 April 2017.

(4) By letter of 9 March 2017 the Commission forwarded the Referral Request to the Notifying Party.

(5) The Notifying Party provided the Commission with its observations on the Referral Request by letter of 13 March 2017.

1. THE PARTIES

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

(7) 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.

2. THE OPERATION AND THE CONCENTRATION

(8) The Proposed Transaction consists of the acquisition 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 2017) during which Delta Lloyd shareholders can choose to sell to NN on the terms set out in the bid.

(9) It follows that the proposed concentration constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (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 – 10 000] million, Delta Lloyd EUR [0 – 5 000] 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.

4. PROCEDURE

(11) The Referral Request relates to the activities of NN and Delta Lloyd in the Netherlands, while overlaps between the Parties' activities occur in both the Netherlands and Belgium.

(12) In order for a referral request to be issued based on Article 9(2)(a) of the Merger Regulation one procedural and two substantive conditions must be fulfilled.

(13) The procedural condition is that the referral request must be made within 15 working days of the date on which the notification of the concentration to the Commission is received by that Member State. In this regard, the Commission notes that the Netherlands, via the ACM, received a copy of the notification of the Proposed Transaction on 27 February 2017 and that the Referral Request was submitted to the Commission on 8 March 2017. The Request was therefore made within 15 working

days of receipt by the Netherlands of the notification of the Proposed Transaction and, consequently, within the deadline stipulated in Article 9(2) of the Merger Regulation.

(14) The substantive conditions are, first, that in assessing a referral request, the Commission is required to determine whether there is a market within the requesting Member State which is affected by the notified concentration and which presents all the characteristics of a distinct market. Pursuant to Article 9(3) of the Merger Regulation and the case law of the General Court,[3] the Commission is required to evaluate this on the basis of a definition of the market for the relevant product or services and a definition of the geographical reference market. Second, the Commission is required to verify whether the notified concentration threatens to significantly affect competition in this market.

(15) Pursuant to Article 9(3) of the Merger Regulation, in the event that the criteria provided for in Article 9(2)(a) are fulfilled, the Commission has discretion whether it is appropriate to refer the case to the requesting Member State. In exercising such discretion the Commission will take into account the need to ensure effective protection of competition in all markets affected by the transaction.[4] The Commission exercises that discretion taking into account the criteria set out in the case law and the Referral Notice.[5]

(16) In the following, the Commission assesses the appropriateness of a referral in the present case in light of the principles set out in the Referral Notice.

5. THE CRITERIA OF ARTICLE 9(2)(A) OF THE MERGER REGULATION

5.1. Submission of the Dutch authorities

(17) The Dutch authorities asked for a partial referral of the Proposed Transaction to the ACM. The Referral Request is limited to the effects of the Proposed Transaction on insurance markets in the Netherlands. The Dutch authorities submitted that, pursuant to Article 9(2)(a) of the Merger Regulation the Proposed Transaction would threaten to significantly affect competition on several insurance markets in the Netherlands which present all the characteristics of a distinct market.

5.1.1. Markets within the Netherlands which present all the characteristics of a distinct market

(18) In the Referral Request, the Dutch authorities submit that the Proposed Transaction threatens to significantly affect competition in the hypothetical national market for life insurance or the hypothetical narrower national markets for pure protection products, savings and investment and/or pension products.

(19) The Dutch authorities submit that while the Proposed Transaction leads to horizontal overlaps also on the markets for non-life insurance, asset management and reinsurance, they do not consider that the Proposed Transaction threatens to significantly affect competition on these markets. Therefore, these markets will not be further analysed for the purpose of this Decision.

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3 Joined Cases T-346/02 and T-347/02 *Cableuropa SA and Others v Commission* [2003] EU:T:2003:256, paragraph 105.

4 Referral Notice, paragraph 8.

5 Referral Notice, paragraphs 5, 7-9.

(20) In line with their past decisional practice, the Dutch authorities consider that there is a separate market for life insurance and that a possible segmentation into hypothetical narrower markets may result from further investigation. The Dutch authorities submit that in the Netherlands pure protection products and savings and investment products are individual life insurance products and pension products are group life insurance products.

(21) Furthermore, the Dutch authorities submit that subject to the results of the market investigation fiscally attractive savings products offered by banks (so called "*banksparen*") could be substitutes of traditional life insurance products and form part of the same product market.

(22) As regards pension products the Dutch authorities submit that neither industry nor occupational pension funds that are mandatory for employers are likely to be part of the same product market as pension products. Nonetheless, although the Dutch authorities believe it to be unlikely, company pension funds could be included in this market for pension products. In the view of the Dutch authorities, a further investigation should determine to what extent new pension providers on the Dutch pension market (such as Premium Pension Institutions (PPI) and general pension funds) effectively compete with life insurance companies.

(23) In line with its past practice as well as the Commission's past decisions the Dutch authorities submit that the market for all categories of the above mentioned insurance products is national in scope, in particular due to international differences in distribution channels, consumer preferences and regulatory framework.

5.1.2. Markets within the Netherlands in which the Transaction threatens to significantly affect competition

(24) In accordance with paragraph 35 of the Referral Notice, to meet the criteria for referral under Article 9(2)(a) of the Merger Regulation, the Netherlands should demonstrate that, based on a preliminary analysis, there is a real risk that the Proposed Transaction threatens to significantly affect competition. Such preliminary indications may be in the nature of *prima facie* evidence of such a possible significant adverse impact, but would be without prejudice to the outcome of a full investigation.

(25) The Dutch authorities consider that the Proposed Transaction threatens to significantly affect competition on the markets for life insurance and its potential segments: pure protection products, savings and investment products (potentially including *banksparen*) and pension products, because of the effects on the relevant markets set out below.

(26) The Dutch authorities note that the merged entity would become the national market leader, in addition to which its position would be strengthened by the fact that the barriers to entry to the life insurance market are high, in particular as a result of the need for scale.

(27) The Dutch authorities note that, following the Proposed Transaction, the merged entity would hold [30-40]% of the overall market for life insurance and would thus become market leader in the Netherlands. It would compete with the four remaining

main insurance companies,[6] and with smaller players jointly accounting for [10-20]% of the market.

(28) According to the Dutch authorities, the Proposed Transaction is most likely to have an effect on competition within the narrower market for pension products, in which the combined entity would become market leader with a [30-40]% market share in the overall market for pension products, and [40-50]% in the narrower segment limited to defined contribution pension products.[7] Four main competitors would remain active on the market for pension products, and [90-100]% of the market would be held by the top five players.[8]

(29) Furthermore, the Dutch authorities consider that the Proposed Transaction could lead to significant coordinated effects as a result of the relatively high level of concentration in the market. With respect to product characteristics, existing national regulation and barriers to entry, the Dutch authorities stress that further investigation would allow them to measure the competitive pressure exerted by other players, in particular PPIs and general pension funds, on insurance companies and vice versa.

(30) With regard to the market for individual life-insurance, the Dutch authorities note that the merged entity would become market leader with [30-40]% market share in savings and investment products in the Netherlands. The remaining actors in this segment would be Aegon ([5-10]%), Achmea, Vivat and ASR (combined [10-20]%) and smaller players ([20-30]%).

(31) Due to lack of data, the Dutch authorities state that one cannot exclude the possibility of significant impediments to competition in the hypothetical national product market for *banksparen* products, and in potential narrower segments within this market limited to either products for saving severance payments or to retirement savings products (in both of which the merged entity would have a market share of around [20-30]%). Nonetheless, the Dutch authorities do not *prima facie* expect the transaction to significantly affect competition on these markets.

5.2. Notifying Party's Views

(32) The Notifying Party considers that the Proposed Transaction does not threaten to significantly affect competition and is of the view that the Referral Request does not demonstrate how the concentration *prima facie* threatens to significantly affect competition.

(33) The Notifying Party reiterates the arguments submitted in the Form CO, which, in its view, demonstrate that the Proposed Transaction does not raise competition concerns. In particular, with regard to pension products in the Netherlands, the Notifying Party submits the following arguments to explain why, in its opinion, the Transaction would not lead to unilateral effects:

(a) industry and occupational pension funds should be considered part of the insurance pension products market, or at the very least it should be recognised that they do exert competitive pressure on the Parties;

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6 Aegon ([10-20]%), Achmea ([10-20]%), Vivat ([10-20]%) and ASR ([10-20]%).

7 In the Form CO, NN provides market share data for pension products under several hypothetical markets, distinguishing between defined benefit (DB) and defined contribution (DC) products, accumulation and decumulation phases, regular and single premium products, unit-linked and non-unit-linked products.

8 Aegon ([20-30]%), ASR ([10-20]%), Vivat ([10-20]%) and Achmea ([10-20]%).

(b) at least five main players would remain active on the narrowest segments of the life insurance market considered;

(c) there is a significant amount of competition in the overall pension market, and ongoing developments, such as the introduction of new pension vehicles, are designed to increase choice for the end customer;

(d) the increased importance of defined contribution policies relative to defined benefit policies, and in particular the introduction of Premium Pension Institutions (PPI) and general pension funds, has made entry to the market easier, as capital requirements are lower;

(e) contracts for pension products expire every 3 to 5 years, meaning that switching takes place regularly. Competition is also increased by the presence of intermediaries, which are required by regulation to obtain offers for their clients from at least three suppliers; and

(f) individual life insurance is largely a closed book business. In addition, from 2017 onwards, NN will stop selling new individual life insurance products independently.[9]

(34) Furthermore, the Notifying Party submits the following arguments explaining why, in its opinion, the Proposed Transaction would not lead to any coordinated effects:

(a) a significant number of strong players (at least five) would remain active on the market;

(b) life insurance products are not homogeneous, as is evidenced by the fact that the Commission has previously considered narrower hypothetical market segments based on different characteristics of the products concerned;

(c) the entry and role of new entities in the pensions market, including PPIs, asset managers and general pension funds[10] , helps to ensure a dynamic market; and

(d) the role of intermediaries significantly reduces the risk of coordinated effects, as it limits insurers' ability to coordinate, to monitor the behaviour of competitors, and, ultimately to discipline competitors via any type of deterrence mechanism.

5.3. Commission's assessment

(35) The Proposed Transaction creates overlaps between the activities of the Parties in a number of markets in the Netherlands and in Belgium. As the Referral Request relates only to the markets for asset management, banking services, non-life insurance, life insurance and (including its potential narrower segments of pension products, pure protection products and savings and investment products) in the Netherlands, analysis will be limited to these markets for the purpose of this Decision.

(36) Furthermore, the Dutch competition authorities submit that *prima facie* they do not expect the Proposed Transaction to threaten to significantly affect competition on the markets for asset management and non-life insurance. The Commission's market

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9 It is planning to outsource production of such products.

10 General pension Funds (APFs) began operating in 2016. They are a type of pension vehicle operating several schemes in ring-fenced circles.

investigation supports the same conclusion, and thus these markets will not be analysed further for the purpose of this Decision.

(37) The Dutch authorities are of the view that the Proposed Transaction threatens to significantly affect competition on the market for life insurance and in particular pension products in the Netherlands, and that it cannot be excluded that the Proposed Transaction could threaten to significantly affect competition on the market for *banksparen*. These markets will be therefore analysed further in this Decision.

5.3.1. Product market definition

(38) In previous decisions relating to the insurance sector, the Commission identified three broad categories of insurance products: life insurance, non-life insurance and reinsurance.[11] 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.[12] In addition, the Commission has considered a possible segmentation of these product markets between group and individual products.[13]

(39) The results of the market investigation broadly confirm the product market definitions established in previous Commission decisions as regards the markets for life insurance, and its sub-segments of: (i) pure protection, (ii) savings and investment, and (iii) pension products.

5.3.1.1. Pension products

(40) As regards pension products, in previous cases, the Commission considered the possibility of separate markets for accumulation and decumulation products.[14] This distinction is only relevant for defined contribution (DC)[15] pension schemes and not for defined benefit (DB)[16] pension schemes.[17] It would therefore also seem appropriate to consider separate markets for DB and DC pension products. Furthermore as regards DC pension schemes, one can distinguish unit-linked DC products, which do not entail any guarantees regarding future pension level, and non-unit linked DC schemes, offering certain guarantees. Further segmentation of the pension products can be contemplated i.e. between accumulation and decumulation and, further, between fixed and variable annuities.

(41) The results of the market investigation confirm that the distinction between DB and DC insurance products is appropriate, as has been envisaged in past Commission cases.

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

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

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

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

15 Defined contribution: pension schemes in which the ultimate level of pension is unknown and depends on market conditions and the investment performance of the pension provider.

16 Defined benefit: traditional schemes which guarantee the level of pension, e.g. as percentage of final salary.

17 The accumulation phase relates to the employer's contract with an insurer for the provision of pensions for its employees. The decumulation phase involves the purchase, by each individual scheme member, of an annuity at the point of retirement. This distinction does not apply to DB pensions as the pension benefits are paid out within the scheme, rather than in the form of an annuity.

(42) In any event, in the present case and for the purpose of this Decision the question of whether there is one market for pension products or whether it should be further segmented as set out above can be left open, as the assessment of the impact of the Proposed Transaction leads to the same conclusions irrespective of the exact definition of the pension products market.

5.3.1.2. Individual life insurance and banksparen

(43) On the market for individual life insurance products, the Proposed Transaction leads to affected market only in the area of savings and investment products and *banksparen*.

(44) In the Netherlands the traditional savings and investment insurance products have, to a large extent, been replaced by *banksparen*, which are offered by banks (including by insurers' banking subsidiaries). It seems likely that the traditional savings and investment life insurance products and *banksparen* products are part of the same market.[18] Furthermore, both traditional life insurance savings and investment products and *banksparen* products can be considered to consist of an accumulation product and a decumulation product.

(45) In any event, for the purpose of this Decision the product market definition relating to individual life insurance products and *banksparen* products can be left open, as the assessment of the impact of the Proposed Transaction remains the same irrespective of which of the above market definitions is contemplated. .

5.3.2. Geographic market definition

(46) The Commission previously considered the geographic market for life insurance and its respective segments to be national in scope.[19] Both the Dutch authorities and the Notifying Party agree with this geographic market definition and also the market investigation did not reveal any arguments which would cast doubt on this finding.

5.3.3. Competitive assessment

5.3.3.1. Pension products

(47) Tables 1-4 show the Parties' market shares on each of the possible product markets within the Dutch market for insurers' pension products which would be affected by the Proposed Transaction (as presented in the Form CO).

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18 The Notifying Party's claims that individual life insurance products are largely a closed book and that 2017 onwards NN will stop selling new individual life insurance products independently, are based on the assumption that banksparen do not form part of the individual life insurance market. If banksparen are considered substitutes of traditional life insurance market, as has been confirmed by the results of the market investigation, the market is not a closed book. In addition, products such as term-life insurance continue to be sold in the same way as in the past.

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

Table 1: Defined benefit (DB) schemes, gross written premium (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]%

Table 2: Defined contribution (DC) accumulation schemes, 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>Achmea</th><th>ASR</th><th>Vivat</th><th>Others</th></tr>
<tr><td>2013</td><td>1 735</td><td>[10-20]%</td><td>[10-20]%</td><td>[30-40]%</td><td>[15-25]%</td><td>[5-10]%</td><td>[5-15]%</td><td>[20-30]%</td><td rowspan="3">[0-5]%</td></tr>
<tr><td>2014</td><td>1 619</td><td>[10-20]%</td><td>[10-20]%</td><td>[30-40]%</td><td>[20-30]%</td><td>[5-10]%</td><td>[5-15]%</td><td>[20-30]%</td></tr>
<tr><td>2015</td><td>1 575</td><td>[10-20]%</td><td>[20-30]%</td><td>[40-50]%</td><td>[20-30]%</td><td>[5-10]%</td><td>[5-15]%</td><td>[20-30]%</td></tr>
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Table 3: DC accumulation schemes unit-linked, 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>Achmea</th><th>ASR</th><th>Vivat</th><th>Others</th></tr>
<tr><td>2013</td><td>1 345</td><td>[10-20]%</td><td>[20-30]%</td><td>[30-40]%</td><td>[20-30]%</td><td>[0-5]%</td><td>[5-10]%</td><td>[25-35]%</td><td rowspan="3">[0-5]%</td></tr>
<tr><td>2014</td><td>1 219</td><td>[10-20]%</td><td>[20-30]%</td><td>[30-40]%</td><td>[20-30]%</td><td>[0-5]%</td><td>[5-10]%</td><td>[25-35]%</td></tr>
<tr><td>2015</td><td>1 175</td><td>[10-20]%</td><td>[30-40]%</td><td>[40-50]%</td><td>[20-30]%</td><td>[0-5]%</td><td>[5-15]%</td><td>[25-35]%</td></tr>
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Table 4: 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>Achmea</th><th>ASR</th><th>Vivat</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">[0-10]%</td><td rowspan="3">[0-10]%</td><td rowspan="3">[5-15]%</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>

(48) In general, as can be seen, irrespective of the exact product market definition applied, the Parties' combined markets share on the market for pension products comes to between [30-40]% and [40-50]%, with an increment of [10-20]%.

DB schemes

(49) As shown in the tables above, the merged entity would become market leader on the market for DB pension schemes (with a market share of [30-40]%), with the second strongest player a way behind (Aegon, [15-25]%). Furthermore, Achmea announced in December 2015 that it had decided to stop offering insured pension schemes to new customers.

(50) The Commission notes, however, that the DB schemes sold by insurers have become very expensive in the current low interest rate environment and are therefore rarely sold to new customers. The market investigation confirmed that, in addition to the general shift from DB to DC, there is also a trend towards insurers retreating from the classic insured market in favour of the newly established pension vehicles they are operating. Consequently, irrespective of the merger, both suppliers and customers are very likely to continue to choose alternative products over of DB products.

DC schemes

(51) Considering all the various possible market definitions of the pension market, the highest combined market share for the merged entity is found on the market for DC accumulation unit-linked schemes (i.e. schemes without any guarantees regarding the level of benefit) offered by insurers, where it would hold [40-50]% of the market (based on 2015 data), with the next closest competitor (Vivat) having around [25-35]% market share. Nonetheless, as submitted by the Notifying Party, and confirmed by the market investigation, there are also other providers active on this market in addition to insurers. Asset managers and banks that have been able to enter the pensions market thanks to the introduction of new pension vehicles (which do not require an insurance licence) could be seen as specialising in unit-linked DC schemes, as this is the only type of product they offer. They are not subject to strict regulatory requirements, in the way that insurers are, which means that their products tend to be cheaper. If they are included in the total market for unit-linked DC products, the Parties combined market share would be [40-50]%. The results of the market investigation clearly demonstrate that these newly introduced pension vehicles (including those set up by non-insurers) do exert significant competitive pressure on insurers, and that there is thus plenty of choice for customers.

Overall pension products

(52) In general, the Parties do not seem to be especially close competitors on the pension product market or any of its sub-segments. All the major insurance companies offer similar products, and information on switching patterns seen amongst customers of DC schemes at the point of renewal (typically every 2-3 years) confirms that the Parties are not each other's closest competitors.[20] The respondents to the market investigation, in particular customers and distributors do not consider the Parties to be particularly close competitors.

(53) Most customers and distributors who responded to the market investigation do not expect the Proposed Transaction to have negative effects on the pension products market and 80% of customers consider there to be sufficient choice left on the Dutch pension market. The need for consolidation in the sector is also recognised by stakeholders. Some competitors mention that the merged entity would become market leader with a significant scale, making it more difficult for remaining competitors to compete. None of their arguments suggest, however, that the Proposed Transaction could lead to competition concerns.

(54) The information provided in the Form CO was based on 2015 data. The Commission's market reconstruction of the Dutch pension market for 2016 indicates that the Parties' position has not grown in terms of market shares and competitive strength.

(55) In view of the above, the Commission considers that the Proposed Transaction does not threaten to significantly affect competition on the market for pension products in the Netherlands or on any of its segments.

[20] For example, of those customers switching away from NN for the decumulation phase, [10-20]% purchased an annuity from Delta Lloyd in 2016, which is in line with Delta Lloyd's market share in DC decumulation products.

5.3.3.2. Individual life insurance and *banksparen*

(56) The Parties' combined market shares on the market for individual savings and investment insurance products are fairly modest, while the introduction of *banksparen* has significantly increased the number of actual and potential suppliers able to compete on the market. On an overall market including both traditional life insurance savings and investment products and *banksparen*, the Parties would have a combined market share of [20-30]%, with an increment of [5-10]% brought by Delta Lloyd. On a product market for *banksparen* alone, or any of the possible product markets within *banksparen*, the Parties' combined market share is lower.

(57) In view of the above, and the fact that the results of the market investigation did not reveal any concerns with regard to the individual life insurance market (including or excluding *banksparen*), the Commission considers that the Proposed Transaction does not threaten to significantly affect competition on these markets in the Netherlands.

5.3.4. Conclusion

(58) The Commission considers that the Proposed Transaction does not threaten to significantly affect competition on any of the markets identified by the Dutch authorities in their Referral Request, which means that the Referral Request does not meet the criteria of Article 9(2)(a) of the Merger regulation.

6. The Commission's discretion in deciding whether to refer the case

(59) Pursuant to Article 9(3) of the Merger Regulation, the Commission may refer part of the case to a Member State with a view to the application of the national competition law if the conditions laid down in Article 9(2)(a) of the Merger Regulation are met, that is to say, if the proposed concentration threatens to significantly affect competition in a market within the requesting Member State which presents all the characteristics of a distinct market. In such case, according to the Referral Notice, the Commission may refer the case taking into account in particular i) which is the authority more appropriate to carry out the investigation, ii) the benefits inherent in the 'one-stop-shop' system and iii) the importance of legal certainty with regard to jurisdiction.[21]

6.1. Submission of the Dutch authorities

(60) The Dutch authorities contend that the Dutch competition authority (ACM) is the more appropriate authority to deal with this case, firstly because the markets in question are all national.[22] They further argue that the ACM has gained experience in the insurance market, both through its assessment of proposed concentrations and as a result of anti-trust investigations and advisory services provided to the Dutch trade association for the industry. The ACM also has an in-house research team that has published reports on various financial industries.

(61) Whilst acknowledging that the partial referral requested would run counter to the one-stop-shop principle, the Dutch authorities maintain that it would not lead to significant extra administrative work for the Parties. The Dutch authorities highlight

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21 Paragraph 8 of the Referral Notice.

22 With the exception of asset management, which is in any case not considered to raise competition concerns by the Dutch authority.

that the ACM is already familiar with the content of the case and would be ready to launch a market investigation, and also maintains that, due to the national scope of the investigation, both the Parties and the respondents to the investigation could benefit from efficiencies were the investigation to be conducted by the ACM rather than the Commission.

(62) Similarly, the Dutch authorities also acknowledge that a partial referral would result in a deviation from the original power with regard to the Proposed Transaction, they consider this does not lead to a breach of the principle of legal certainty. This is because the grounds for the referral are sufficiently compelling to depart from the original jurisdiction.

6.2. Notifying Party's view

(63) In general, the Notifying Party considers that the Commission is best placed to continue the assessment of the proposed transaction.

(64) First, the Notifying Party emphasises that the referral would result in a significant increase in the administrative burden for the Notifying Party and other interested parties. The Notifying Party would need to submit a new notification form in another language, and is likely to have to answer a number of questions from the ACM, in order for the ACM to reach the same level of understanding of the case as the Commission's case team has already acquired. Furthermore, while the Commission has completed its market investigation, the ACM would still need to launch its own investigation, which would imply an additional administrative burden for the Notifying Party and for third parties.

(65) Second, the Notifying Party submits that some market participants active on the markets relevant to the Proposed Transaction can operate on a cross-border basis and that actors of this type are increasingly active on the Dutch insurance market. The Notifying Party argues that the effects on cross-border trade of the introduction of new vehicles able to compete at international level (PPIs) are tangible and that international asset managers are actual and potential entrants in the wider pension and group life markets. In view of this, the Notifying Party considers the Commission to be best placed to assess the Proposed Transaction.

(66) Third, the Notifying Party notes that the Proposed Transaction has effects outside the Netherlands, namely in Belgium.

(67) Finally, the Notifying Party notes that, while the Commission is best placed to pursue its investigation and assess the case, the referral would put the planned timetable of the Proposed Transaction in jeopardy, which is subject to rules governing public bids, thus creating uncertainty on the capital market.

6.3. Commission's assessment

(68) As explained above, the Commission considers that the Proposed Transaction does not threaten to significantly affect competition in any market presenting all the characteristics of a distinct market.

(69) Even if the Proposed Transaction were to be considered to significantly affect competition in any of the markets concerned, the Commission is of the opinion that there are compelling reasons not to refer this case to the Dutch authorities. These are based on the guiding principles.

(70) The Merger Regulation refers to the need to ensure that a case is "*dealt with by the most appropriate authority*".[23] Furthermore according to paragraph 9 of the Referral Notice "*jurisdiction should only be reattributed to another competition authority in circumstances where the latter is more appropriate for dealing with the merger, having regard to the specific characteristics of the case as well as the tools and expertise available to the authority*". In this regard, the Referral Notice clarifies that, in addition to the likely geographic localisation of the impact on competition of the merger, *"regard should be had to the implications, in terms of administrative effort, of any contemplated referral*". Furthermore, as explained in the Referral Notice the rules governing the referral of concentrations are designed in such a way as to "*take due account of legal certainty and the 'one-stop shop' principle*". These three considerations – which is the most appropriate authority, legal certainty and the one-stop shop principle – should therefore also form part of the reasoning in assessing a referral request.

(71) Firstly, the Commission considers itself to be the more appropriate authority to assess this case for two main reasons: the need to ensure consistence throughout the EU and the fact that the Commission has an extensive experience in the area of insurance. As regards the first point, the Commission has a particular interest in ensuring that competition is preserved in the same way across the EU. Whilst the markets in question are national, most of the changes observed on the Dutch insurance market (in particular on the pensions market) in recent years are part of wider, international trends. The Commission has a strong interest in ensuring consistency in the way the different mergers falling into its competence in the insurance sector are assessed throughout the EU based on consistent criteria, in particular in view of the fact that the activity of insurers is rarely limited to only one country. In order to ensure the consistent approach the Commission must use its ability to conduct pan-European, holistic assessments of mergers occurring in these sectors.

(72) In addition, the Commission has significant recent experience in assessing concentrations in the insurance sector. For example, in recent years, the Commission assessed the following transactions which led to affected markets in the area of insurance: Aviva / Friends Life / Telent,[24] Canada Life / Irish Life,[25] Allianz / Insurance Portfolio and Brokerage Services of Gan Eurocourtage,[26] IF P&C Insurance Holding / Topdanmark[27] and more specifically in the market for pension products in case Blackstone / Cambourne / Goldman Sachs/ Rothesay.[28] The Commission therefore concludes that, in terms of experience and sector expertise, it is at least as well placed as the ACM to assess this case.

(73) Secondly, there appear to be grounds to suppose that the referral would add to the administrative burden placed on the Parties and other market participants, as the Commission was close to completing its market investigation at the time of receiving the Referral Request. The increased administrative burden is intrinsic in the case

[23] Recital 14 of the Merger Regulation.

[24] COMP M.7478 Aviva/ Friends Life/ Telenet, Commission decision of 13 March 2015

[25] COMP M.6883 Canada Life/ Irish Life, Commission decision of 31 May 2013

[26] COMP M.6649 Allianz/Insurance Portfolio and Brokerage Services of Gan Eurocourtage, Commission decision of 23 July 2012

[27] COMP M.6957 IF P&C Insurance Holding/ Topdanmark, Commission decision of 23 September 2013.

[28] COMP M.7044 Blackstone /Cambourne / Goldman Sachs / Rothesay, Commission decision of 29 November 2013.

referral arrangements, and has to be weighed against possible efficiencies resulting from the referral. In the present case, the Commission has conducted a particularly far reaching market investigation, including 14 pre-notification calls with various market participants, a significant number of requests for information to the Parties and to competitors. In total the Commission sent questionnaires to almost 300 market participants, and received responses from 60.

(74) In its letter of 13 March 2017, the Notifying Party also emphasises that a referral at this late stage would make it impossible for the Parties to obtain competition authority approval before the expiry of the public bid. This would create significant uncertainty amongst investors. By granting the referral, the Commission, as part of the network of competition authorities, could therefore be seen to be causing unjustified harm to the Parties' legitimate competitive interests, without there being any overriding reason for such a course of action.

(75) Thirdly, the principle of legal certainty is an additional argument in favour of not referring the case, unless there are compelling reasons to do so. As set out above, such compelling reasons are not present in this case. Even absent the assumption that the Proposed Transaction does not threaten to significantly affect competition in the distinct markets identified, there are strong arguments in favour of the Commission keeping the case, in view of which it would be unjustified to take an approach which also undermines the legal certainty created by the Merger Regulation.

7. CONCLUSION

(76) From the above it follows that the conditions to request a referral under Article 9(2)(a) Merger Regulation are not met. The Commission therefore decides not to refer the case to the Netherlands.

HAS ADOPTED THIS DECISION:

Article 1

The Proposed Transaction shall not be referred to the competition authority of the Netherlands, pursuant to Article 9(3)(a) of the Merger Regulation.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 7.4.2017

For the Commission

(Signed)

Margrethe VESTAGER
Member of the Commission