EUROPEAN COMMISSION
DG Competition

Case M.9810 - NATIXIS INVESTMENT MANAGERS / LA BANQUE POSTALE / JV

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 30/09/2020

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EUROPEAN COMMISSION

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Subject: **Case M.9810 – Natixis Investment Managers/La Banque Postale/JV**
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 26 August 2020, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation and following a referral pursuant to Article 4(5) thereof by which[3] Natixis Investment Managers ("NIM", France) and La Banque Postale ("LBP", France) acquire within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation joint control of a newly created joint venture (the "JV") that will consist in the combination of a large part of the asset management activities of (i) Ostrum Asset Management ("Ostrum AM", France) and (ii) La Banque Postale Assets Management ("LBPAM", France), (the "Transaction"). NIM and LBP, along with the group of companies to which they respectively belong, are designated hereinafter as "the Notifying Parties" and, together with the JV as "the Parties".

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 Publication in the Official Journal of the European Union No C 289, 01.09.2020, p. 5.

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1. THE PARTIES

(2) **NIM** is a wholly owned subsidiary of the corporate and investment bank **Natixis**, active in asset management and fund administration. NIM owns Ostrum AM, an asset management company, which primarily offers its services to institutional and corporate clients. NIM and Natixis are ultimately controlled by Banque Populaire Caisse d'Epargne ("**BPCE**", France). BPCE is primarily active in three main lines of business, namely (i) retail banking and financial services, (ii) investment banking and (iii) asset management and insurance.

(3) **LBP** is a credit institution active in the banking sector, through the offering of (i) retail banking, (ii) commercial banking and (iii) asset management. LPB controls LBPAM, an asset management company primarily active in France. LBP is also active in the insurance sector (life and non-life insurance), notably through its subsidiary CNP Assurances ("**CNP**", France). LBP is a wholly-owned subsidiary of **La Poste**, which is controlled by the Caisse des Dépôts et Consignations ("**CDC**", France), a French public financial institution.

(4) The **JV** will consist in the combination of a large part of the asset management activities of (i) Ostrum AM and (ii) LBPAM. It will be active in asset management and fund administration, primarily in France.

2. THE OPERATION

(5) On 26 July 2019, the Notifying Parties entered into an agreement providing for the creation of a JV, combining a large part of the asset management activities of (i) Ostrum AM and (ii) LBPAM. The Transaction will be carried out in several steps, through (i) a carve-out of LBPAM's activities not to be transferred to the JV, (ii) a carve-out, within Ostrum AM of the activities excluded from the perimeter of the JV, (iii) the absorption, by Ostrum AM, of LBPAM, together constituting the JV, and (iv) the acquisition by LBP of 55% of the shares in the newly created JV.

(6) Pursuant to the Shareholders' Agreement signed on 28 June 2020, NIM will hold the majority of shares and voting rights of the JV, with a 55% share, while LBP will own the remaining 45% share.[4] Nevertheless, the initial business plan for 2021-2025 will be commonly agreed between LBP and NIM, and LPB's approval is *de facto* required for the adoption of all subsequent business plans, and notably the next business plan for 2026-2030.[5] Furthermore, LBP will also have specific veto rights over a number of strategic commercial decisions of the JV, namely (*i*) the annual budget, in case it deviates by at least 22.5% from the budget provided for in the business plan, and (*ii*) strategic IT decisions, being noted that the IT system constitutes a key feature of the JV's activities.[6] Lastly, LBP will appoint the JV's deputy managing director.

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4 In addition, NIM will appoint the majority of the JV's board members (namely six) out of eleven, while the Board's decisions will be adopted by simple majority as a basic principle.

5 Under the Shareholders' Agreement, in case of a deadlock, the Board could adopt the business plan with a simple majority. […] However, in practice, this casting vote appears to be of limited relevance and effectiveness, in particular because […]

6 Pursuant to the Shareholders' Agreement, strategic IT decisions include […].

(7) The JV will therefore be jointly controlled by NIM and LBP.

(8) Furthermore, each of Ostrum AM and LBPAM will transfer to the JV their existing asset management activities, including management strategies regarding (i) direct rate insurance, (ii) rate and currency, (iii) credit (excluding convertibles), (iv) multi-strategy, (v) monetary and (vi) share insurance, including for each of these management strategies the outstanding amounts under dedicated mandates and funds as well as those under open funds. The functions of fund administration (*middle office* and *back office*) and the employees affected to the activities attributed to the JV will also be transferred.[7] The JV will also have a direct relationship with some of its clients and when providing services to its parents, the JV will charge such services at market price.[8] In addition, the JV will operate on a lasting basis, as the terms of the agreement establishing its creation provide for an initial duration of operation until 31 December 2030, renewable for three-year periods. The JV will therefore be fully functional.[9]

(9) In light of the elements set out above, the Commission considers that the Transaction involves the acquisition of joint control of a newly created full-function JV by NIM and LBP, within the meaning of Articles 3(1)(b) and 3(4) of the EU Merger Regulation.

3. EU DIMENSION

(10) The Transaction does not meet the thresholds laid down in Article 1(2) and Article 1(3) of the Merger Regulation. In accordance with Article 4(5) of the Merger Regulation, the Notifying Parties requested a referral to the Commission on the grounds that the case would be reviewable under the national merger control laws of 21 Member States, namely Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. No Member State expressed disagreement with this request and the case was referred to the Commission on 12 August 2020.

4. DEFINITION OF THE RELEVANT MARKETS

4.1. Introduction

(11) The JV will be active in asset management and fund administration, while (i) NIM will retain some activities in asset management and fund administration, (ii) LBP will retain some activities in asset management, and (iii) both are active at group level (i.e. BPCE for NIM and CDC for LBP) in a wide range of activities, some of which are vertically linked with asset management and fund administration.

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7 See paragraph 94 of the Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings ("CJN"); OJ C95, 16.04.2008, p.5.

8 See paragraph 98 of the CJN.

9 See paragraph 103 of the CJN.

4.2. Market definitions

4.2.1. Product market definitions

4.2.1.1. Asset management

(12) Asset management encompasses the provision and potential implementation of investment advice.

Notifying Parties' view

(13) The Notifying Parties generally agree with the Commission precedents defining a market for asset management, but submit with respect to a potential segmentation by type of customer, *i.e.* between retail customers (e.g. collective investment schemes) and institutional clients, that large corporations could also be akin to institutional clients, as they both tend to source asset management services directly.

(14) In addition, the Notifying Parties argue that it is not necessary to further segment the market according to the type of product, *i.e.* between the creation and management of mutual funds for retail clients and tailor-made funds for institutional customers, and portfolio management for private investors, pension funds and institutions. According to the Notifying Parties, on the supply-side the methodology, the know-how and the IT tools required to carry out such activities are identical, and on the demand-side, despite some costs differences, there is a certain degree of substitutability between the different types of products so that customers do not always specify the type of product sought in tenders.

Commission's assessment

(15) In its decisional practice, the Commission considered a relevant product market for asset management overall, including the creation and management 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.[10]

(16) The Commission also envisaged the possibility of there being narrower relevant product markets 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.[11] The Commission further considered the possible existence of separate relevant product markets for each of the types of products mentioned above.[12]

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[10] M.8837 – *Blackstone/Thomson Reuters F&R Business*, M.8359 – *Amundi/Credit Agricole/Pioneer investments*, M.8257 – *NN Group/Delta Lloyd*, M.6812 – *SFPI/Dexia.*

[11] Ibid.

[12] Ibid, M.3894 – *Unicredito/HVB.*

(17) Within the market of asset management for retail customers, the Commission considered several sub-segmentations:[13] (i) between open and closed retail funds;[14] (ii) between mutual funds sold within a life insurance envelope and mutual funds sold on a standalone basis; (iii) between money market funds and other short term saving agreements, and within money market funds between (a) those sold to corporate investors and (b) those sold to retail investors and (iv) a possible distinction of the so-called *Fonds Communs de Placement d'Entreprise* ("FCPE") from open retail mutual funds.[15]

(18) Within the segment of asset management for institutional clients, the Commission considered the possibility of further sub-segmenting the institutional asset management based upon a distinction between active asset management and passive asset management.[16]

(19) In the present case, the results of the market investigation did not highlight any elements that would contradict the Commission's earlier findings.

(20) In any event, the precise definition of the product market for asset management can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market concerning the asset management market, or any other plausible segment previously envisaged by the Commission.

4.2.1.2. Fund Administration

(21) Fund administration services include various services such as acting as trustee, depositary or depot bank of mutual funds, accounting services etc.

Notifying Parties' view

(22) The Notifying Parties are in line with Commission's precedents defining a market for fund administration, and specify that fund administration services include *back office* activities, such as accounting and portfolio performance analysis, and *middle office* activities, e.g. the management of securities transactions.

Commission's assessment

(23) In previous cases, the Commission considered fund administration to constitute a distinct product market, notably because all activities are subject to the same legal and business environment.[17]

(24) The results of the market investigation conducted in this case did not provide any elements which would justify departing from the Commission's previous findings.

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13 M.5728 – *Crédit Agricole/Société Générale Asset Management*.

14 M.8359 – *Amundi/Credit Agricole/Pioneer investments* and M.5728 – *Crédit Agricole/Société Générale Asset Management*.

15 M.5728 – *Crédit Agricole/Société Générale Asset Management*.

16 M.8359 – *Amundi/Credit Agricole/Pioneer investments*, M.5728 – *Crédit Agricole/Société Générale Asset Management*, and M.5580 – *BlackRock/Barclays GIH*.

17 M.8359 – *Amundi/Credit Agricole/Pioneer investments*, M.5728 – *Crédit Agricole/Société Générale Asset Management* and M.3781 – *Crédit Agricole/Caisse d'Epargne/JV*.

4.2.1.3. Provision of insurance

Notifying Parties' view

(25) The Notifying Parties do not challenge the Commission's decisional practice relating to the provision of insurance products, and simply underline that both non-life and life insurers may procure asset management services for the purpose of their activities.

Commission's assessment

(26) 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.[18]

(27) Within the upstream market for insurance provision, the Commission has distinguished the market for the provision of insurance into three broad product categories: life insurance, non-life insurance and reinsurance.[19]

(28) As regards life insurance, the Commission has further segmented the 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.[20] In addition, the Commission has considered a possible segmentation of these product markets between group and individual products.[21]

(29) As regards non-life insurance, the Commission has distinguished as a starting point between the following segments: (i) accident and sickness, (ii) motor vehicle,[22] (iii) property, (iv) liability, (v) marine, aviation and transport, (vi) credit and suretyship, (vii) travel, (viii) cargo, (ix) specialty and (x) aerospace.[23]

(30) With respect specifically to the potential segment for credit and suretyship, in its past decisional practice, the Commission has found that this segment could be further segmented between (i) delcredere insurance, (ii) capital goods insurance, (iii) consumer credit insurance, (iv) fidelity insurance and (v) guarantee insurance, although the precise market definition has been left open.[24]

(31) In the case at hand, the market investigation did not provide any indications that would contradict the Commission's previous findings.

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18 M.8257 – *NN Group/Delta Lloyd*; M.6957 – *If P&C/TopDanmark*; M.6053 – *CVC / Apollo / Brit Insurance*.

19 M.9056 – *Generali CEE/AS*, M.8617 – *Allianz / LV General Insurance Businesses*.

20 M.4701 – *Generali/PPF Insurance business* and M.6521 – *Talanx International/Meiji Yasuda Life Insurance/Warta*.

21 M.5075 – *Vienna Insurance Group/EBV* and M.4701 – *Generali/PPF Insurance business*.

22 The Commission considered further segmenting the motor vehicle insurance market between (i) third party liability ("TPL") motor insurance, and (ii) non-TPL (or "Casco") insurance. See M.6521 – *Talanx International/Meiji Yasuda Life Insurance/Warta*, M.4701 – *Generali/PPF Insurance business* and M.4284 – *AXA/Winterthur*. The Commission also considered segmenting the motor vehicle insurance market between (i) large vehicle (e.g. trucks and buses) insurance, and (ii) automobile and/or small commercial vehicle insurance. See M.6521 – *Talanx International/Meiji Yasuda Life Insurance/Warta*.

23 See M.9531 – *Assicurazioni Generali/Seguradoras unidas/Advancecare* and M.9056 – *Generali CEE/AS.*

24 M.3786 – *BP/Euler Hermes/Cosec*; M.2602 – *Gerling/NCM*; M.4701 – *Generali/PPF Insurance Business*.

(32) In any event, for the purpose of this decision the exact scope of the product market can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market, regardless of the precise product market definition.

4.2.2. Geographic market definitions

4.2.2.1. Asset management

Notifying Parties' view

(33) The Notifying Parties submit that the geographic market for asset management is at least EEA-wide, if not worldwide.

Commission's assessment

(34) The relevant geographic market for asset management, or any narrower segment, has previously been considered to be either national or EEA wide.[25] Furthermore, the Commission has deemed it likely that some parts of the asset management market, in particular asset management for institutional customers, are wider than national,[26] which the results of the market investigation in the present case tended to confirm,[27] as several customers underlined that French players compete with various international players and stressed the international scale of the provision of such services.

(35) In any event, the precise geographic market definition regarding asset management can be left open, as the Transaction does not raise any doubts as to its compatibility with the internal market, irrespective of the exact geographic market definition.

4.2.2.2. Fund administration

Notifying Parties' view

(36) The Notifying Parties put forward that the market for fund administration should be defined as worldwide.

Commission's assessment

(37) In previous decisions, the Commission considered and left open whether the geographic market should be considered national or wider in scope (*e.g.* worldwide).[28]

(38) In any case, the precise geographic scope of the market for fund administration can be left open for the purpose of this case, as the Transaction does not raise competition concerns under any plausible geographic definition of the market for fund administration services.

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25 M.8837 – *Blackstone/Thomson Reuters F&R Business*; M.8257 – *NN Group/Delta Lloyd*; M.6812 – *SFPI/Dexia*; M.4844 – *Fortis/ABN Amro Assets*.

26 M.8359 – *Amundi/Credit Agricole/Pioneer investments*, M.8257 – *NN Group/Delta Lloyd*, M.5728 – *Crédit Agricole/Société Générale Asset Management*.

27 See replies to question 5 – Questionnaire to asset management customers.

28 M.8359 – *Amundi/Credit Agricole/Pioneer investments*, M.5728 – *Crédit Agricole/Société Générale Asset Management* and M.3781 – *Crédit Agricole/Caisse d'Epargne/JV*.

4.2.2.3. Provision of insurance

Notifying Parties' view

(39) The Notifying Parties do not challenge the Commission's precedents and submit that the relevant geographic markets for the assessment of life and non-life insurance should both be defined as national.

Commission's assessment

(40) The Commission previously considered the geographic market for the provision of life insurance and its respective segments to be national in scope.[29] Regarding the non-life insurance market and its segments, the Commission considered that they are generally national in scope. Within non-life insurance, the Commission has however found that the insurance of large commercial risks, or so-called speciality insurance, is most likely to be at least EEA-wide in scope.[30] The geographic scope of the reinsurance market has in the past been considered as global due to the need to pool risks on a worldwide basis.[31]

(41) For the purpose of the present decision, the exact geographic market definition for the provision of life and non-life insurance can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition of all plausible markets identified in paragraphs (26) to (30).

5. COMPETITIVE ASSESSMENT

5.1. Overview of the affected markets

(42) In view of the product and geographic market definitions set out above, the Transaction results in a limited number of affected markets,[32] namely <u>one horizontally affected market</u>, on the potential segment of active asset management for institutional customers in France,[33] and <u>two vertically affected links</u> with respect to (i) asset management, upstream, and the provision of insurance, downstream, and

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29 M.4701 – *Generali/PPF Insurance business* and M.6521 – *Talanx International/Meiji Yasuda Life Insurance/Warta*.

30 M.9531 – *Assicurazioni Generali/Seguradoras unidas/Advancecare* and M.9056 – *Generali CEE/AS.*

31 M.6053 – *CVC/Apollo/Brit Insurance;* M.5925 – *MetLife/Alico/Delam*; M.5083 – *Groupama/OTP Garan*cia and M.4059 – *Swiss Re/GE Insurance Solutions.*

32 Further to the affected markets identified above, the JV's activities also overlap horizontally with those of the Notifying Parties on some markets and/or segments relating to (i) asset management, and (ii) fund administration, and result as well in the creation of vertical relationship between the provision of custody services (upstream) and asset management (downstream). Nevertheless, considering that the Transaction does not give rise to any horizontally or vertically affected markets on any of the plausible markets and/or segments previously identified by the Commission, these markets and/or segments will not be further discussed in the present decision.

33 The Notifying Parties were not able to provide any data separating large corporate clients from institutional clients. Therefore, the market shares as provided by the Notifying Parties for the segment of active asset management for institutional customers in France also includes large corporate customers. Nevertheless, the Notifying Parties put forward that (i) large corporate clients account for only 5 to 10% of their overall asset management portfolio, and (ii) that this proportion is equivalent to those of their competitors, so that the Parties' share would not significantly vary if large corporate clients were to be included with retail clients.

(ii) fund administration, upstream, and the provision of insurance, downstream.

5.2. Assessment of horizontal effects: Asset management

5.2.1. Introduction

(43) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it.

(44) The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the "Horizontal Merger Guidelines") distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.[34]

5.2.2. Asset management

(45) In the present case, the Transaction gives rise to an affected market at national level, on a plausible segment of the market for asset management, namely <u>the segment of active asset management for institutional customers in France</u>.

(46) On this segment, the Parties' combined market share would amount to approximately [20-30]%, with respective market shares of [10-20]% for the JV, [0-5]% for CDC and [0-5]% for BPCE. This sub-segment, which is one of the narrowest plausible markets, is thus only marginally affected due to the Parties' relatively modest market shares, just above 20%.[35]

Notifying Parties' view

(47) The Notifying Parties submit that the JV will only be active on the market for institutional customers which, in line with the Commission's prior decisional practice,[36] may be wider than national considering the ability and propensity of institutional customers to procure asset management services beyond their national borders. In this respect, the Notifying Parties underline that if the relevant geographic market were to be considered as wider than national, *e.g.* EEA-wide, the Transaction would not give rise to any horizontally affected market.

(48) The Notifying Parties further explain that it is not relevant to combine the JV's market share with those of its parents for the purpose of the competitive assessment, since the JV will pursue its own commercial strategy, and each of the Parties will operate on the market independently from each other.

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34 OJ C 31, 05.02.2004, p. 5.

35 For completeness, the Commission notes that the methodology used by the Notifying Parties to calculate their market shares is rather conservative since they relied on their overall sales, regardless of whether such sales were achieved with French customers, while taking as a benchmark for the total market size the activities of French asset managers for French customers only. The Notifying Parties argue on this basis that these figures fail to take into account the competitive pressure of foreign competitors and are necessarily over-estimated.

36 M.5728 – *Crédit Agricole/Société Générale Asset Management*.

(49) The Notifying Parties also argue that customers frequently use tenders, in which an important average number of asset management firms participate, in order to set up or renew their contracts, which contributes to ensure that the offers on the markets remain competitive and prices do not rise.

Commission's assessment

(50) The Commission notes the relatively fragmented nature of the overall segment of asset management for institutional customers in France, which has an HHI below 2 000,[37,38] and over 600 players active in France. As a result, the JV will continue to face the competitive constraint of a significant number of competitors post-Transaction, including large players such as Amundi and Axa Investments Managers.[39]

(51) This was confirmed by the results of the market investigation. All customers that contributed indicated that they considered that a sufficient number of players would remain on the market post-Transaction, among which Amundi, Axa Investments Managers, BNPP Asset Management, Covéa Finance and Groupama Asset Management.[40]

(52) The market investigation also highlighted that, although the Notifying Parties are both active in asset management, they are not particularly close competitors. In particular, several respondents explained that the range of services offered by NIM is more diversified than LBP's.[41]

(53) Furthermore, the results of the market investigation tend to confirm the Notifying Parties' assertion that institutional clients have the ability to procure asset management services beyond national borders. Several customers pointed out that a number of international players directly compete with French players for the provision of asset management services,[42] one customer even referring to asset management as a "*very international market*".[43] A competitor indicated likewise that dozens of French and international companies, such as Blackrock, JP Morgan AM, Invesco, Aviva, actively compete with the Parties on this segment.[44]

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37 Under paragraph 20 of the Horizontal Merger Guidelines, "*the Commission is also unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1000 and 2000*".

38 This figure relates to the overall segment of asset management for institutional customers in France, without distinguishing between active and passive asset management. The Notifying Parties were not able to provide competitors' market share data allowing to compute the HHI level on the segment of active asset management for institutional customers in France. Nevertheless, in view of the fact that this sub-segment represents 95% of the overall segment of asset management for institutional customers in France, for which the Notifying Parties provided competitors' market share data, the Commission was able to compute an upper bound for the HHI level of this segment.

39 As mentioned above in footnote 38, the Notifying Parties were only able to provide market share data for their competitors on the segment combining both active and passive asset management for institutional customers in France. Nevertheless, on this overall segment of which 95% consist of active asset management, Amundi and Axa Investments Managers respectively hold a market share of 19% and 10%.

40 See replies to question 5 – Questionnaire to customers – Asset management.

41 See replies to question 3 – Questionnaire to customers – Asset management. See replies to question 5 – Questionnaire to competitors – Asset management and fund administration.

42 See replies to question 5 – Questionnaire to customers – Asset management.

43 See replies to question 5 – Questionnaire to customers – Asset management.

44 See replies to question 4 – Questionnaire to competitors – Asset management and fund administration.

(54) Given the Parties' position on the market, the Transaction does not appear to result in the elimination of a significant player on the market, especially in view of the highly competitive dynamics of the market and the large number of remaining competitors, including international players.

(55) Lastly, concerning the potential impact of the Transaction, the Commission notes that customers that contributed to the market investigation unanimously indicated that they did not foresee any significant impact on the market and its different sub-segments, with several of them mentioning a highly competitive market.[45] Competitors on the other hand provided a more mixed set of replies, with certain respondents indicating that the Transaction could have a significant impact, and more largely will reinforce the Parties' position, particularly on the segment of asset management for institutional customers.[46] The Commission nevertheless notes that respondents providing a negative view substantiated their reply to a very limited extent, and that most of their reservations lie in the fact that they anticipate an improvement of the competitiveness of the Parties –in comparison to theirs– accompanied by an enhanced price competition on the market as a result of the Transaction.

(56) In view of the elements set out above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the segment of active asset management for institutional customers in France, nor on any other plausible segments in relation to asset management.

5.3. Assessment of vertical effects

5.3.1. Introduction

(57) Pursuant to the Commission's Guidelines on the assessment of non-horizontal mergers under the Merger Regulation[47] (the "Non-Horizontal Merger Guidelines"), a merger is said to result in foreclosure where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.

(58) Such foreclosure may discourage entry or expansion of rivals or encourage their exit, and is regarded as anti-competitive where the merged entity –and, possibly, some of its competitors as well– are able to profitably increase the price charged to consumers as a result.[48]

(59) Two forms of vertical foreclosure can be distinguished. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to result in foreclosure of upstream rivals by restricting their access to a sufficiently large customer base (customer foreclosure).[49]

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45 See replies to question 6 – Questionnaire to customers – Asset management.

46 See replies to question 5 – Questionnaire to competitors – Asset management and fund administration.

47 OJ L 24, 29.1.2004, p. 1.

48 Non-horizontal Merger Guidelines, paragraph 29.

49 Non-horizontal Merger Guidelines, paragraph 30.

5.3.2. Asset management and the provision of insurance

(60) The Transaction gives rise to an affected vertical relationship with respect to asset management (upstream), where the JV will be active (and would have a market share of [10-20]%),[50] and a sub-segment of the insurance provision market (downstream), namely the provision of consumer credit insurance, where both parents of the JV are active. On this sub-segment of the provision of consumer credit insurance, CDC and BPCE have a combined market share of [40-50]%.

Notifying Parties' view

(61) The Notifying Parties submit that the Transaction is not likely to create any vertical effects for three main reasons. First, the Notifying Parties explain that the vertical links existing between the JV and each of its parents, with respect to asset management and insurance provision, already existed pre-Transaction and are not affected by it. Second, the Notifying Parties put forward that all insurers procure asset management services, regardless of the type of risk covered, so that the overall market for the provision of insurance – where the Notifying Parties' combined market share does not exceed 30% – should be taken into account. Third, the Notifying Parties argue that the Parties would not have the ability to engage into either input or customer foreclosure due to their relatively limited presence on both the upstream and downstream markets.

Commission's assessment

(62) The Commission considers that the Notifying Parties will have neither the ability nor the incentive post-Transaction to engage in either input foreclosure or customer foreclosure.

(63) With respect to input foreclosure, as mentioned above in paragraph (50), the market for asset management is rather fragmented with both large French competitors, and international competitors active in France.

(64) The Parties' combined market share comes to at most [20-30]% on the narrow segment of active asset management for institutional customers in France and does not exceed [10-20]% in the overall market for asset management if the market is considered to be national, and [0-5]% if the market is considered to be EEA-wide. As such, the Commission considers it rather unlikely that this position would allow the Parties to exert any significant market power given the presence of other strong upstream asset management players on the market.

(65) Regarding customer foreclosure, the Commission notes that (i) the Transaction gives rise to a vertically affected market downstream only with regard to one of the many potential sub-segments for the provision of insurance (*i.e.* the Notifying Parties' market share in the provision of insurance and any of its other potential segments remains below 30%), and that (ii) all insurance segments require asset management services in similar proportions.[51]

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[50] On this segment, the Parties' combined market share would amount to approximately [20-30]%, with respective market shares of [10-20]% for the JV, [0-5]% for CDC and [0-5]% for BPCE.

[51] The exception to this is life insurance, which requires more asset management services compared to other plausible sub-segments of insurance provision. Nevertheless, as the combined market shares of CDC and

(66) As such, the overall market for insurance provision constitutes a more relevant proxy to assess the importance of both of the JV's parents as asset management customers. In this regard, the information provided by the Notifying Parties shows that on the overall market of insurance provision, the combined market share of CDC and BPCE does not exceed 30%.[52]

(67) Furthermore, pre-Transaction each parent to the JV already sources a proportion of its needs in asset management services internally, for the purpose of their insurance activities.[53] This internal sourcing accounts for […]% of asset management needs within BPCE, and for […]% within CDC and will remain unaffected by the merger.[54] In addition and in any event, even if the Parties were to internalise their entire procurement of asset management services, a large number of insurance groups sourcing asset management services for the purpose of their activities – representing more than 70% of the French market for insurance provision– would remain.

(68) The position of the Notifying Parties on the overall market for the provision of insurance, therefore make it unlikely that the Notifying Parties would have the ability, as customers active in the provision of insurance, to exert a significant market power over asset management companies and proceed to customer foreclosure. Additionally, any foreclosure strategy would be unlikely to have an impact on upstream competitors, as considering that they already source part of their needs internally, only a part of BPCE and CDC demand for asset management services could be diverted from rivals upstream to the combined entity.

(69) For the reasons set out above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards potential vertical non-coordinated effects on the market and all plausible segments for asset management, upstream, and the provision of insurance, downstream.

5.3.3. Fund administration and the provision of insurance

(70) The Transaction gives rise to an affected vertical relationship with respect to the provision of fund administration services (upstream), where the JV will be active, and the segment of the provision of consumer credit insurance (downstream), where both parents of the JV are active. On this sub-segment of the provision of consumer credit insurance, CDC and BPCE together have a combined market share of [40-50]%.

Notifying Parties' view

(71) The Notifying Parties submit that the Transaction is not likely to create any vertical effects for three main reasons. First, the Notifying Parties underline that their combined market share on the market for fund administration is limited and that on the market for the provision of insurance, it is only when combined that their share

BPCE on the segment of life insurance and any plausible sub-segments do not exceed 15%, any customer foreclosure scenario appears very unlikely.

52 For completeness, the Commission notes that the Notifying Parties also confirmed that their combined market share on the overall market for insurance provision, excluding the life-insurance segment, would not exceed 30%.

53 From Ostrum AM for BPCE and from LBPAM for CDC.

54 Percentages expressed in terms of value of assets under management.

exceeds 30%, while post-Transaction each of BPCE and CDC will keep on operating on an autonomous and independent basis on this market. Second, the Notifying Parties explain that the vertical links existing between the JV and each of its parents, with respect to fund administration and insurance provision, already existed pre-Transaction and are not affected by it. Third, the Notifying Parties argue that the Parties would not have the ability to engage into either input or customer foreclosure due to their relatively limited presence on both the upstream and downstream markets.

Commission's assessment

(72) The Commission considers that the Notifying Parties will have neither the ability nor the incentive post-Transaction to engage in either input foreclosure or customer foreclosure.

(73) Concerning input foreclosure, considering that the Parties' combined market share does not exceed 20% on any plausible market or market segment upstream, the Commission considers it extremely unlikely that this position would allow the Parties to exert any significant market power given the presence of other strong upstream fund administrators on the market.

(74) Regarding customer foreclosure, similarly to what is exposed above with respect to the vertical link between asset management and the provision of consumer credit insurance, downstream, the Commission notes that (i) the Transaction gives rise to a vertically affected market only with regard to one (the segment for consumer credit insurance) of the many potential sub-segments for the provision of insurance (*i.e.* the Notifying Parties' market share in the provision of insurance and any of its other potential segments remains below 30%), and that (ii) all insurance segments of the provision of insurance require fund services in similar proportions.[55]

(75) For this reason, the overall market for insurance provision provides a more relevant proxy to assess the importance of the Notifying Parties as fund administration customers. In this respect, as the market share of the Notifying Parties in the overall segment of insurance provision remain below 30%,[56] rival fund administrators will continue, post-Transaction, to have access to at least 70% of the customer base.

(76) The position of the Notifying Parties on the overall market for the provision of insurance makes it unlikely that they would have the ability, as customers active in the provision of insurance, to exert a significant market power over fund administrators and proceed to customer foreclosure.

(77) For the reasons set out above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards potential vertical non-coordinated effects.

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55 The exception to this is unit-linked life insurance, which require more fund administration services than other plausible sub-segments within insurance provision. Nevertheless, as the combined market share of CDC and BPCE on the possible sub-segment of unit-linked life insurance do not exceed 20%, any customer foreclosure scenario appears very unlikely.

56 As previously stated in footnote 52, the Commission notes that the Notifying Parties also confirmed that their combined market share on the overall market for insurance provision, excluding the life-insurance segment, would not exceed 30%.

6. CONCLUSION

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

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President