EUROPEAN COMMISSION
DG Competition

Case M.10499 - STATE STREET / BBH (INVESTOR SERVICES BUSINESS)

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 24/02/2022

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EUROPEAN COMMISSION

Brussels, 24.02.2022
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

State Street Corporation
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Boston, MA 02111-2901
United States of America

Subject: **Case M.10499 – STATE STREET / BBH (INVESTOR SERVICES BUSINESS)**
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 24 January 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which State Street Corporation ("**State Street**", US) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Brown Brothers Harriman & Co.'s ("**BBH**", US) investor services business (the "**Target**") (the "**Transaction**") by way

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').

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of purchase of shares and assets.[3] State Street is referred to as the "**Notifying Party**" and, together with the Target, the "**Parties**".

1. THE PARTIES

(2) **State Street** is based in Boston and is active in the field of financial services and, more specifically, in the provision of domestic and global securities services to support institutional investors in developing and executing their global investment strategies. As a securities services provider, State Street provides an array of customised investment solutions to asset managers, pension funds, hedge funds, insurance companies, collective funds, mutual funds and non-profit organisations. These primarily comprise global and local custody, fund administration, securities lending, investment manager operations outsourcing, recordkeeping, performance measurement and analytics and transfer agency services. State Street has more than 39,000 employees and operates in more than 100 geographic markets worldwide, including in the United States, Canada, Europe, the Middle East and Asia.

(3) **BBH** operates three primary lines of business: Investor Services (equivalent to State Street's custody business), Private Banking and Investment Management. The investor Services division i.e. the Target, operates via its 17 offices across the US, Europe and Asia and provides investment servicing, custody and safekeeping, agency, securities lending and borrowing, investment operations and technology solutions to its clients, which are primarily financial institutions and asset managers. As of June 30, 2021, the Target serviced total consolidated assets of approximately USD […], total assets under custody of USD 5.34 trillion and total assets under administration of USD […]. The Target is headquartered in New York and has approximately 4,700 employees, primarily operating from its offices in Boston, Jersey City, Kraków, Luxembourg, Dublin, Tokyo, Hong Kong and London (with smaller locations in Zurich, Beijing and Grand Cayman).

2. THE CONCENTRATION

(4) On 6 September 2021, State Street and BBH entered into an agreement pursuant to which State Street agreed to acquire from BBH a combination of shares in, or assets from, certain of its European and Asian subsidiaries, together comprising Target. Following completion of the Transaction, State Street will thus acquire sole control of the Target. The Transaction is therefore a concentration within the meaning of Article 3(1)(b) of the EU Merger Regulation.

3. UNION DIMENSION

(5) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million[4] (State Street: EUR 8 533 million; Target: EUR […]). Each of them has a Union-wide turnover in excess of EUR 250 million (State Street: EUR […]; Target: EUR […]), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified

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3 Publication in the Official Journal of the European Union No C 54, 1.1.2022, p. 6.

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

operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

(6) The Parties are both active in the supply of securities services (also sometimes referred to as investment servicing) to asset managers and institutional investors and, in the case of Target, high net worth individual clients. Institutional clients include mutual funds, pension funds, alternative investors such as hedge funds and insurance companies.

(7) The Commission has previously analysed securities services in a number of cases, distinguishing between: global custody, *i.e.* the service by which a custodian holds a range of assets/securities on behalf of a client; and fund administration, *i.e.* a range of outsourced investor services, different configurations of which are provided to sophisticated financial institutions and asset managers.

4.1. Global custody

4.1.1. Product market definition

4.1.1.1. Previous Commission decisions

(8) In previous Commission decisions, global custody services have been held to include safekeeping of assets, presentation of securities for and reception of securities from clearing and settlement platforms, income and dividend processing, arranging of withholding tax relief and tax reclaim, other corporate actions such as notification and dealing with bonus issues, rights issues and takeovers, proxy voting services, sweeping of uninvested cash and transaction and portfolio reporting services.[5] Global custodians may also provide to their clients foreign exchange trading, securities lending, performance measurement and risk analysis, and management of cash accounts and cash funds linked to securities held in custody.

(9) The Commission considered that these services all form part of a single product market but left open whether global custody should be systematically distinguished from local custody (sub-custody).[6] Local custody (or sub-custody) refers to the provision of custody services within a specific jurisdiction (see section 4.2).

(10) The Commission previously considered whether a common product market for global custody and fund administration services exists, but left open the question.[7]

4.1.1.2. The Notifying Party's view

(11) The Notifying Party submits that all services mentioned in paragraph (8) form part of a single product market, which should not be further divided into segments.

5 M.5797 *State Street / Intesa Sanpaolo*, paragraph 11; M.3781 *Crédit Agricole / Caisse D'Epargne*, paragraphs 11-14; M. 3027 *State Street / Deutsche Bank*, paragraphs 8-10.

6 M.5797 *State Street / Intesa Sanpaolo*, paragraph 12; M.3781 *Crédit Agricole / Caisse D'Epargne*, paragraphs 11-14; M. 3027 *State Street / Deutsche Bank*, paragraph 10.

7 M.5797 *State Street / Intesa Sanpaolo*, paragraphs 8-9; M.3781 *Crédit Agricole / Caisse D'Epargne ;* M. 3027 *State Street / Deutsche Bank*.

Notably, the Notifying Party argues that segmentations by customer type, fund type or asset type or volume of assets under management ("**AUM**") would not be appropriate. The Notifying Party submits that:

(a) The services provided under global custody do not materially vary for any of these possible segments[8];

(b) All service providers can offer the services for each possible segment.[9]

(c) Likewise, the services are not materially different depending on the segment. The specific mix of services rather depends on the individual needs of every client.[10]

(12) The Notifying Party regards a combined market for global custody and fund administration as a plausible product market definition as well, as the two services are commonly provided together.[11]

4.1.1.3. The Commission's assessment

(13) Global custody comprises a broad set of services that can be different from client to client. Some of these services, such as safekeeping of assets, presentation of securities for and reception of securities from, clearing and settlement platforms and income and dividend processing are considered as core global custody services by virtually all respondents to the Commission's market investigation. Other services, such as proxy voting services and sweeping of uninvested cash are considered by a majority of respondents as ancillary global custody services.[12] However, the Commission did not get any indications that any of these services are sufficiently distinct so that they should be considered as separate product markets. As such, for the purposes of this Decision the Commission considers global custody to comprise all the services mentioned in paragraph (8).

(14) The majority of customers that responded to the Commission's market investigation do not choose different global custody service providers for different asset classes. However, some customers indicated that more niche asset classes may benefit from specific support and services from the global custodian.[13] Similarly, the majority of competitors that responded to the Commission's market investigation either indicated that global custody services are broadly the same across asset types, or that there are slight differences, but that all major suppliers are able to serve all types of assets.[14] As such, for the purposes of this Decision the Commission considers that a segmentation by asset class is not appropriate.

(15) Concerning different customer types (*e.g.* asset managers vs. pension funds), the majority of competitors consider that global custody services are the same,

[8] Form CO, paragraphs 96, 111.

[9] Form CO, paragraphs 108, 110.

[10] Form CO, paragraphs 96, 107, 112.

[11] Form CO, paragraph 102.

[12] Responses to questionnaire Q1 to customers, question 4 and questionnaire Q2 to competitors, question 4.

[13] Responses to questionnaire Q1 to customers, question 7.

[14] Responses to questionnaire Q2 to competitors, question 8.

regardless of customer type.[15] As such, for the purposes of this Decision the Commission considers that a segmentation by customer type is not appropriate.

(16) To conclude, the Commission considers that global custody can be considered as a single heterogeneous market, with a set of services that may differ slightly depending on client needs or asset type.

(17) As concerns a combined market for global custody services and fund administration, the Commission's market investigation confirmed that the majority of customers source global custody and fund administration together, as this is generally more efficient. However, not all customers source the two services together, for example in order to select a best in class service provider for each service, which may not be the same provider.[16] Furthermore, there are slight differences in the competitive landscape for each service. For example, there are some non-bank fund administrators, who cannot provide global custody as the latter requires a banking license.

(18) In this case, it can be left open whether the appropriate product market definition is limited to global custody, or comprises a combined market for global custody and fund administration, as the Parties' market positions are very similar on both markets. The Commission will perform its competitive assessment on the narrowest basis, *i.e.* a separate market for each of global custody and fund administration. However, considering that the Parties' position on a combined market is very similar, the competitive assessment is valid for a combined market as well.

4.1.2. Geographic market definition

4.1.2.1. Previous Commission decisions

(19) The Commission has previously considered whether global custody markets are global, EEA wide or national in scope considering aspects such as: the global nature of the service, the regulatory framework, whether clients hold a large number of domestic assets, and whether clients prefer a global custodian with its own local presence in this jurisdiction.[17] Notably, in case M.3781 *Crédit Agricole / Caisse D'Epargne* in 2005, the Commission, without concluding on the matter, examined the existence of a national (French) market on the basis that a large number of clients held significant parts of their investments in French instruments and could prefer a provider having its local custody service.

4.1.2.2. The Notifying Party's view

(20) The Notifying Party submits that the market for global custody services is global in scope. First, while acknowledging that both the AIFMD and UCITS regimes[18]

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15 Responses to questionnaire Q2 to competitors, question 10.

16 Responses to questionnaire Q1 to customers, question 6.

17 M.3781 *Crédit Agricole / Caisse D'Epargne,* paragraphs 15 – 19; M.5797 *State Street / Intesa Sanpaolo*, paragraph 17.

18 All collective investment undertakings which: (i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) are domiciled or distributed in the EU, are subject to either the UCITS framework or the AIFMD framework. UCITS and their management companies and managers or AIFs (AIFMs) are governed by the Member

require that a global custodian providing a depositary function for EU domiciled funds must be domiciled in the Member State where the fund is domiciled, the Notifying Party argues that the Parties' clients manage funds that hold assets in multiple jurisdictions in and outside of the EU. Thus, the clients source global custody services globally.[19] Second, the major global custodians, including the Parties, operate globally.[20] Third, global custodians could easily obtain the regulatory approval to establish a local presence in the potentially affected national markets, Ireland and Luxembourg.[21] Fourth, global custody services are often delegated within the custodians group and, hence, carried out in different locations from an operational perspective.[22]

(21) Moreover, the Notifying Party is of the view that the considerations in case M.3781 are irrelevant for the present case as, promoted by the introduction of a European passport for UCITS and AIF under the respective regulatory frameworks, clients hold assets in various jurisdictions. Moreover, different from the French market in M.3781, Ireland and Luxembourg are generally regarded as cross-border jurisdictions that are used by investment institutions to access the broader EEA market.[23]

4.1.2.3. The Commission's assessment

(22) A slight majority of customers responding to the Commission's market investigation indicated that they source global custody services by comparing offers worldwide, and that the major players are active globally.[24] However, the vast majority of customers that responded to the Commission's market investigation indicated that they demand that their global custodian is present in the country in which their fund is domiciled due to regulatory requirements.[25] Indeed, the European UCITS and AIFMD regimes do not contain a passporting provision for global custodian services, meaning that global custodians need to be present in the country of domiciliation of their client funds.

(23) Furthermore, some customers indicated that there are global custodians that are only active regionally.

(24) These facts would indicate that global custody services in the EEA might be national in scope.

(25) Ultimately, in this case the appropriate geographic market definition for global custody services can be left open, as the Transaction does not give rise to competitive concerns under any plausible geographic market definition. The Transaction does not give rise to an affected market for global custody on a global or

State laws implementing the relevant Directives (Undertakings for Collective Investment Transferable Securities Directive 2009/65/EC ("UCITS IV"), Directive 2014/91/EU ("UCITS V") and Alternative Investment Fund Managers Directive 2011/61/EU (the "AIFMD")).

19 Form CO, paragraph 114, 121.

20 Form CO, paragraph 121.

21 Form CO, paragraph 120.

22 Form CO, paragraph 121.

23 Form CO, paragraphs 123 – 125.

24 Responses to questionnaire Q1 to customers, question 9.

25 Responses to questionnaire Q1 to customers, question 10.

EEA-wide level. At national level, the Transaction gives rise to affected global custody markets in **Ireland** and **Luxembourg**.

4.2. Local custody

4.2.1. Product market definition

4.2.1.1. Previous Commission decisions

(26) Local custody (or sub-custody) refers to the provision of custody services within a specific jurisdiction. The Commission has previously noted that a local custodian (or sub-custodian) is one method by which a global custodian can carry out custody services in countries other than the one in which it is domiciled and still adhere to the specific requirements of national law.[26] In the same case, the Commission also considered global custody and local custody as separate standalone markets on the basis that they perform different functions. Global custody is intended for the end customer (i.e., institutional investors in this case) and implies a direct link between the global custodian and the end customer. In contrast, local custody refers to a service intended for global custodians, who can therefore be considered as employing a sub-contractor with no direct link to the end customer. The Commission ultimately left the exact product market definition open.

4.2.1.2. The Notifying Party's view

(27) The Notifying Party submits that, while there is likely a local custody market that the Commission could plausibly analyse, the question can be left open.[27]

4.2.1.3. The Commission's assessment

(28) The market investigation has not provided any indication that the Commission should depart from precedents or the Notifying Party's view with regard to the market definition for local custody. As such, for the purposes of this Decision, the Commission has considered a plausible market for local custody services, but does not conclude on whether local custody clearly constitutes a separate product market, given that no competition concerns arise regardless of the precise definition.

4.2.2. Geographic market definition

4.2.2.1. Previous Commission decisions

(29) The Commission noted in *Crédit Agricole/Caisse D'Epargne/JV* that it may be defensible to analyse a national-level market (in that case, France) on the basis that a large number of clients with a significant part of their investment domiciled in one country may favour a sub-custodian in the same country. However, the Commission ultimately left the exact approach to geographic market definition open.

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[26] M.3781 *Crédit Agricole/Caisse D'Epargne/JV*, decision of 14 June 2005, paragraphs 11-12.

[27] Response to RFI 7, paragraph 2.2

4.2.2.2. The Notifying Party's view

(30) The Notifying Party submits that the Commission should not depart from its previous decisional practice.

4.2.2.3. The Commission's assessment

(31) The market investigation has not provided any indication that the Commission should depart from precedents or the Notifying Party's view with regard to the market definition for local custody. As such, for the purposes of this Decision, the Commission has considered the market to be national in scope.

4.3. Fund administration

4.3.1. Product market definition

4.3.1.1. Previous Commission decisions

(32) The Commission considered that fund administration includes a range of services that form a single product market.[28] These services typically include: acting as trustee, depositary or depot bank of mutual funds; accounting services and net asset valuations; share registration and taxation services; transfer agency; trustee and record keeping services; ancillary legal and secretarial services and transaction and portfolio reporting services. Additional value-added services may be offered, such as providing middle and back office services for fund managers; benefit payment services; performance measurement and risk analysis; and consolidated recordkeeping.[29]

(33) While ultimately leaving the question open, in M.5797 *State Street / Intesa Sanpaolo*, the Commission examined whether fund administration services for individual managed accounts (IMAs) constitute a separate market.

4.3.1.2. The Notifying Party's view

(34) The Notifying Party submits that fund administration constitutes a single product market comprising of the services mentioned in paragraph (32) without further segmentation. Notably, a segmentation by fund type would not be appropriate as the services provided to different fund types do not substantially differ and the regulatory background is very similar.[30] According to the Parties, this also applies to IMAs, as the services are very similar, because the only difference is that NAV calculations do not have to be divided in units.[31]

(35) Moreover, the Notifying Party states that transfer agency should not be considered separately from fund administration. Transfer agency is, in most cases, provided together with fund administration and clients do not select a service provider based

28 M.3781 *Crédit Agricole / Caisse D'Epargne,* paras. 21; M.5797 *State Street / Intesa Sanpaolo,* paragraph 14.

29 M. 3027 *State Street / Deutsche Bank,* paragraph 11.

30 Form CO, paragraph 139.

31 Form CO, paragraph 140.

on their transfer agency capabilities but look at the more general service package of fund administration.[32]

4.3.1.3. The Commission's assessment

(36) Fund administration can cover various services and the precise definition appears to vary more among market participants than that of global custody. Respondents to the market investigation agree that accounting (e.g. Net Asset Value calculation) is a core fund administration service, while they are divided on whether remaining services such as transfer agency, securities lending, back-office activities, collateral management, depobank, correspondent bank, performance and analytics, tax-transparent asset pooling, transition management, foreign exchange services and client and regulatory reporting should be classified as core or ancillary fund administration services.[33] However, no market participants suggested that any of these services are sufficiently distinct so that they should be considered as separate product markets.

(37) Further, with respect to transfer agency, the Notifying Party's view was confirmed; the majority of customers responding to the market investigation stated that they source transfer agency together with fund administration, and the majority of competitors responding to the market investigation indicated that they usually provide transfer agency together with fund administration (and/or global custody, to the extent that global custody and fund administration are themselves provided together).[34] As such, for the purposes of this Decision the Commission considers fund administration to comprise all the services mentioned in paragraph (32).

(38) As is the case for global custody service providers, the majority of customers that responded to the Commission's market investigation do not choose different fund administration service providers for different asset classes.[35] Similarly, the majority of competitors that responded to the Commission's market investigation either indicated that fund administration services are broadly the same across asset types, or that there are slight differences, but that all major suppliers are able to serve all types of assets.[36] As such, for the purposes of this Decision the Commission considers that a segmentation by asset class is not appropriate.

(39) Concerning different customer types (*e.g.* asset managers vs. pension funds), the large majority of competitors consider that either fund administration services are the same, regardless of customer type, or that they differ per customer but all major suppliers are able to serve all types of customers.[37] As such, for the purposes of this Decision the Commission considers that a segmentation by customer type is not appropriate.

(40) To conclude, the Commission considers that fund administration can be considered as a single heterogeneous market, with a set of services that may differ slightly depending on client needs or asset type. As per paragraphs (17)-(18), the question of

32 Form CO, paragraphs 144 – 146.

33 Responses to questionnaire Q1 to customers, question 5 and questionnaire Q2 to competitors, question 5.

34 Responses to questionnaire Q1 to customers, question 5 and questionnaire Q2 to competitors, question 7.

35 Responses to questionnaire Q1 to customers, question 8.

36 Responses to questionnaire Q2 to competitors, question 9.

37 Responses to questionnaire Q2 to competitors, question 11.

whether fund administration and global custody services are a combined market or two separate markets can be left open.

4.3.2. *Geographic market definition*

4.3.2.1. Previous Commission decisions

(41) The Commission considered a possible national definition of the relevant market in M.3027, but noted in case M.3781, without concluding on the matter, that the arguments of the Parties in that case that the market may be wider than national had been in part confirmed by the market investigation.[38] The reasons for considering a national market were that some of the activities included in the fund administration services have specific national regulations or require a national presence following the UCITS Directive.[39] However, the market investigation in case M.3781 suggested that this had partially changed.[40]

4.3.2.2. The Notifying Party's view

(42) The Notifying Party submits that the fund administration market is at least EEA-wide in scope for four reasons. First, fund administrators are usually active in various jurisdictions, including a range of countries across the EEA and tend to offer standardised services irrespective of the location.[41] Second, an increasing number of clients sources fund administration services from a single provider on a pan-European or at least multi-jurisdictional basis.[42] Third, market dynamics are substantially similar across the EU.[43] Finally, European regulatory regimes, namely AIFMD and UCITS Directives, continue harmonisation of the services environment within the EEA.[44] Considering these dynamics, the Notifying Party further argues that the assessment in M.3027 would not be appropriate anymore.

4.3.2.3. The Commission's assessment

(43) A majority of customers responding to the Commission's market investigation indicated that they source fund administration services by comparing offers worldwide, and that the major players are active globally.[45] Unlike global custody services, for fund administration services there does not appear to be a regulatory requirement for national presence. Nevertheless, customers do indicate that they sometimes look for local knowledge and expertise related to the scope of investment.[46]

(44) Ultimately, in this case the appropriate geographic market definition for fund administration services can be left open, as the Transaction does not give rise to competitive concerns under any plausible geographic market definition. The

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38 M.3781 *Crédit Agricole / Caisse D'Epargne,* paragraph 22.
39 M.3027 *State Street / Deutsche Bank*, paragraph 12.
40 M.3781 *Crédit Agricole / Caisse D'Epargne,* paragraph 22.
41 Form CO, paragraph 161.
42 Form CO, paragraph 162.
43 Form CO, paragraph 163.
44 Form CO, paragraph 165.
45 Responses to questionnaire Q1 to customers, question 11.
46 Responses to questionnaire Q1 to customers, question 11.

Transaction does not give rise to an affected market for fund administration on an EEA-wide level. At national level, the Transaction gives rise to affected fund administration markets in **Ireland** and **Luxembourg**. At the global level, the Transaction also gives rise to an affected fund administration market.

4.4. Asset management

4.4.1. Product market definition

4.4.1.1. Previous Commission decisions

(45) The Commission has previously described asset management as "the provision of investment advice and often also the implementation of this advice".[47] Asset management includes, "the creation, establishment and marketing of funds mainly to retail clients on an 'off-the-shelf' basis and the provision of portfolio management services for institutional investors."[48] The Commission has previously considered a market for overall asset management, but also further segmentation by client type (i.e., asset management for retail clients and asset management for institutional clients) as well as a separate market for mutual funds. Within asset management for institutional clients, the Commission has also considered further sub-segmentation by active management (asset manager aims at outperforming a benchmark such as an index) and passive management (asset manager aims at replicating the performance of an index). Similarly, within asset management for retail clients, the Commission has considered further sub-segmentation by open retail funds (no restriction on the number of investors) and closed retail funds (tailored for a small group of investors). Ultimately, however, the Commission has left open the question of whether asset management should be treated as a single market or segmented more narrowly according to these various distinctions.[49]

4.4.1.2. The Notifying Party's view

(46) The Notifying Party submits that the relevant market is likely to be asset management without further segmentation, but notes that the exact product market definition can be left open.[50] The Notifying Party adds that most asset management providers tend to provide the full range of asset management products/services and certain types of funds (e.g., UCITS) can be addressed to both institutional and retail clients.

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[47] M.6812 *SFPI/DEXIA*, decision of 21 February 2013, paragraph 30; M.4844 *Fortis/ABN AMRO Assets*, decision of 3 October 2007, paragraph 67; M.8257 *NN Group/Delta Lloyd*, decision of 7 April 2017, paragraph 108.

[48] M.8359 *Amundi/Credit Agricole/Pioneer Investments*, decision of 24 March 2017, paragraph 16; M.9796 *UNIQA/AXA (Insurance, Asset Management and Pensions – Czechia, Poland and Slovakia)*, decision of 29 July 2020, paragraph 35.

[49] M.3894 *Unicredito/HVB*, decision of 18 October 2005, paragraphs 35-36; M.4844 *Fortis/ABN AMRO Assets*, decision of 3 October 2007, paragraphs 67-70; M.5728 *Crédit Agricole/Société Générale Asset Management*, decision of 22 December 2009, paragraphs 35- 39; M.8359 *Amundi/Credit Agricole/Pioneer Investments*, decision of 24 March 2017, paragraphs 18 and 20.

[50] Response to RFI 7, paragraph 1.3.

4.4.1.3. The Commission's assessment

(47) The market investigation has not provided any indication that the Commission should depart from precedents or the Notifying Party's view with regard to the market definition for asset management. As such, for the purposes of this Decision the Commission considers a market for asset management, leaving open the question of further segmentation.

4.4.2. Geographic market definition

4.4.2.1. Previous Commission decisions

(48) In previous cases, the Commission has considered the market as global, EEA-wide or national in scope, but ultimately left this question open.[51]

4.4.2.2. The Notifying Party's view

(49) The Notifying Party submits that the geographic market is at least EEA-wide, if not global, in scope, but note that the exact approach to product market definition can be left open.[52] The Notifying Party adds that, as noted in previous Commission decisions, a wider than national market is particularly plausible for large multinational corporate customers with cross-border activities, where there may also be a need to pool risks on an international basis. The Notifying Party argues that this is supported by the fact that the asset management sector has been harmonised throughout the EU by virtue of the UCITS Directive and AIFD.

4.4.2.3. The Commission's assessment

(50) The market investigation has not provided any indication that the Commission should depart from precedents or the Notifying Party's view with regard to the market definition for asset management. As such, for the purposes of this Decision, the Commission has considered the market as global, EEA-wide or national in scope.

5. COMPETITIVE ASSESSMENT

(51) The Transaction gives rise to horizontal overlaps in global custody and in fund administration, as well as to vertical links between local custody and global custody, global custody and asset management, and fund administration and asset management.

5.1. Horizontally affected markets

5.1.1. Legal framework

(52) 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

[51] M.8359 *Amundi/Credit Agricole/Pioneer Investments*, decision of 24 March 2017, paragraphs 28-29 and M.5728 *Crédit Agricole/Société Générale Asset Management*, decision of 22 December 2009, paragraph 41.

[52] Response to RFI 7, paragraph 1.5.

relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.

(53) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by each merging party on the other, as a result of which the merged entity would have increased market power without resorting to coordinated behaviour. The Horizontal Merger Guidelines list a number of factors[53] which may influence whether or not significant non-coordinated effects are likely to result from a merger. These include the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. Not all of these factors need to be present for significant non-coordinated effects to be likely. The list of factors, any one of which is not necessarily decisive, is also not an exhaustive list.

5.1.2. Global custody

5.1.2.1. Market structure

(54) The Transaction gives rise to horizontal overlaps for global custody, which result in affected markets in Ireland and Luxembourg if the geographic scope is national. The Transaction does not give rise to affected markets for global custody under a global or EEA-wide geographic market definition.

(55) The below tables show the market structure for global custody services in Ireland and Luxembourg.

Table 1: Market shares for global custody services in Ireland, assets under custody (AUC), 2018-2020

Company	2018		2019		2020	
	AUC EUR billion	Market share	AUC EUR billion	Market share	AUC EUR billion	Market share
State Street	[900-1000]	[30-40]%	[1000-2000]	[30-40]%	[1000-2000]	[30-40]%
Target	[200-300]	[5-10]%	[200-300]	[5-10]%	[200-300]	[5-10]%
Combined	***[1000-2000]***	***[40-50]%***	***[1000-2000]***	***[40-50]%***	***[1000-2000]***	***[40-50]%***
Northern Trust	[300-400]	[10-20]%	[400-500]	[10-20]%	[400-500]	[10-20]%
BNY Mellon	[300-400]	[10-20]%	[300-400]	[10-20]%	[400-500]	[10-20]%
JP Morgan	[200-300]	[10-20]%	[200-300]	[10-20]%	[300-400]	[10-20]%
RBC	[70-80]	[0-5]%	[70-80]	[0-5]%	[70-80]	[0-5]%
Citi	[60-70]	[0-5]%	[50-60]	[0-5]%	[50-60]	[0-5]%
BNP Paribas	[30-40]	[0-5]%	[40-50]	[0-5]%	[40-50]	[0-5]%
HSBC	[30-40]	[0-5]%	[40-50]	[0-5]%	[40-50]	[0-5]%
Others	[50-60]	[0-5]%	[60-70]	[0-5]%	[80-90]	[0-5]%
Total	**[2000-3000]**	**100%**	**[2000-3000]**	**100%**	**[2000-3000]**	**100%**

Source: The Notifying Party

53 Horizontal Merger Guidelines, paras 24 *et seq*.

Table 2: Market shares for global custody services in Luxembourg, assets under custody (AUC), 2018-2020

Company	2018		2019		2020	
	AUC EUR billion	**Market share**	**AUC EUR billion**	**Market share**	**AUC EUR billion**	**Market share**
State Street	[800-900]	[10-20]%	[900-1000]	[10-20]%	[1000-2000]	[10-20]%
Target	[300-400]	[5-10]%	[300-400]	[5-10]%	[400-500]	[5-10]%
Combined	***[1000-2000]***	***[20-30]%***	***[1000-2000]***	***[20-30]%***	***[1000-2000]***	***[20-30]%***
JP Morgan	[700-800]	[10-20]%	[800-900]	[10-20]%	[900-1000]	[10-20]%
BNP Paribas	[300-400]	[5-10]%	[300-400]	[5-10]%	[400-500]	[5-10]%
CACEIS	[200-300]	[0-5]%	[300-400]	[5-10]%	[300-400]	[5-10]%
BNY Mellon	[200-300]	[5-10]%	[300-400]	[5-10]%	[300-400]	[5-10]%
RBC	[100-200]	[0-5]%	[200-300]	[0-5]%	[200-300]	[0-5]%
UBS	[100-200]	[0-5]%	[100-200]	[0-5]%	[100-200]	[0-5]%
Pictet	[100-200]	[0-5]%	[100-200]	[0-5]%	[100-200]	[0-5]%
DZ Privatbank	[100-200]	[0-5]%	[100-200]	[0-5]%	[100-200]	[0-5]%
Société Générale	[100-200]	[0-5]%	[100-200]	[0-5]%	[100-200]	[0-5]%
Others	[700-800]	[10-20]%	[900-1000]	[10-20]%	[1000-2000]	[20-30]%
Total	**[4000-4500]**	**100%**	**[5000-5500]**	**100%**	**[5000-5500]**	**100%**

Source: The Notifying Party

(56) In both Ireland and Luxembourg State Street is the market leader in terms of market share. The Transaction will increase State Street's market share for both Ireland and Luxembourg.

(57) The Irish global custody market is concentrated, with State Street having the highest market share ([30-40]% in 2020). The pre-Transaction HHI is approximately [1000-3000] and the Transaction brings a sizeable delta HHI of [600-700].

(58) The Luxembourgish global custody market is more fragmented, and State Street's market share is lower ([10-20]% in 2020). The pre-Transaction HHI is below 1,000 and the Transaction brings a modest delta HHI of [200-300].

5.1.2.2. The Notifying Party's view

(59) The Notifying Party submits that the Transaction does not raise any competitive concerns for global custody for any geographic market.[54] To support this position, the Notifying Party argues the following:

(a) Market shares are not reflective of market power, but instead of high levels of customer concentration, particularly in Ireland. As a result, losing a large client can significantly affect market share.[55]

(b) Customers are able to switch, and the Parties have only retained their major customers in Ireland because they have responded to competitive threats to

[54] Form CO, paragraph 190.

[55] Form CO, paragraphs 191-202.

stop them from switching. This is evidenced by fees being at the same levels in Ireland and Luxembourg, despite different concentration levels.[56]

(c) All of the Parties' major competitors are already present in both Ireland and Luxembourg, and there are no barriers to expansion or any differentiation that makes them distant competitors to the Parties. Therefore, the Parties face strong competitive constraints irrespective of geographic scope.[57]

5.1.2.3. The Commission's assessment

(60) First, the Commission notes that post-Transaction, the merged entity will have a high market share in Ireland ([40-50]%) and a more modest – yet still market leading – market share in Luxembourg ([20-30]%). However, the Luxembourgish global custody market is far more fragmented than the market in Ireland.

(61) In addition, data submitted by the Notifying Party confirms its argument that the strong position in Ireland is primarily driven by a high degree of customer concentration. State Street's top three clients in Ireland account for [a significant percentage]% of its assets under custody ("AUC"), and the Target's top three clients account for [a significant percentage]% of its Ireland AUC.[58] As such, the loss of one or few clients could significantly shift the market shares and potentially remove State Street's leading position.

(62) Second, the market investigation confirmed that a number of strong competitors remain in each of the markets post-Transaction. Despite the strong market position of State Street in Ireland, customers that responded to the Commission's market investigation rated several other providers of global custody services similarly or more suitable for their needs in Ireland, including BNY Mellon, BNP Paribas, Citi, JP Morgan and Northern Trust.[59] One customer explained, "*All the above listed Custodians are recognized in the market. There are additional players that are not shown in the list*."[60] Another confirmed, "*State Street, Northern Trust, BNY Mellon & JP Morgan are the largest custodians in Ireland and have significant experience and expertise…*"[61] One customer summarized, "*The Irish market is substantial and well served with custodians*." [62]

(63) Moreover, customers that responded to the Commission's market investigation did not consider State Street and the Target as particularly close competitors. Customers typically considered the other large global custodians, such as BNY Mellon, Northern Trust and JP Morgan, as the closest competitors to State Street in both Ireland and Luxembourg. The Target is considered a smaller competitor. One customer summarizes, "*BBH is more competing against the second level of custodians by asset under custody*." Some customers explained that while State

56 Form CO, paragraphs 203-205.
57 Form CO, paragraphs 206-212.
58 Form CO, paragraphs 191-194, 252-255.
59 Responses to questionnaire Q1 to customers, question 12.
60 Response to questionnaire Q1 to customers, question 12.
61 Response to questionnaire Q1 to customers, question 12.
62 Response to questionnaire Q1 to customers, question 12.

Street is characterised by efficient process due to its scale, the Target is characterised by more tailored, high-touch service.[63]

(64) Third, contrary to the Notifying Party's arguments, customers consider that switching suppliers is either difficult or very difficult, and costs a significant amount of money and time.[64] Despite these difficulties, there is evidence that significant client switches do occur. For example, in December 2021, BlackRock (State Street's largest customer in Ireland) announced that it will move its iShares ETF portfolio to a multi-custodian model and away from State Street as the sole supplier.[65] The Irish part of this portfolio accounts for approximately […]% of State Street's AUC in Ireland. Other examples are provided by customers responding to the market investigation; "*We moved the majority of our Luxembourg Funds from [one provider] to [another provider] in 2021. After lengthy DD process we concluded that they could provide the required service but at a cheaper price which the investors would benefit from*."[66] Another explains, "*We added [one provider] in Luxembourg as we were unhappy with the service levels provided our existing provider.*" Another customer "*transitioned 2 funds from [one provider] to [another provider in] Ireland. The services in scope included depositary/global custody and fund administration. It was a strategic decision to move these funds based on the wider relationship [with the provider] and operational efficiency that could be gained from consolidating providers*." Additionally, when launching a new fund, asset managers do have flexibility to choose a (new) global custodian.

(65) Moreover, several customers indicated that they would be willing to switch if necessary, and that they could employ negotiation strategies such as internal benchmarking and benchmarking with the help of external consultants.[67] One customer explains, "*[the customer] is rather reluctant to switch and would thoroughly assess and weigh the transition costs against the potential benefits in terms of service and price. However, switching is not excluded, because, if it would be in the best interest of the investors. [the customer] protects the interest of the investor and ensures that services and prices are adequate.*"[68] Indeed, most customers already work with multiple global custodians in a single jurisdiction, because, among others, this "*enables direct comparison of services and benchmarking*".[69] One customer summarizes, "*in a recurring period of 3 years, [the customer] challenges its suppliers either in bilateral negotiations or with formal requests for proposals ("RFP") in order to benchmark and evaluate the service offerings.*"[70] Furthermore, several responding customers indicated that they have stopped working with a global custodian in the past 3 years, while around a third indicated that they have added a new global custodian in the past 3 years.

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63 Responses to questionnaire Q1 to customers, question 16.

64 Responses to questionnaire Q1 to customers, question 26.

65 https://www.wsj.com/articles/blackrock-to-pull-2-trillion-in-assets-from-state-street-11638918001#:~:text=Citigroup%20will%20wind%20up%20custodian,expected%20to%20take%2018%20months.&text=The%20bank%20also%20provides%20custody,the%20manager's%20private%2Dmarkets%20business., Accessed on 17 February 2022.

66 Responses to questionnaire Q1 to customers, question 25.

67 Responses to questionnaire Q1 to customers, question 23.

68 Minutes of call with customer held on 4 January 2022.

69 Responses to questionnaire Q1 to customers, question 20.

70 Minutes of call with customer held on 6 January 2022.

(66) Fourth and last, the large majority of customers and competitors that responded to the Commission's market investigation did not expect a negative impact on the global custody markets in either Ireland or Luxembourg, instead indicating that they expect the Transaction to have a neutral or positive effect.[71] One customer explains, "*Even though two important market players are merging, it is possible that the merger will result in higher pressure on prices and will create trends to innovate*" and others confirm, "*Innovation power increases and scale benefits are expected to be passed on to clients*" and "*The technology coupled with the scale (State Street) may accelerate investment in innovative products.*" Yet another customer explains, "*The transaction involves parties with complementary attributes in terms of coverage and expertise. The combined organisation will have increased scale across markets where custody services are delivered, providing opportunities to reduce prices, and additional client servicing capabilities, providing opportunities for enhanced service delivery*."

(67) Furthermore, the vast majority of customers that responded to the Commission's market investigation indicated that sufficient suitable suppliers will be available post-Transaction.[72] One customer summarizes, "[the customer] *has no competition concerns regarding the Transaction as there would remain sufficient competitors on the market globally as well as in Luxembourg and Ireland*" and another confirms, "*There are sufficient providers of global custody and fund administration globally and in Ireland*."[73] Regarding Ireland specifically, customers confirmed, "*We consider that there will be sufficient suppliers to provide coverage for the Irish market*" and "*There are many other firms based in Ireland that can supply the services.*"[74]

(68) Based on the above, the Transaction does not give rise to serious doubts as to its compatibility with the internal market or a substantial part thereof in relation to horizontal non-coordinated effects for the provision of global custody services in Ireland and Luxembourg.

5.1.3. Fund administration

5.1.3.1. Market structure

(69) Both Parties are active globally in fund administration. The Transaction does not give rise to an affected market under an EEA-wide geographic scope, as the Parties' combined market share remains under 20% ([10-20]% in 2020). The Transaction does give rise to an affected market for fund administration at global level, and at national level in Ireland and Luxembourg.

71 Responses to questionnaire Q1 to customers, questions 30.2, 30.3, 30.4 and questionnaire Q2 to competitors, questions 28.2, 28.3, 28.4.

72 Responses to questionnaire Q1 to customers, question 32.

73 Responses to questionnaire Q1 to customers, question 31.

74 Responses to questionnaire Q1 to customers, question 32.

Table 3: Market shares for fund administration services globally, assets under management (AUM), 2018-2020

Company	2018		2019		2020	
	AUM EUR trillion	Market share	AUM EUR trillion	Market share	AUM EUR trillion	Market share
State Street	[20-30]	[10-20]%	[20-30]	[10-20]%	[20-30]	[10-20]%
Target	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%
Combined	***[20-30]***	***[20-30]%***	***[20-30]***	***[10-20]%***	***[20-30]***	***[20-30]%***
BNY Mellon	[20-30]	[20-30]%	[20-30]	[20-30]%	[30-40]	[20-30]%
J.P. Morgan	[20-30]	[20-30]%	[20-30]	[20-30]%	[20-30]	[20-30]%
Citi	[10-20]	[10-20]%	[20-30]	[10-20]%	[20-30]	[10-20]%
Northern Trust	[5-10]	[5-10]%	[5-10]	[5-10]%	[10-20]	[5-10]%
US Bank	[5-10]	[0-5]%	[5-10]	[0-5]%	[5-10]	[0-5]%
Société Generale	[5-10]	[0-5]%	[5-10]	[0-5]%	[5-10]	[0-5]%
HSBC	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%
RBC	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%
BNP Paribas	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%
CACEIS	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%
LB BW	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%
Banque Pictet & Cie	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%
Others	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%
Total	**[100-200]**	**100 %**	**[100-200]**	**100 %**	**[100-200]**	**100 %**

Source: Form CO, paragraph 244

Table 4: Market shares for fund administration services in Ireland, assets under management (AUM), 2018-2020

Company	2018		2019		2020	
	AUM EUR billion	Market share	AUM EUR billion	Market share	AUM EUR billion	Market share
State Street	[900-1000]	[30-40]%	[1000-2000]	[30-40]%	[1000-2000]	[30-40]%
Target	[100-200]	[5-10]%	[200-300]	[5-10]%	[200-300]	[5-10]%
Combined	***[1000-2000]***	***[40-50]%***	***[1000-2000]***	***[40-50]%***	***[1000-2000]***	***[40-50]%***
Northern Trust	[300-400]	[10-20]%	[400-500]	[10-20]%	[400-500]	[10-20]%
BNY Mellon	[300-400]	[10-20]%	[300-400]	[10-20]%	[300-400]	[10-20]%
J.P. Morgan	[200-300]	[10-20]%	[200-300]	[10-20]%	[300-400]	[10-20]%
RBC	[70-80]	[0-5]%	[70-80]	[0-5]%	[70-80]	[0-5]%
Citi	[50-60]	[0-5]%	[50-60]	[0-5]%	[50-60]	[0-5]%
CITCO	[30-40]	[0-5]%	[40-50]	[0-5]%	[50-60]	[0-5]%
HSBC	[30-40]	[0-5]%	[40-50]	[0-5]%	[40-50]	[0-5]%
SEI	[30-40]	[0-5]%	[30-40]	[0-5]%	[30-40]	[0-5]%
BNP Paribas	[20-30]	[0-5]%	[20-30]	[0-5]%	[30-40]	[0-5]%
Others	[100-200]	[5-10]%	[100-200]	[0-5]%	[100-200]	[0-5]%
Total	**[2000-3000]**	**100 %**	**[2000-3000]**	**100 %**	**[2000-3000]**	**100 %**

Source: Form CO, paragraph 248

Table 5: Market shares for fund administration services in Luxembourg, assets under management (AUM), 2018-2020

Company	2018		2019		2020	
	AUM EUR billion	Market share	AUM EUR billion	Market share	AUM EUR billion	Market share
State Street	[800-900]	[10-20]%	[900-1000]	[10-20]%	[1000-2000]	[10-20]%
Target	[200-300]	[5-10]%	[200-300]	[5-10]%	[200-300]	[0-5]%
Combined	***[1000-2000]***	***[20-30]%***	***[1000-2000]***	***[20-30]%***	***[1000-2000]***	***[20-30]%***
J.P. Morgan	[500-600]	[10-20]%	[600-700]	[10-20]%	[700-800]	[10-20]%
BNY Mellon	[200-300]	[5-10]%	[300-400]	[5-10]%	[300-400]	[5-10]%
BNP Paribas	[200-300]	[5-10]%	[300-400]	[5-10]%	[300-400]	[5-10]%
CACEIS	[100-200]	[0-5]%	[200-300]	[0-5]%	[300-400]	[5-10]%
RBC	[100-200]	[0-5]%	[200-300]	[0-5]%	[200-300]	[0-5]%
Northern Trust	[100-200]	[0-5]%	[200-300]	[0-5]%	[200-300]	[0-5]%
Société Generale	[100-200]	[0-5]%	[200-300]	[0-5]%	[100-200]	[0-5]%
Banque Pictet & Cie	[100-200]	[0-5]%	[100-200]	[0-5]%	[100-200]	[0-5]%
Union Investment Financial Services	[90-100]	[0-5]%	[100-200]	[0-5]%	[100-200]	[0-5]%
FIL	[90-100]	[0-5]%	[100-200]	[0-5]%	[100-200]	[0-5]%
Franklin Templeton International Services	[80-90]	[0-5]%	[80-90]	[0-5]%	[60-70]	[0-5]%
DWS Investment	[70-80]	[0-5]%	[70-80]	[0-5]%	[50-60]	[0-5]%
Nordea	[70-80]	[0-5]%	[80-90]	[0-5]%	[90-100]	[0-5]%
Credit Suisse Fund Services	[60-70]	[0-5]%	[80-90]	[0-5]%	[90-100]	[0-5]%
Citi	[50-60]	[0-5]%	[70-80]	[0-5]%	[70-80]	[0-5]%
Apex Group	-	-			[60-70]	[0-5]%
Universal-Investment	-	-	[50-60]	[0-5]%	[70-80]	[0-5]%
Alter Domus	-	-	[50-60]	[0-5]%	[70-80]	[0-5]%
HSBC	-	-	[50-60]	[0-5]%	[50-60]	[0-5]%
Others	[600-700]	[10-20]%	[600-700]	[10-20]%	[600-700]	[10-20]%
Total	**[4000-5000]**	**100%**	**[5000-6000]**	**100%**	**[5000-6000]**	**100%**

Source: Notifying Party, Form CO, Table 34-36.

(70) In both Ireland and Luxembourg State Street is the market leader in terms of market share. The Transaction will increase State Street's market share for both Ireland and Luxembourg. Globally, State Street is number three, and would become number two with the addition of the Target's market share.

(71) The Irish fund administration market is concentrated, with State Street having the highest market share ([30-40]% in 2020). The pre-Transaction HHI is approximately [1000-3000] and the Transaction brings a sizeable delta HHI of [600-700].

(72) The Luxembourgish fund administration market is more fragmented, and State Street's market share is lower ([10-20]% in 2020). The pre-Transaction HHI is below 1,000 and the Transaction brings a modest delta HHI of [100-200], with the final HHI remaining under 1,000.

(73) The global fund administration market is relatively more concentrated. State Street's market share is [10-20]% in 2020, but the pre-Transaction HHI is approximately [1000-3000]. The Transaction, however, brings a negligible delta of [0-100].

5.1.3.2. The Notifying Party's view

(74) The Notifying Party argues that no competition concerns arise in fund administration, regardless of the geographic market definition, because there are a number of well-resourced competitors,[75] customers can and do switch,[76] and the market shares are not reflective of market power[77] but rather of high customer concentration.[78] Additionally, the Notifying Party argues that low regulatory barriers to entry (e.g., no banking licence requirement), coupled with the growth of alternative asset classes which do not require a custodian, have created an opportunity for independent non-bank fund administrators to enter the fund administration space.[79] According to the Notifying Party, in Europe these companies compete directly with banks such as the Parties.

5.1.3.3. The Commission's assessment

(75) The Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to fund administration, and its further plausible segmentations, at a global level or national level in Ireland or Luxembourg, for the following reasons.

(76) First, the Commission notes that post-Transaction, the merged entity will have a high market share in Ireland ([40-50]%) and a more modest – yet still market leading – market share in Luxembourg ([20-30]%). However, the Luxembourgish global custody market is more fragmented than the market in Ireland. At the global level, the merged entity will have a low market share only slightly above 20% (at [20-30]%) and will remain number two; moreover, the increment at global level is very low, at [0-5] percentage point.

(77) Furthermore, data submitted by the Notifying Party confirms its argument that the strong position in Ireland is primarily driven by a high degree of customer concentration. State Street's top three clients in Ireland account for [a significant percentage]% of its AUC, and the Target's top three clients account for [a significant percentage]% of its Ireland AUC.[80] As such, the loss of one or few clients could significantly shift the market shares and potentially remove State Street's leading position.

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75 Form CO, paragraph 263.
76 Form CO, paragraphs 266 - 269.
77 Form CO, paragraphs 251 et seq.
78 Form CO, paragraph 255.
79 Form CO, paragraphs 276 – 279.
80 Form CO, paragraphs 252-255.

(78) Second, the market investigation confirmed that a number of strong competitors remain in each of the markets post-Transaction. Customers ranked Bank of New York Mellon as the top provider in Ireland, followed by BBH, State Street, Northern Trust and JP Morgan. Customers indicated that all 5 providers, and at least 3 others, would be suitable or very suitable to meet their needs in fund administration in Ireland.[81] One customer summarized, "*All the above listed suppliers are recognized in the market. There are additional players that are not shown in the list,*" while another confirmed, "*All service providers listed in this questionnaire are well established and reputable market players*."[82]

(79) Similarly, customers ranked Bank of New York Mellon as the top provider in Luxembourg, followed by BBH, State Street, BNP Paribas and JP Morgan. Customers indicated that all 5 providers and at least 1 other would be suitable or very suitable to meet their needs in fund administration in Luxembourg.[83] One customer summarized, "*The Luxembourg market is also well established and served by a variety of providers.*"[84] Competitors confirmed customers' view concerning fund administration in both Ireland and Luxembourg.[85]

(80) Moreover, the Parties are not considered to be close competitors of each other. Customers typically considered the other large global custodians, such as BNY Mellon, Northern Trust and JP Morgan, as the closest competitors to State Street and to BBH in Ireland. In Luxembourg, customers considered BNY Mellon and JP Morgan to be the closest competitors to both State Street and BBH.[86]

(81) Overall, the Target is considered a smaller competitor. Some customers explained that while State Street is characterised by efficient process due to its scale, the Target is characterised by more tailored, high-touch service.[87] One customer summarized, "*State Street's closest competitors are the larger organisations providing fund administration services. BBH's closest competitors are smaller and can provide a more bespoke service*."[88] Another specified, "*BBH is more competing against the second level of administrators by asset under administration.*"[89]

(82) Third, contrary to the Notifying Party's arguments, customers consider that switching suppliers is either difficult or very difficult, and costs a significant amount of money and time.[90] Therefore, although it is relatively rare for an existing fund to switch administrators, there is evidence that switching does occur for various reasons. For example, a fund may switch in case of unsatisfactory performance of the incumbent provider. One customer states, "*We moved the majority of our Luxembourg Funds from [one provider] to [another provider] in 2021. After lengthy DD process we concluded that they could provide the required service but at a*

81 Responses to questionnaire Q1 to customers, question 13.
82 Response to questionnaire Q1 to customers, question 13.
83 Responses to questionnaire Q1 to customers, question 14.
84 Response to questionnaire Q1 to customers, question 14.
85 Responses to questionnaire Q2 to competitors, questions 16, 18.
86 Responses to questionnaire Q1 to customers, questions 17, 19.
87 Responses to questionnaire Q1 to customers, question 17.
88 Response to questionnaire Q1 to customers, question 17.
89 Response to questionnaire Q1 to customers, question 17.
90 Responses to questionnaire Q1 to customers, question 26.

cheaper price which the investors would benefit from."[91] Another explains, "*We added [one provider] in Luxembourg as we were unhappy with the service levels provided our existing provider.*" Another customer "*transitioned 2 funds from [one provider] to [another provider in] Ireland. The services in scope included depositary/global custody and fund administration. It was a strategic decision to move these funds based on the wider relationship [with the provider] and operational efficiency that could be gained from consolidating providers*." Yet another customer describes the process and rationale, "*We changed custody and fund administrators in [year] from [a provider] and [a provider] to [selected provider]…we decided to undertake a review of both service providers and undertook an RFP process. The aim was to benchmark the incumbents to other providers in the market and during the RFP it was clear benefits of consolidating both fund structures into one…[an incumbent provider was] eliminated from the process at the first stage as the services offered were significantly inferior. [One provider] and [another provider] were the finalist and references were taken from existing clients. Both service providers offered a superior service compared with the incumbents however [the customer] decided to partner with [selected provider] due to similarities in the culture and ethos*" Moreover, when launching a new fund, asset managers do have flexibility to choose a (new) fund administrator.

(83) In addition, several customers indicated that they would be willing to switch if necessary, and could employ negotiation strategies such as internal benchmarking and benchmarking with the help of external consultants.[92] One customer explains, "*[the customer] is rather reluctant to switch and would thoroughly assess and weigh the transition costs against the potential benefits in terms of service and price. However, switching is not excluded, because, if it would be in the best interest of the investors. [the customer] protects the interest of the investor and ensures that services and prices are adequate.*"[93] Indeed, the majority of customers already work with multiple fund administrators in a single jurisdiction.[94] One customer explains, "*We are better able to negotiate services when we have a comparative provider*."[95] Another customer summarizes, "*in a recurring period of 3 years, [the customer] challenges its suppliers either in bilateral negotiations or with formal requests for proposals ("RFP") in order to benchmark and evaluate the service offerings.*"[96] Furthermore, several responding customers indicated that they have stopped working with a fund administrator in the past 3 years, while a sizeable number indicated that they have added a new fund administrator in the past 3 years.

(84) Fourth and last, the large majority of customers and competitors that responded to the Commission's market investigation expected a positive or neutral impact on the overall fund administration market, as well as the fund administration markets in Ireland and in Luxembourg.[97] One customer explains, "*We consider that the impact will be neutral or marginally positive for the market. There are some complimentary*

[91] Responses to questionnaire Q1 to customers, question 25.
[92] Responses to questionnaire Q1 to customers, question 23.
[93] Minutes of call with customer held on 4 January 2022.
[94] Responses to questionnaire Q1 to customers, question 21.
[95] Response to questionnaire Q1 to customers, question 21.
[96] Minutes of call with customer held on 6 January 2022.
[97] Responses to questionnaire Q1 to customers, questions 30.5, 30.6, 30.7 and questionnaire Q2 to competitors, questions 28.2, 28.3, 28.4.

[sic] *aspects between State Street and BBH in terms of market coverage that should provide greater options and benefit for clients of both firms. The increased scale and coverage should also allow for further price compression in the market*." Another confirms, "*Perceiving the capabilities and strengths of BBH and State Street as complimentary* [sic] *regards fund administration and transfer agency we would not expect any major change on price charged to the market but improvements on quality and innovation as a consequence of combining BBH's expertise and agility with State Street's scale and capability to fund innovation and bringing it to market to the extent the post-merger integration is successful*."

(85) Furthermore, the vast majority of customers that responded to the Commission's market investigation indicated that sufficient suitable suppliers will be available post-Transaction.[98] Customers explained, "*the market remains competitive with other service providers*" and "*There are many other firms that can supply the services.*"[99] Regarding Ireland specifically, customers confirmed, "*We consider that there will be sufficient suppliers to provide coverage for the Irish market*" and "*There are many other firms based in Ireland that can supply the services*."[100]

(86) Based on the above, the Transaction does not give rise to serious doubts as to its compatibility with the internal market or a substantial part thereof in relation to horizontal non-coordinated effects for the provision of fund administration services in Ireland, in Luxembourg and at the global level.

5.2. Vertically affected markets

5.2.1. Legal framework

(87) According to the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-horizontal Merger Guidelines"), foreclosure effects may occur 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.[101]

(88) In assessing the likelihood of an anticompetitive *input* foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[102] These three conditions are cumulative so that the absence of any of them is sufficient to rule out the likelihood of anti-competitive input foreclosure.[103]

(89) In assessing the likelihood of an anticompetitive *customer* foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream

[98] Responses to questionnaire Q1 to customers, question 32.
[99] Responses to questionnaire Q1 to customers, question 31.
[100] Responses to questionnaire Q1 to customers, question 32.
[101] Non-horizontal Merger Guidelines, paragraph 18.
[102] Non-horizontal Merger Guidelines, paragraph 32.
[103] Case T – 370/17 KPN v Commission, EU:T:2019:354, para 119.

rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[104]

5.2.2. Local custody (upstream) – Global custody (downstream)

(90) With regard to the upstream markets, the Parties act as a local custodian in: (i) the US, Canada, Germany and the UK for State Street; and (ii) the US for BBH.[105] In the US, the Parties expect that their combined share falls below 30%. In Canada, Germany and the UK, State Street estimates its share to be [20-30]%, [10-20]% and [10-20]% in each country respectively, while BBH is not active at all.

(91) The Parties' combined market shares in global custody (downstream) have been presented above in Tables 1 and 2. They are [40-50]%, [20-30]%, [10-20]% and [10-20]% respectively in Ireland, Luxembourg, in the EEA and at the global level.

(92) Given these market shares, only the vertical link between global custody in Ireland downstream and local custody upstream is affected.[106]

5.2.2.1. Customer foreclosure

(A) The Notifying Party's view

(93) The Parties submit that the supply of local custody services (upstream) to global custody providers (downstream) does not constitute a vertically affected market. First, the Notifying Party argues that the appropriate geographic market for the provision of global custody (downstream) is global, in which case the Parties' combined market share would be significantly below 30%. The Notifying Party therefore argues that there is no scope for either input or customer foreclosure concerns to arise in relation to the provision of local custody services in these jurisdictions.

(94) With respect to customer foreclosure, the Notifying Party adds that the Parties will not have sufficient market power downstream. The Notifying Party argues that as a result of customer concentration, competition is fierce and market positions are not entrenched in Ireland. In fact, fees as a proportion of AUA are similar across both the Republic of Ireland and Luxembourg, despite the higher concentration in the former. The Notifying Party argues that the relatively more concentrated market shares in the Republic of Ireland are therefore not reflective of market power.[107]

(95) The Notifying Party further argues that the combined entity would lack incentive to pursue a customer foreclosure strategy; in the US, neither State Street nor BBH currently use third-party local custody suppliers. Therefore, the Parties would not have the ability, nor the incentive, to pursue customer foreclosure in relation to local custody services in the US. The Parties do use third-party local custodians in

[104] Non-horizontal Merger Guidelines, paragraph 59.

[105] Form CO, paragraph 339 *ff.*

[106] Input foreclosure for this vertical link is not assessed further in this decision as it can be excluded *a priori* due to the low combined market shares (<30% in all cases) in the upstream market. The rest of this section therefore focuses on customer foreclosure.

[107] Form CO, paragraph 351.

Canada, Germany and the UK. However, the Notifying Party states that there would be no incentive for the Parties to pursue customer foreclosure in these countries as funds domiciled in the Republic of Ireland do not represent a significant portion of the global custody market (less than 4.3%). Therefore, even if assets under all funds in the Republic of Ireland were subject to local custody services in Canada, Germany and the UK, the Parties would have no incentive to pursue customer foreclosure.

(B) The Commission's assessment

(96) The Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to the vertical relationship between local custody upstream and global custody downstream, regardless of the precise market definition, for the following reasons.

(97) First, the vertical link is largely pre-existing, since State Street is already active both upstream and downstream. The increment from the Target upstream is [5-10]%,[108] which does not represent a significant change in the incentive to foreclose. Downstream, the increment is [5-10]%, which represents only a moderate change in the ability to foreclose. Indeed, as argued by the Notifying Party and as confirmed by the Commission in section 5.1.2.3, sufficient customers, i.e. global custodians, will remain downstream. The vast majority of customers that responded to the Commission's market investigation indicated that sufficient suitable global custodians will be available post-Transaction.[109] This is also valid for global custodians as customers of local custody providers.

(98) Moreover, there is customer concentration in Ireland, with State Street's top three clients in Ireland account for [a significant percentage]% of its AUC, and the Target's top three clients account for [a significant percentage]% of its Ireland AUC.[110] As such, the loss of one or few clients could significantly shift the market shares and potentially remove the merged entity's leading position in global custody. This would indicate that the merged entity would lack the market power downstream implied by its market shares, and thus the ability or incentive to successfully implement customer foreclosure, given that the loss of a few clients could threaten the success of the foreclosure strategy.

(99) Second, funds domiciled in the Republic of Ireland only represent less than 4.3% of the total addressable market of global custody downstream. Of these, only a certain percentage require local custody services in the countries where the Parties are present, namely US, Canada, Germany and the UK; the Parties estimate those shares to be 50-55%, <1%, <2% and <7% respectively for those jurisdictions.[111] However, even if all assets under all funds in the Republic of Ireland were subject to local custody services in US, Canada, Germany and the UK, local custody competitors upstream would have sufficient remaining demand (i.e. 95.7%) for their services.

108 Response to RFI 7, paragraph 4.1.
109 Responses to questionnaire Q1 to customers, question 32.
110 Form CO, paragraphs 191-194.
111 Response to RFI 7, paragraph 3.2.

(100) Only one competitor indicated a potential concern in relation to this vertical link; this competitor currently receives local custody services from the Target and suggested that the quality of service post-Transaction is unknown as it depends on whether State Street continues the same quality of service. In other words, the concern was related to a preference for BBH as a provider, rather than the risk of an intentional degradation of service to itself post-Transaction as a downstream competitor.

5.2.3. Global custody (upstream) – Asset management (downstream)

(101) The Parties' combined market shares in global custody have been presented above in Tables 1-2. They are [40-50]%, [20-30]%, [10-20]% and [10-20]% respectively in Ireland, Luxembourg, in the EEA and at the global level.

(102) The Parties' combined share in asset management is low, at [0-5]%, [0-5]%, [0-5]% and [0-5]% respectively in Ireland, Luxembourg, globally and in the EEA.

(103) Given these market shares, only the vertical link between global custody in Ireland upstream and asset management downstream is affected.[112]

5.2.3.1. Input foreclosure

(A) The Notifying Party's view

(104) First, the Notifying Party argues that the combined entity would lack significant market power and therefore ability to pursue an input foreclosure strategy. The Notifying Party argues that as a result of customer concentration, competition is fierce and market positions are not entrenched in Ireland. In fact, fees as a proportion of AUA are similar across both the Republic of Ireland and Luxembourg, despite the higher concentration in the former. The relatively more concentrated market shares in the Republic of Ireland are therefore not reflective of market power.[113]

(105) Second, the Notifying Party argues that the combined entity would lack incentive to pursue an input foreclosure strategy; the Parties' major competitors are already present in the Republic of Ireland, including BNY Mellon ([10-20]%), JP Morgan ([10-20]%), BNP Paribas ([0-5]%), Northern Trust ([10-20]%) and Citi ([0-5]%). Thus, downstream customers will continue to have a choice of global custody suppliers post Transaction. The Notifying Party adds that threats of switching that the Parties face reinforces this conclusion.[114] The Notifying Party concludes that any downstream gains would accrue to rivals rather than to the Parties given their very small shares (and minimal increment) in asset management.

(B) The Commission's assessment

(106) The Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in

[112] Customer foreclosure for this vertical link is not assessed further in this decision as it can be excluded *a priori* due to the low combined market shares (<4% under any market definition) in the downstream market. The rest of this section therefore focuses on input foreclosure.

[113] Form CO, paragraph 351.

[114] Form CO, paragraph 352.

relation to the vertical relationship between global custody upstream and asset management downstream, regardless of the precise market definition, for the following reasons.

(107) First, the vertical link is largely pre-existing, since State Street is already active both upstream and downstream. The increment from the Target upstream is [5-10]%, which represents only a moderate change in market power and thus ability to foreclose. Downstream, the increment is negligible, indicating a lack of change in the incentive to foreclose. Indeed the low combined market share downstream would point to low potential gains in the case of foreclosure.

(108) Second, as argued by the Notifying Party and as confirmed by the Commission in section 5.1.2.3, sufficient competitors will remain upstream. Moreover, there is customer concentration in Ireland, with State Street's top three clients in Ireland account for [a significant percentage]% of its AUC, and the Target's top three clients account for [a significant percentage]% of its Ireland AUC.[115] As such, the loss of one or few clients could significantly shift the market shares and potentially remove the merged entity's leading position in global custody. This would indicate that the merged entity would lack the market power upstream implied by its market shares, and thus the ability or incentive to successfully implement input foreclosure, given that the loss of a few clients could threaten the success of the foreclosure strategy.

(109) Third and last, while the majority of responding competitors indicated that they currently use services from the Parties, a large majority of responding competitors stated that they are not concerned that the Parties would stop providing the service post-Transaction.[116] The only competitor who indicated a potential concern did so in relation to a different vertical link, namely local custody upstream and global custody downstream, dealt with in the previous section.

5.2.4. Fund administration (upstream) – Asset management (downstream)

(110) The Parties' combined market shares upstream in fund administration have been presented above in Tables 3-5. They are [40-50]%, [20-30]% and [20-30]% respectively in Ireland, Luxembourg and at the global level.

(111) The Parties' combined share downstream in asset management is low, at [0-5]%, [0-5]%, [0-5]% and [0-5]% respectively in Ireland, Luxembourg, globally and in the EEA.

(112) Given these market shares, only the vertical link between fund administration in Ireland upstream and asset management downstream is affected.[117]

[115] Form CO, paragraphs 191-194.

[116] Responses to questionnaire Q2 to competitors, question 27.

[117] Customer foreclosure for this vertical link is not assessed further in this decision as it can be excluded *a priori* due to the low combined market shares (<4% under any market definition) in the downstream market. The rest of this section therefore focuses on input foreclosure.

5.2.4.1. Input foreclosure

(A) The Notifying Party's view

(113) First, the Notifying Party argues that the combined entity would lack significant market power and therefore ability to pursue an input foreclosure strategy. The Notifying Party argues that as a result of customer concentration, competition is fierce and market positions are not entrenched in Ireland. In fact, fees as a proportion of AUA are similar across both the Republic of Ireland and Luxembourg, despite the higher concentration in the former. The relatively more concentrated market shares in the Republic of Ireland are therefore not reflective of market power.[118]

(114) Second, the Notifying Party argues that the combined entity would lack incentive to pursue an input foreclosure strategy; the Parties' major competitors are already present in the Republic of Ireland, including BNY Mellon ([10-20]%), JP Morgan ([10-20]%), BNP Paribas ([0-5]%), Northern Trust ([10-20]%) and Citi ([0-5]%). Thus, downstream customers will continue to have a choice of fund administration suppliers post Transaction. The Notifying Party adds that threats of switching that the Parties face reinforces this conclusion. The Notifying Party concludes that any downstream gains would accrue to rivals rather than to the Parties given their very small shares (and minimal increment) in asset management.[119]

(B) The Commission's assessment

(115) The Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to the vertical relationship between fund administration upstream and asset management downstream, regardless of the precise market definition, for the following reasons.

(116) First, the vertical link is largely pre-existing, since State Street is already active both upstream and downstream. The increment from the Target upstream is [5-10]%, which only represents a moderate change in market power and thus ability to foreclose. Downstream, the increment is negligible, indicating a lack of change in the incentive to foreclose. Indeed the low combined market share downstream would point to low potential gains in the case of foreclosure.

(117) Second, as argued by the Notifying Party and as confirmed by the Commission in section 5.1.3.3, sufficient competitors will remain upstream. Moreover, there is customer concentration in Ireland, with State Street's top three clients in Ireland account for [a significant percentage]% of its AUC, and the Target's top three clients account for [a significant percentage]% of its Ireland AUC.[120] As such, the loss of one or few clients could significantly shift the market shares and potentially remove the merged entity's leading position in fund administration. This would indicate that the merged entity would lack the market power upstream implied by its market shares, and thus the ability or incentive to successfully implement input foreclosure, given that the loss of a few clients could threaten the success of the foreclosure strategy.

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[118] Form CO, paragraph 356.

[119] Form CO, paragraph 357.

[120] Form CO, paragraphs 191-194, 252-255.

(118) Third and last, while the majority of responding competitors indicated that they currently use services from the Parties, a large majority of responding competitors stated that they are not concerned that the Parties would stop providing the service post-Transaction.[121] The only competitor who indicated a potential concern did so in relation to a different vertical link, namely local custody upstream and global custody downstream, dealt with in section 5.2.2.

6. CONCLUSION

(119) 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

121 Responses to questionnaire Q2 to competitors, question 27.