



EUROPEAN COMMISSION
DG Competition

***Case M.10978 - CACEIS / RBC INVESTOR SERVICES
BANK / RBC OFFSHORE FUND MANAGERS / RBC
INVESTOR SERVICES TRUST ASSETS***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 15/06/2023

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: Case M.10978 – CACEIS / RBC INVESTOR SERVICES BANK / RBC OFFSHORE FUND MANAGERS / RBC INVESTOR SERVICES TRUST ASSETS
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 5 May 2023, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which CACEIS SA (“CACEIS”, France) will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of RBC Investor Services Bank SA (“RBC IS Bank”, Luxembourg) and RBC Offshore Fund Managers Limited (“RBC Channel Islands”, Guernsey), and of certain assets and liabilities of the UK branch of RBC Investor Services Trust (the “RBC UK Transferring Business”, United Kingdom) (all of them ultimately controlled by the Royal Bank of Canada (“RBC”,

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’).

Canada)).³ CACEIS is designated hereinafter as the “Notifying Party”, and the target entities together as the “Targets”. CACEIS and the Targets are designated hereinafter as the “Parties”.

1. THE PARTIES

- (2) **CACEIS** is a subsidiary of Crédit Agricole SA (France). Crédit Agricole SA is active, through its subsidiaries, in retail and investment banking as well as insurance and asset management, and provides insurance and asset management services to corporate clients, institutional investors, banks and brokers. Through offices across Europe, North and South America and Asia, CACEIS offers a broad range of services covering financial execution, clearing, foreign exchange (“forex”), securities lending, custody, depositary and fund administration, fund distribution support, middle office outsourcing and issuer services.
- (3) **The Targets** constitute RBC’s European asset servicing activities and its associated Malaysian subsidiary which acts as a back-office to the asset servicing business. In particular, the Targets are active in custody, fund administration, transfer agency, middle office and securities lending in Europe.

2. THE CONCENTRATION

- (4) Pursuant to a share purchase agreement entered into by RBC IS Bank, RBC Channel Islands, RBC Investor Services Trust, Crédit Agricole and CACEIS on 23 December 2022, CACEIS will acquire: (i) all of the shares of RBC IS Bank and of RBC Channel Islands; and (ii) the RBC UK Transferring Business; in exchange for the payment of EUR [...] to RBC.

3. UNION DIMENSION

- (5) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million⁴ (Crédit Agricole SA: EUR [...]; Targets: EUR [...]). Each of them has a Union-wide turnover in excess of EUR 250 million (Crédit Agricole SA: EUR [...]; Targets: 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 operation therefore has a Union dimension.

4. RELEVANT MARKETS

4.1. Introduction

- (6) CACEIS and the Targets are both active in the provision of securities services, in particular global custody services and fund administration services, which are financial services provided to asset managers and institutional investors such as pension funds and insurance companies.

³ Publication in the Official Journal of the European Union No C 175, 17.5.2023, p. 15.

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

- (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.
- (8) Crédit Agricole SA is also active in a small number of markets upstream and downstream of global custody services and fund administration services; namely local custody (upstream from global custody) and asset management (downstream from global custody and fund administration).

4.2. Global custody services

4.2.1. Product market definition

4.2.1.1. Previous Commission decisions

- (9) In previous Commission decisions, global custody services have been found 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. Global custodians may also provide foreign exchange trading, securities lending, performance measurement and risk analysis, and management of cash accounts and cash funds linked to securities held in custody.⁵
- (10) The Commission has previously held that global custody can be considered as a single heterogeneous market, with the set of services differing slightly depending on client needs or asset type.⁶ Although the exact market definition was left open, the Commission indicated that global custody services are broadly the same across customer and asset types, and all major suppliers are able to serve all customer and asset types.⁷
- (11) The Commission has also previously examined whether global custody should be delineated from local custody services and whether a common product market for global custody and fund administration services exists, but ultimately left both questions open.⁸ Local custody refers to the provision of custody services within a specific jurisdiction (see section 4.3 below).

⁵ M.10499 *State Street / BBH (Investor Services Business)*, paragraph 8; M.5797 *State Street / Intesa Sanpaolo*, paragraph 11; M.3781 *Crédit Agricole / Caisse D'Epargne / JV*, paragraphs 11-14; M.3027 *State Street / Deutsche Bank*, paragraphs 8-10.

⁶ M.10499 *State Street / BBH (Investor Services Business)*, paragraph 16.

⁷ M.10499 *State Street / BBH (Investor Services Business)*, paragraphs 13-16.

⁸ M.10499 *State Street / BBH (Investor Services Business)*, paras 26 and 28; and e.g., M.5797 *State Street / Intesa Sanpaolo*, paragraphs 8-9.

- (12) Furthermore, the Commission has previously considered but ultimately left open the question of whether depositary services should be considered as part of global custody, or fund administration services.⁹

4.2.1.2. The Notifying Party's view

- (13) The Notifying Party considers that all global custody services mentioned in paragraph (9) above, including depositary services, form a single relevant product market within global custody, which should not be further segmented.¹⁰
- (14) The Notifying Party further submits that in-house sales should be considered as part of the relevant product market for global custody because: (i) integrated customers treat in-house and third-party providers on an equal footing when choosing providers; and (ii) the content and price of the services are homogeneous irrespective of whether sold internally or externally.¹¹

4.2.1.3. The Commission's assessment

- (15) The market investigation indicates that global custody services comprise 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, 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 transaction and portfolio reporting services and sweeping of uninvested cash, are considered by the majority of respondents as ancillary global custody services.¹² However, the market investigation did not give an indication 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 (9).
- (16) The majority of competitors and customers that responded to the Commission's market investigation indicated that global custody services are broadly the same across asset types, or that there are slight differences but all major suppliers are able to serve all types of assets.¹³ As such, for the purposes of this decision, the Commission considers that a segmentation of the global custody market by asset class is not appropriate.
- (17) Concerning different customer types (e.g. asset managers vs. pension funds), the majority of competitors and customers consider that global custody services are the

⁹ See, e.g., M.9796 *UNIQA / AXA (Insurance, asset management and pensions – Czechia, Poland and Slovakia)*, paragraph 48; and M.3894 *Unicredito / HVB*, paragraph 37.

¹⁰ Form CO, paragraphs 104-124.

¹¹ Form CO, paragraphs 179-188 and 218 *et seq.*

¹² Responses to questionnaire Q1 to competitors, question C.1 and to questionnaire Q2 to customers, question C.1. Regarding depositary services, the Commission's market investigation confirmed the Notifying Party's view in that the majority of competitors and customers consider depositary services as part of global custody services.

¹³ Responses to questionnaire Q1 to competitors, question C.8 and questionnaire Q2 to customers, question C.8.

same regardless of customer type.¹⁴ As such, for the purposes of this decision, the Commission considers that a segmentation of the global custody market by customer type is not appropriate.

- (18) 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.
- (19) As concerns a potential combined market for global custody services and fund administration, the majority of competitors responding to the Commission's market investigation indicated that they provide global custody and fund administration together or that it depends on the management model and type of fund. Customers' responses were mixed between sourcing the services from the same provider, from different providers and depending on the management model and type of fund.¹⁵ 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. The Commission will perform its competitive assessment on the narrowest basis, i.e. a separate market for each of global custody and fund administration.
- (20) As regards in-house sales, the majority of integrated market players responding to the Commission's market investigation consider both in-house and third-party providers when sourcing global custody services.¹⁶ For the purposes of this decision, the Commission considers that at least certain in-house provision may cause competitive pressure on the merchant market for the provision of global custody services, but does not conclude on whether in-house sales constitute a part of the relevant 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

- (21) 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 Recently, the Commission has considered global custody to be possibly national in scope given the regulatory requirements and the fact that some global custodians are only active regionally, but ultimately left the geographic scope open.¹⁸

¹⁴ Responses to questionnaire Q1 to competitors, question C.12 and questionnaire Q2 to customers, question C.12.

¹⁵ Responses to questionnaire Q1 to competitors, question C.5 and questionnaire Q2 to customers, question C.5

¹⁶ Responses to questionnaire 1 to competitors, questions B.11 and B.12, and to questionnaire 2 to customers, question D.A.9.

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

¹⁸ M.10499 *State Street / BBH (Investor Services Business)*, paragraphs 22-25.

4.2.2.2. The Notifying Party's view

- (22) The Notifying Party submits that the market for global custody is at least EEA-wide in scope because: (i) the Parties and their main competitors manage funds that hold assets in multiple jurisdictions inside and outside of the EU; (ii) clients source global custody services globally; and (iii) the services are often delegated within various entities of a custodian group and hence are carried out in different locations from an operational perspective.¹⁹

4.2.2.3. The Commission's assessment

- (23) The majority of competitors responding to the Commission's market investigation said they provide global custody services to customers globally, and the majority of customers consider that suppliers are active at an EEA-wide level.²⁰ However, the majority of customers responding to the Commission's market investigation purchase global custody services by comparing offers at national level (e.g., for France and Belgium separately)²¹ and require their global custody provider to be domiciled and/or have personnel located in the same jurisdiction as the relevant fund either for regulatory reasons or out of commercial preference.²² A majority of competitors also stated that they have an entity domiciled and/or personnel located nationally in the same jurisdiction as the client fund due to regulatory requirements.²³
- (24) These facts would indicate that global custody services might be national in scope. The Commission's investigation also indicated that global custodians have a regulatory requirement to hold a license to operate and/or to have an entity located in the country where the client is domiciled,²⁴ and some customers explained that they consider global custody services to be always provided locally by local teams.²⁵
- (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 EEA-wide level. At national level, the Transaction gives rise to affected global custody markets in France.

¹⁹ Form CO, paragraph 126.

²⁰ Responses to questionnaire 1 to competitors, questions C.17, and to questionnaire 2 to customers, question C.15.

²¹ Responses to questionnaire 2 to customers, question C.15.

²² Responses to questionnaire 2 to customers, question C.17.

²³ Responses to questionnaire 1 to competitors, question C.20.

²⁴ Minutes of a call with a customer, 11 January 2023, explaining that for this reason its funds domiciled in France have different (i.e., French) custodians from those domiciled in other Member States; minutes of a call with a competitor, 10 January 2023, which explain that to act as global/local custodian in France, the company (e.g., a credit institution) must have a "custody account-keeping" licence, granted by the French Prudential Supervisory Authority (Autorité de contrôle prudentiel et de résolution – "ACPR"). Minutes of a call with a competitor, 17 January 2023, explaining that foreign players can operate on the French market as long as they have access to the market (i.e., are a member of the local Central Securities Depository).

²⁵ E.g., minutes of a call with a customer, 11 January 2023.

4.3. Local custody

4.3.1. Product market definition

4.3.1.1. 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 that case, the Commission considered global custody and local custody as separate standalone markets and ultimately left the exact product market definition open.²⁷

4.3.1.2. The Notifying Party's view

(27) The Notifying Party is of the opinion that, while there is likely a local custody market that the Commission could plausibly analyse, the question can be left open.²⁸

4.3.1.3. The Commission's assessment

(28) The market investigation has not provided any indication that the Commission should depart from its previous decisions 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.

4.3.2. Geographic market definition

4.3.2.1. Previous Commission decisions

(29) The Commission noted in *Crédit Agricole/Caisse D'Epargne/JV*²⁹ that it may be defensible to analyse a national-level market 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.

4.3.2.2. The Notifying Party's view

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

²⁶ M.3781 *Crédit Agricole/Caisse D'Epargne/JV*, paragraphs 11-12.

²⁷ See also M.10499 *State Street / BBH (Investor Services Business)*, paragraph 28.

²⁸ Form CO, paragraph 132.

²⁹ M.3781 *Crédit Agricole / Caisse D'Epargne / JV*.

³⁰ Form CO, paragraph 134.

4.3.2.3. The Commission's assessment

- (31) The market investigation has not provided any indication that the Commission should depart from its previous decisions 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.

4.4. Fund administration services

4.4.1. Product market definition

4.4.1.1. Previous Commission decisions

- (32) The Commission previously considered that fund administration includes a range of services that form a single product market.³¹ These services typically include acting as trustee, 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.³²
- (33) The Commission has considered that the range of services mentioned above at paragraph (32) form a single product market, with a set of services that may differ slightly depending on client needs or asset type.³³ While the exact market definition was left open in *State Street/BBH*, the Commission undertook its assessment on a market for all customer types and asset classes.³⁴
- (34) The Commission has also previously considered but ultimately left open the question of whether fund administration services for individual managed accounts (“IMAs”), a customer type, constitute a separate market.³⁵ This question is in any event irrelevant in this case given that the Targets do not provide fund administration services to IMAs.³⁶
- (35) The Commission has previously considered that transfer agency forms part of fund administration services but noted that it may also be provided together with global custody services, to the extent that global custody and fund administration are themselves provided together.³⁷

³¹ M.3781 *Crédit Agricole / Caisse D'Epargne / JV*, paragraph 21; M.5797 *State Street / Intesa Sanpaolo*, paragraph 14.

³² M.3027 *State Street / Deutsche Bank*, paragraph 11.

³³ M.10499 *State Street / BBH (Investor Services Business)*, paragraphs 36-40.

³⁴ M.10499 *State Street / BBH (Investor Services Business)*, paragraphs 38-39.

³⁵ M.5797 *State Street / Intesa Sanpaolo*.

³⁶ Form CO, paragraph 144.

³⁷ M.10499 *State Street / BBH (Investor Services Business)*, paragraphs 32 and 37.

4.4.1.2. The Notifying Party's view

- (36) The Notifying Party is of the opinion that all services mentioned in paragraphs (32) and (34) above form a single relevant product market within fund administration and that the market should not be further segmented by customer or asset class.³⁸
- (37) Furthermore, the Notifying Party consider that the product market definition for fund administration should encompass in-house sales because, e.g.: (i) integrated customers treat in-house and third-party providers on an equal footing when choosing providers and can switch away from their in-house suppliers; (ii) several providers with in-house capacity also supply third parties; (iii) the services are in practice identical irrespective of the end-customer; (iv) non-integrated customers can develop in-house capabilities in the short term; and (v) purely captive providers can start providing fund administration services on the merchant market in the short term.³⁹

4.4.1.3. The Commission's assessment

- (38) The market investigation indicates that fund administration can cover various services and the precise definition appears to vary more among market participants than for global custody. Respondents to the market investigation agree that accounting (e.g. Net Asset Value calculation) and record keeping are core fund administration services, while they are divided on whether remaining services such as share registration and taxation services, transfer agency,⁴⁰ client and regulatory reporting, performance and analytics, tax-transparent asset pooling, transition management, and foreign exchange services should be considered as core or ancillary fund administration services, or not fund administration services at all.⁴¹
- (39) As is the case for global custody service providers, the majority of competitors and customers that responded to the Commission's market investigation consider 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.⁴² As such, for the purposes of this decision, the Commission considers that a segmentation by asset class is not appropriate.
- (40) Concerning different customer types (e.g. asset managers vs. pension funds), the majority of competitors and customers consider that fund administration services are the same regardless of customer type.⁴³ As such, for the purposes of this decision, the Commission considers that a segmentation by customer type is not appropriate.

³⁸ Form CO, paragraphs 136-146.

³⁹ Form CO, paragraphs 179-188 and 218-265.

⁴⁰ The majority of customers responding to the market investigation stated that they source transfer agency together with fund administration and/or global custody services for the same fund. Responses to questionnaire Q2 to customers, question C.7.

⁴¹ Responses to questionnaire Q1 to competitors, question C.3, and to questionnaire Q2 to customers, question C.3.

⁴² Responses to questionnaire Q1 to competitors, question C.10, and to questionnaire Q2 to customers, question C.10.

⁴³ Responses to questionnaire Q1 to competitors, question C.14, and to questionnaire Q2 to customers, question C.14.

- (41) 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 such, for the purposes of this decision, the Commission considers fund administration to comprise all the services mentioned in paragraph (32). As per paragraph (19) above, the question of whether fund administration and global custody services are a combined market or two separate markets can be left open.
- (42) As regards in-house sales, the Commission's market investigation has indicated that integrated market players often consider both in-house and third-party providers on an arm's length basis when sourcing fund administration services.⁴⁴ For the purposes of this decision, the Commission considers it plausible that at least certain in-house provision may cause competitive pressure on the merchant market, but does not conclude on whether in-house sales constitute a part of the relevant market, given that no competition concerns arise regardless of the precise definition.

4.4.2. *Geographic market definition*

4.4.2.1. Previous Commission decisions

- (43) Without concluding on the matter, the Commission has previously considered that the markets for fund administration services could be national in scope due to national regulation and/or customers preference for local knowledge and expertise related to the scope of the investment, or possibly wider than national in scope.⁴⁵

4.4.2.2. The Notifying Party's view

- (44) The Notifying Party is of the opinion that the geographical market for fund administration is at least EEA-wide because: (i) 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, (ii) an increasing number of clients source fund administration services from a single provider on a pan-European or at least multi-jurisdictional basis, and (iii) market dynamics are substantially similar across the EU.⁴⁶

4.4.2.3. The Commission's assessment

- (45) The majority of customers responding to the Commission's market investigation indicated that they source fund administration services by comparing offers at national level (i.e., separately for France and Belgium), and consider fund administration suppliers to be active at national level.⁴⁷ The competitors responding to the Commission's market investigation expressed mixed views regarding

⁴⁴ Responses to questionnaire 1 to competitors, questions B.13 and B.14, and to questionnaire 2 to customers, question D.B.12.

⁴⁵ M.3027 *State Street / Deutsche Bank*, e.g., paragraph 12; M.3781 *Crédit Agricole / Caisse D'Epargne / JV*, paragraph 22.

⁴⁶ Form CO, paragraph 149.

⁴⁷ Responses to questionnaire Q2 to customers, question C.18.

whether they provide fund administration services at national, EEA or global level.⁴⁸

- (46) However, the majority of competitors stated they have an entity domiciled and/or personnel located in the same jurisdiction as the fund due to regulatory reasons and the majority of customers said they require that their supplier has an entity domiciled and/or personnel located in the same jurisdiction as the fund either for regulatory reasons or commercial preference.⁴⁹
- (47) The above facts would indicate that fund administration services might be national in scope. 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 Transaction does not give rise to an affected market under a global or EEA-wide geographic scope under any possible segmentation. At national level, the Transaction gives rise to affected markets in France and in Belgium.

4.5. Asset management

4.5.1. Product market definition

4.5.1.1. Previous Commission decisions

- (48) The Commission has previously described asset management as “the provision of investment advice and often also the implementation of this advice”.⁵⁰ The Commission has previously considered a market for overall asset management, but also potential 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.⁵¹

⁴⁸ Responses to questionnaire Q1 to competitors, question C.18.

⁴⁹ Responses to questionnaire Q1 to competitors, question C.22, and to questionnaire Q2 to customers, question C.20. Minutes of a call with a customer, 13 January 2023; minutes of a call with a competitor, 1 February 2023; minutes of a call with a customer, 13 March 2023; minutes of a call with a customer, 14 March 2023; and minutes of a call with a customer, 17 March 2023.

⁵⁰ M.6812 *SFPI/DEXIA*, paragraph 30; M.4844 *Fortis/ABN AMRO Assets*, paragraph 67; M.8257 *NN Group/Delta Lloyd*, paragraph 108.

⁵¹ M.3894 *Unicredito/HVB*, paragraphs 35-36; M.4844 *Fortis/ABN AMRO Assets*, paragraphs 67-70; M.5728 *Crédit Agricole/Société Générale Asset Management*, paragraphs 35- 39; M.8359 *Amundi/Credit Agricole/Pioneer Investments*, paragraphs 18 and 20 ; and M.10499 *State Street / BBH (Investor Services Business)*, paragraph 47.

4.5.1.2. The Notifying Party's view

- (49) The Notifying Party is of the opinion that the relevant market should be asset management without further segmentation for the following reasons: (i) most asset management players provide the full range of asset management products and services; (ii) certain distinctions (for instance between institutional and retail clients) are irrelevant in practice as many funds (e.g., UCITS) can be addressed to both types of customers indifferently; and (iii) corporate funds customers are able to and do switch constantly between the various forms of funds within the retail or institutional sector.⁵²

4.5.1.3. The Commission's assessment

- (50) The market investigation has not provided any indication that the Commission should depart from its previous decisions 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.

4.5.2. *Geographic market definition*

4.5.2.1. Previous Commission decisions

- (51) In previous cases, the Commission has considered the market as global, EEA-wide or national in scope, but ultimately left this question open.⁵³

4.5.2.2. The Notifying Party's view

- (52) The Notifying Party is of the opinion that the geographical market for asset management is EEA-wide rather than national in scope because of harmonised EU regulation and the fact that large multinational corporate customers with cross-border activities may also be a need to pool risks on an international basis.⁵⁴

4.5.2.3. The Commission's assessment

- (53) The market investigation has not provided any indication that the Commission should depart from its previous decisions 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**

- (54) The Transaction gives rise to horizontal overlaps in the provision of global custody services and of fund administration services, as well as to vertical links between: (i) local custody and global custody; (ii) global custody and asset management; and (iii) fund administration and asset management.

⁵² Form CO, paragraph 169.

⁵³ M.8359 *Amundi/Credit Agricole/Pioneer Investments*, paragraphs 28-29; M.5728 *Credit Agricole/Société Générale Asset Management*, paragraph 41; and M.10499 *State Street / BBH (Investor Services Business)*, paragraph 50.

⁵⁴ Form CO, paragraph 171.

5.1. Horizontally affected markets

5.1.1. Legal framework

- (55) Under Articles 2(2) and 2(3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.
- (56) There are two main ways in which horizontal mergers may significantly impede effective competition, in particular by creating or strengthening a dominant position: (a) by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour (non-coordinated effects); (b) by changing the nature of competition in such a way that firms that previously were not coordinating their behaviour, are now significantly more likely to coordinate and raise prices or otherwise harm effective competition (coordinated effects).⁵⁵
- (57) Non-coordinated effects may significantly impede effective competition by eliminating an important competitive constraint imposed by each of the 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 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 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 not an exclusive list.⁵⁶
- (58) Coordinated effects may arise in markets where the structure may be such that firms would consider it possible, economically rational, and hence preferable, to adopt on a sustainable basis a course of action on the market aimed at selling at increased prices. A merger in a concentrated market may significantly impede effective competition, through the creation or the strengthening of a collective dominant position, because it increases the likelihood that firms are able to coordinate their behaviour and raise prices. The Horizontal Merger Guidelines list a number of factors the Commission may consider in examining the likelihood of coordinated effects in a given market, including whether it would be possible to reach and sustain terms of coordination and monitor deviations.⁵⁷

⁵⁵ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03) (“Horizontal Merger Guidelines”), paragraph 22.

⁵⁶ Horizontal Merger Guidelines, paragraphs 22, 24, 28, 31-32.

⁵⁷ Horizontal Merger Guidelines, paragraphs 39-41.

5.1.2. Global custody services

5.1.2.1. Market structure

- (59) The Transaction gives rise to horizontal overlaps for global custody, which results in an affected market in France when considering a national market definition. The Transaction does not give rise to affected markets for global custody under a global or EEA-wide geographic market definition.
- (60) The below table shows the market structure for global custody services in France.

Table 1: Market shares for global custody services in France in 2021⁵⁸, assets under custody (AuC)⁵⁹, incl. in-house sales awarded through a competitive process

Company	AuC (EUR billion)	Market share
CACEIS	[...]	[30-40]%
Targets	[...]	[0-5]%
Combined	[...]	[30-40]%
BNP Paribas	[...]	[20-30]%
Société Générale	[...]	[20-30]%
CMC CIC	[...]	[5-10]%
Others	[...]	[10-20]%
Total	[...]	100%

Source: The Notifying Party (Form CO, Table 32)

- (61) CACEIS is the market leader in terms of market share, followed by two other large providers, BNP Paribas and Société Générale. The Transaction brings an increment of [0-5]% -point and HHI delta of [0-100].
- (62) As noted in paragraph (20) above, the Commission's market investigation indicated that integrated market players consider both their own in-house division and external third-party providers when sourcing global custody services. For purposes of this decision, and without concluding on the matter, the Commission considers that captive providers that are only active internally and do not offer services to third parties are unlikely to compete for customers and cause competitive pressure on providers active on the merchant market. Therefore, the market shares in Table 1 include in-house sales awarded through a competitive process and exclude sales of purely captive providers. In any event, the Notifying Party has confirmed that even if all in-house sales were excluded, the Parties' market shares in global custody services in France would not materially differ from those presented in

⁵⁸ The Notifying Party has confirmed that the market shares have not significantly varied over the last three years and that, consequently, the 2022 market shares are not materially different from the provided 2021 market shares. Form CO, footnote 15.

⁵⁹ The Notifying Party has confirmed that the Parties' market shares would not materially differ if measured by sales value. Form CO, paragraph 192.

Table 1.⁶⁰ Therefore, the competitive assessment is also valid for a potential market that excludes all in-house sales.

5.1.2.2. The Notifying Party's view

(63) The Notifying Party submits that the Transaction does not raise any competitive concerns for global custody in France regardless of the exact product and geographic market definition because: (i) the Parties' combined market share will remain below 40%; (ii) the Transaction brings a market share increment of below [0-5]-point and an HHI delta of only c. [0-100] and is therefore unable to change the structure of the market or affect CACEIS' incentive or ability to adopt any anticompetitive behaviour; (iii) the merged entity will be constrained by several strong competitors including BNP Paribas, Société Générale and CMC CIC; and (iv) customers can easily switch global custody providers.⁶¹

5.1.2.3. The Commission's assessment

(64) The Commission's market investigation largely confirmed the Parties' arguments.

(65) *First*, the majority of market participants that responded to the Commission's market investigation did not consider RBC as competing closely with CACEIS. BNP Paribas, Société Générale and CMC CIC were consistently referred to as the closest competitors to CACEIS.⁶² On the other hand, CACEIS was considered to be in the top-3 competitors of RBC together with BNP Paribas and Société Générale.⁶³

(66) *Second*, the Targets are very small and do not appear to exert a strong competitive constraint in the global custody market in France.⁶⁴ A number of customers described RBC as "*not active in France*", a "*minor player in the market*", "*no [longer] a major actor on the French market*"; and "*not at all strong and [...] very small in France*".⁶⁵

(67) *Third*, the market investigation confirmed that a number of strong competitors will remain in the market post-Transaction. In addition to listing CACEIS as a strong provider in France, the competitors and customers that responded to the Commission's market investigation rated several other providers similarly or as stronger/more suitable for their needs, including Société Générale, BNP Paribas and CMC CIC.⁶⁶ RBC was considered as a clearly weaker provider by both

⁶⁰ Form CO, paragraphs 311-316 and Table 33.

⁶¹ Form CO, paragraphs 317 *et seq.*

⁶² Responses to questionnaire 1 to competitors, question D.A.3, and to questionnaire 2 to customers, question D.A.13.

⁶³ Responses to questionnaire 1 to competitors, question D.A.3, and to questionnaire 2 to customers, question D.A.13.

⁶⁴ Minutes of a call with a competitor, 10 January 2023; minutes of a call with a competitor, 17 January 2023; minutes of a call with a customer, 11 January 2023; and minutes of a call with a customer, 16 January 2023.

⁶⁵ Responses to questionnaire 2 to customers, question D.A.13; and minutes of a call with a customer, 19 January 2023. Also, minutes of a call with a competitor, 10 January 2023; and minutes of a call with a competitor, 17 January 2023.

⁶⁶ Responses to questionnaire 1 to competitors, questions D.A.1 and D.A.2, and to questionnaire 2 to customers, question D.A.11.

competitors and customers. One customer explained that: “[t]he main players in France are [BNP Paribas], [Société Générale], CMC CIC and Caceis, which all offer the same range of services in the same range of prices”⁶⁷ and another that “[...] we do not see any big differences between the major actors being Caceis, BNP [Paribas] and Société Générale as global custodian is a mainstream business. The service of RBC in France was below our expectations.”⁶⁸

- (68) *Fourth*, market participants responding to the Commission’s market investigation confirmed that switching global custodians is possible. The majority of competitors and customers consider that switching is easy for new funds,⁶⁹ meaning that customers tend to choose a global custody provider separately for each fund they set up.⁷⁰ As regards existing funds, the majority of respondents consider that switching may represent a project but does not cost a significant or a prohibitive amount of time or money.⁷¹ Customers explained that: “[t]he switching process depends on the size and complexity of the funds,” “[s]witching global custodian would typically take less than 3 months with limited costs”, and “[w]e realized this kind of operation in 2019 for about 20 funds and there was a lot of legal and technical points to manage. As for an indication of time regarding such [switching] process, it took around 9 months to achieve.”⁷² In addition, some customers renegotiate terms during the lifetime of funds, e.g., by using benchmarking information or threatening to switch part of all of their business.⁷³
- (69) *Finally*, market participants view the Transaction neutrally and expect sufficient alternative suppliers to remain in the market. The clear majority of customers and competitors that responded to the Commission’s market investigation consider the impact of the Transaction to be either neutral or positive on their business, the overall global custody market in France and in the EEA and on competitive parameters including pricing, quality and innovation.⁷⁴ Furthermore, customers confirmed that sufficient suitable global custody suppliers will be available in France post-Transaction.⁷⁵
- (70) Based on the above, the Commission concludes that 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 France.

⁶⁷ A response to questionnaire 2, question D.A.12.

⁶⁸ A response to questionnaire 2, question D.A.12.

⁶⁹ Responses 1 to competitors, question D.A.4, and to questionnaire 2 to customers, questions D.A.4 and D.A.5.

⁷⁰ However, one customer explained that parallel funds generally have the same custodian and fund administration services provider as the flagship fund, without a separate RFP being set up. Minutes of a call with a customer, 11 January 2023.

⁷¹ Responses 1 to competitors, question D.A.4, and to questionnaire 2 to customers, questions D.A.4 and D.A.5.

⁷² Responses to questionnaire 2 to customers, questions D.A.4 and D.A.5.

⁷³ Responses to questionnaire 2 to customers, questions D.A.2 and D.A.3.

⁷⁴ Responses to questionnaire 1 to competitors, questions E.1.a-E.1.e, and to questionnaire 2 to customers, questions E.1.a-E.1.e.

⁷⁵ Responses to questionnaire 2 to customers, questions E.2.

5.1.3. Fund administration services

5.1.3.1. Introduction

(71) The Transaction gives rise to horizontal overlaps for fund administration services, which results in affected markets in France and Belgium when considering the markets on a national basis. The Transaction does not give rise to affected markets for fund administration services under a global or EEA-wide geographic market definition.

5.1.3.2. Fund administration services in France

5.1.3.2.1. Market structure

(72) The below tables show the market structure for fund administration services in France.

Table 2: Market shares for fund administration services in France in 2021⁷⁶, assets under management (AuM)⁷⁷, incl. in-house sales awarded through a competitive process

Company	AuM (EUR billion)	Market share
CACEIS	[...]	[40-50]%
Targets	[...]	[0-5]%
Combined	[...]	[40-50]%
Société Générale	[...]	[20-30]%
BNP Paribas	[...]	[20-30]%
CIC	[...]	[0-5]%
Others	[...]	[0-5]-[5-10]%
Total	[...]	100%

Source: The Notifying Party (Form CO, Table 16)

(73) CACEIS is the market leader in terms of market share, followed by two other large providers, Société Générale and BNP Paribas. The Transaction brings an increment of [0-5]% -point and HHI delta of [50-150].

(74) As noted in paragraph (42) above, the Commission's market investigation indicated that integrated market players often consider both their in-house division and third-party providers on an arm's length basis when sourcing fund administration services. For purposes of this decision, and without concluding on the matter, the Commission considers that captive providers that are only active internally and do not offer services to third parties are unlikely to compete for customers and cause

⁷⁶ The Parties have confirmed that the market shares have not significantly varied over the last three years and that, consequently, the 2022 market shares are not materially different from the provided 2021 market shares. Form CO, fn. 15 and paragraph 211.

⁷⁷ The Notifying Party has confirmed that the Parties' market shares would not materially differ if measured by sales value. Form CO, paragraphs 267-269.

competitive pressure on providers active on the merchant market.⁷⁸ Therefore, the market shares in Table 2 include in-house sales awarded through a competitive process and exclude sales of purely captive providers. In any event, the Notifying Party has confirmed that even if all in-house sales were excluded, the Parties' market shares in fund administration services in France would not materially differ from those presented in Table 2.⁷⁹ Therefore, the competitive assessment is also valid for a potential market that excludes all in-house sales.

5.1.3.2.2. The Notifying Party's view

- (75) The Notifying Party submits that the Transaction does not raise any competitive concerns for fund administration services in France regardless of the exact product and geographic market definition. This is for the following reasons: (i) the increment brought by the Targets in France is *de minimis* at below [0-5]-point and, consequently, the Transaction is unlikely to change the structure of the market; (ii) the HHI delta resulting from the Transaction is only [50-150], i.e., below 150; and (iii) the merged entity will face competition from several strong competitors including Société Générale and BNP Paribas.⁸⁰

5.1.3.2.3. The Commission's assessment

- (76) The Commission's market investigation largely confirmed the Parties' arguments.
- (77) *First*, the majority of market participants that responded to the Commission's market investigation do not consider RBC to be a very close competitor to CACEIS. Instead, BNP Paribas, Société Générale and CMC CIC were referred to as the closest competitors to CACEIS.⁸¹ On the other hand, CACEIS was considered to be in the top-3 competitors of RBC together with BNP Paribas and Société Générale.⁸²
- (78) *Second*, both customers and competitors responding to the Commission's market investigation consider the Targets as a weaker supplier that does not appear to exert a strong competitive constraint in the fund administration market in France.⁸³ A number of customers described the Targets as "*a minor player in the market*", "*no [longer] a major actor [on] the French market*", and "*not at all strong and [...] very small in France*".⁸⁴

⁷⁸ Minutes of a call with a competitor, 11 January 2023; minutes of a call with a customer, 13 March 2023; and minutes of a call with a customer, 17 March 2023.

⁷⁹ Form CO, paragraphs 213 and 346.

⁸⁰ Form CO, paragraphs 349-353.

⁸¹ Responses to questionnaire 1 to competitors, question D.B.A.3, and to questionnaire 2 to customers, question D.B.A.2. One customer explained that BNP Paribas and Société Générale "*have similar offers and pricing*" as compared to CACEIS.

⁸² Responses to questionnaire 1 to competitors, question D.B.A.3, and to questionnaire 2 to customers, question D.B.A.2.

⁸³ Responses to questionnaire 1 to competitors, question D.B.A.3, and to questionnaire 2 to customers, question D.B.A.2; minutes of a call with a competitor, 10 January 2023; minutes of a call with a competitor, 17 January 2023; minutes of a call with a customer, 11 January 2023; and minutes of a call with a customer, 16 January 2023.

⁸⁴ Responses to questionnaire 2 to customers, question D.B.A.2; and minutes of a call with a customer, 19 January 2023. Also, minutes of a call with a competitor, 10 January 2023; and minutes of a call with a competitor, 17 January 2023.

- (79) *Third*, the market investigation confirmed that a number of strong competitors remain in the market post-Transaction. In addition to listing CACEIS as a strong provider in France, the competitors and customers that responded to the Commission’s market investigation rated several other providers similarly or as stronger/more suitable for their needs, including Société Générale, CMC CIC and BNP Paribas.⁸⁵
- (80) *Fourth*, market participants responding to the Commission’s market investigation confirmed that switching fund administration providers is possible, in particular for new funds. The majority of customers consider switching fund administrators for new funds to be easy or very easy, whereas the majority of competitors said it may represent a project but does not cost a significant or a prohibitive amount of time or money.⁸⁶ As regards switching for existing funds, the majority of competitors consider that switching may represent a project but does not cost a significant or a prohibitive amount of time or money, whereas the majority of customers consider it to be costly and difficult.⁸⁷ However, a number of market participants contacted during the Commission’s market investigation confirmed that switching sometimes occurs during a lifetime of a fund following quality issues.⁸⁸ Moreover, the majority of customers responding to the Commission’s market investigation tend to regularly run new RfPs or renegotiate contractual terms, e.g., by using benchmarking information or threatening to switch part of all of their business.⁸⁹
- (81) *Finally*, market participants view the Transaction neutrally and expect sufficient alternative supplier to remain in the market. The clear majority of customers and competitors that responded to the Commission’s market investigation consider the impact of the Transaction to be either neutral or positive on their business, the overall fund administration market in France and in the EEA, and on competitive parameters including pricing, quality and innovation.⁹⁰ Furthermore, customers confirmed that sufficient suitable fund administration suppliers will be available in France post-Transaction.⁹¹
- (82) Based on the above, the Commission concludes that 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 France.

⁸⁵ Responses to questionnaire 1 to competitors, question D.B.A.1, and to questionnaire 2 to customers, question D.B.A.1.

⁸⁶ Responses 1 to competitors, question D.B.1, and to questionnaire 2 to customers, questions D.B.6.

⁸⁷ Responses 1 to competitors, question D.B.1, and to questionnaire 2 to customers, questions D.B.6. Some customers explained that switching occurs from time to time during a lifetime of a fund in response to quality issues, minutes of a call with a customer, 11 January 2023 and minutes of a call with a customer, 19 January 2023.

⁸⁸ Minutes of a call with a customer, 11 January 2023; minutes of a call with a customer, 19 January 2023.

⁸⁹ Responses to questionnaire 2 to customers, questions D.B.3 and D.B.5.

⁹⁰ Responses to questionnaire 1 to competitors, questions E.1.a-E.1.e, and to questionnaire 2 to customers, questions E.1.a-E.1.e.

⁹¹ Responses to questionnaire 2 to customers, question E.2.

5.1.3.3. Fund administration services in Belgium

5.1.3.3.1. Market structure

(83) The below tables show the market structure for fund administration services in Belgium.

Table 3: Market shares for fund administration services in Belgium in 2021⁹², assets under management (AuM)⁹³, incl. in-house sales awarded through a competitive process

Company	AuM (EUR billion)	Market share
CACEIS	[...]	[0-5]%
Targets	[...]	[5-10]%
Combined	[...]	[10-20]%
BNP Paribas	[...]	[30-40]%
Bank of New York	[...]	[10-20]%
Degroof Petercam	[...]	[5-10]%
Capfi Delen	[...]	[0-5]%
Others	[...]	[20-30]%
Total	[...]	100%

Source: The Notifying Party (Response to RFI 7, question 1)

- (84) BNP Paribas is the market leader in terms of market share, whereas the Targets and CACEIS are the third and fifth largest, respectively. The Transaction brings an increment of [0-5]-point and HHI delta of [0-100].
- (85) As noted in paragraph (42) above, the Commission's market investigation indicated that integrated market players often consider both their in-house division and third-party providers on an arm's length basis when sourcing fund administration services. For purposes of this decision, and without concluding on the matter, the Commission considers that captive providers that are only active internally and do not offer services to third parties are unlikely to compete for customers and cause competitive pressure on providers active on the merchant market.⁹⁴ Therefore, the market shares in Table 3 include in-house sales awarded through a competitive process and exclude sales of purely captive providers. In any event, the Parties' market shares in fund administration services in Belgium would be moderate (CACEIS: [0-5]%, the Targets: [10-20]%, combined: [20-30]%) even if all

⁹² The Parties have confirmed that the market shares have not significantly varied over the last three years and that, consequently, the 2022 market shares are not materially different from the provided 2021 market shares. Form CO, fn. 15 and paragraph 211.

⁹³ The Notifying Party has confirmed that the Parties' market shares would not materially differ if measured by sales value. Form CO, paragraphs 267-269.

⁹⁴ Minutes of a call with a competitor, 11 January 2023; minutes of a call with a customer, 13 March 2023; and minutes of a call with a customer, 17 March 2023.

in-house sales were excluded.⁹⁵ Therefore, the competitive assessment is also for a potential market that excludes all in-house sales.

5.1.3.3.2. The Notifying Party's view

- (86) The Notifying Party submits that the Transaction does not raise any competitive concerns for fund administration services regardless of the exact product and geographic market definition. The Notifying Party argues that this is for the following reasons: (i) the Parties' combined market share is below 25%; (ii) the combined entity will be constrained by several strong competitors including the market leader BNP Paribas; and (iii) customers have bargaining power and are able to switch providers.⁹⁶

5.1.3.3.3. The Commission's assessment

- (87) The Commission's market investigation largely confirmed the Parties' arguments.
- (88) *First*, the majority of market participants that responded to the Commission's market investigation consider BNP Paribas to be the closest competitor to both CACEIS and RBC.⁹⁷ BNP Paribas was described as having "*similar services offering, operational capabilities*" to CACEIS and being "[...] *also a global player*", and a "*major actor with similar service offering*".⁹⁸ As to other close competitors to CACEIS, the competitors mentioned Degroof Petercam ("*Similar size on the Belgian market*"⁹⁹), RBC, and KBC ("*Number 1 on the Belgian market*"¹⁰⁰), and customers listed, e.g. RBC, Capfi Delen, and Degroof Petercam.¹⁰¹
- (89) *Second*, several market participants contacted during the Commission's investigation consider the Targets to be a very small and not a credible fund administration competitor to alternative providers including CACEIS in Belgium, and some were not even aware of the Targets providing fund administration services in Belgium.¹⁰²
- (90) Furthermore, the Notifying Party explained that the Targets currently serve a total of only [...] customers in Belgium and the largest one, [customer], constituted over [...]% of the Targets' fund administration business in Belgium in 2021 and 2022.¹⁰³ If [customer] decided to move its business or a substantial part of it away

⁹⁵ Form CO, Table 20 and paragraphs 263, 266 and 338.

⁹⁶ Form CO, paragraphs 334-338 and 548.

⁹⁷ Responses to questionnaire 1 to competitors, question D.B.B.3, and to questionnaire 2 to customers, question D.B.B.2.

⁹⁸ Responses to questionnaire 1 to competitors, question D.B.B.3, and to questionnaire 2 to customers, question D.B.B.2.

⁹⁹ Responses to questionnaire 1 to competitors, question D.B.B.3.

¹⁰⁰ Responses to questionnaire 1 to competitors, question D.B.B.3.

¹⁰¹ Responses to questionnaire 1 to competitors, question D.B.B.3, and to questionnaire 2 to customers, question D.B.B.2.

¹⁰² Minutes of a call with a customer, 13 January 2023; minutes of a call with a customer, 18 January 2023; minutes of a call with a competitor, 20 January 2023; minutes of a call with a customer, 17 March 2023.

¹⁰³ Form CO, Tables 45 and 46: [customer entities] together approx. [...]% of the Targets' total fund administration revenues in Belgium in 2021, and [...]% in 2022. This relationship is the result of [customer relationship].

from the Targets, this could have a material effect on the stability of the Targets' market share.

- (91) *Third*, the market investigation confirmed that a number of strong competitors remain in the market post-Transaction. The competitors responding to the Commission's market investigation consider KBC, Degroof Petercam, Capfi Delen and BNP Paribas to be stronger providers of fund administration services in Belgium than either of the Parties.¹⁰⁴ The customers that responded to the Commission's market investigation consider CACEIS and RBC as suitable suppliers but also rated other providers similarly or as more suitable for their needs, including BNP Paribas and Capfi Delen.¹⁰⁵
- (92) *Fourth*, the Commission's market investigation indicated that entry into the Belgian fund administration market and/or building in-house capabilities could be possible within a relatively short period of time for players that are already active in neighbouring product markets and/or currently provide the services in-house but not on the merchant market.¹⁰⁶
- (93) *Fifth*, market participants responding to the Commission's market investigation confirmed that switching fund administration providers is possible, in particular for new funds. The majority of customers consider switching fund administrators for new funds to be easy or very easy, whereas the majority of competitors said it may represent a project but does not cost a significant or a prohibitive amount of time or money.¹⁰⁷ As regards switching for existing funds, the majority of competitors consider that switching may represent a project but does not cost a significant or a prohibitive amount of time or money, whereas the majority of customers consider it to be difficult and costly.¹⁰⁸
- (94) However, a number of market participants contacted during the Commission's market investigation confirmed that switching sometimes occurs during a lifetime of a fund in response to quality issues.¹⁰⁹ Moreover, the majority of customers responding to the Commission's market investigation tend to regularly run new RfPs or renegotiate contractual terms, e.g., by using benchmarking information or threatening to switch part of all of their business.¹¹⁰
- (95) *Finally*, market participants view the Transaction neutrally and expect sufficient alternative supplier to remain in the market. The clear majority of customers and

¹⁰⁴ Responses to questionnaire 1 to competitors, question D.B.B.1; e.g., minutes of a call with a customer, 13 January 2023; and minutes of a call with a competitor, 1 February 2023.

¹⁰⁵ Responses to questionnaire 2 to customers, question D.B.B.1.

¹⁰⁶ Minutes of a call with a customer, 13 January 2023; Minutes of a call with a customer, 13 March 2023; A third party's response of 30 January 2023 to an RFI of 23 January 2023; and a third party's response of 1 February 2023 to an RFI of 23 January 2023.

¹⁰⁷ Responses to questionnaire 1 to competitors, question D.B.1, and to questionnaire 2 to customers, questions D.B.6.

¹⁰⁸ Responses to questionnaire 1 to competitors, question D.B.1, and to questionnaire 2 to customers, questions D.B.6. Some customers explained that switching occurs from time to time during a lifetime of a fund following quality issues, see minutes of a call with a customer, 11 January 2023 and minutes of a call with a customer, 19 January 2023.

¹⁰⁹ Minutes of a call with a customer, 11 January 2023; minutes of a call with a customer, 19 January 2023.

¹¹⁰ Responses to questionnaire 2 to customers, questions D.B.3 and D.B.5.

competitors that responded to the Commission’s market investigation consider the impact of the Transaction to be either neutral or positive on their business, the overall fund administration market in Belgium and in the EEA and on competitive parameters including pricing, quality and innovation.¹¹¹ Furthermore, the majority of customers that responded to the Commission’s market investigation confirmed that sufficient suitable fund administration suppliers will be available in Belgium post-Transaction.¹¹²

- (96) 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 Belgium.

5.2. Vertically affected markets

5.2.1. Legal framework

- (97) 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.¹¹³

- (98) 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.¹¹⁴ 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.¹¹⁵

- (99) 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 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.¹¹⁶

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

- (100) The Targets are not active in the upstream market for the provision of local custody services. CACEIS is active in local custody services in France with a market share

¹¹¹ Responses to questionnaire 1 to competitors, questions E.1.a-E.1.e, and to questionnaire 2 to customers, questions E.1.a-E.1.e.

¹¹² Responses to questionnaire 2 to customers, questions E.2.

¹¹³ Non-horizontal Merger Guidelines, paragraph 18.

¹¹⁴ Non-horizontal Merger Guidelines, paragraph 32.

¹¹⁵ Case T-370/17 *KPN v Commission*, EU:T:2019:354, paragraph 119.

¹¹⁶ Non-horizontal Merger Guidelines, paragraph 59.

[10-20]%.¹¹⁷ As presented in Table 1 above, the Parties' combined market share in global custody (downstream) in France is [30-40]%. Therefore, an affected vertical link arises between local custody and global custody in France.¹¹⁸

5.2.2.1. The Notifying Party's view

(101) The Notifying Party submits that the Transaction will not result in customer foreclosure on the markets for local custody services (upstream) and global custody services (downstream) in France because: (i) there is no overlap upstream; (ii) the increment on the downstream market is *de minimis* at [0-5]-point and the combined post-merger share is [30-40]%; and (iii) sufficient alternative providers remain available downstream including BNP Paribas, Société Générale and CMC CIC.¹¹⁹

5.2.2.2. The Commission's assessment

(102) 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.

(103) *First*, the vertical link is largely pre-existing, since CACEIS is already active both upstream and downstream. The Targets are not active upstream. The increment from the Targets downstream is [0-5]-point, which represents a very small change in market power.

(104) *Second*, as explained in Section 5.1.2.3 above, the Commission's market investigation confirmed that sufficient customers, i.e. providers of global custody services, will remain downstream.¹²⁰

(105) *Third*, the majority of responding competitors and customers stated that they are not concerned that the Parties would stop providing, or provide with less favourable terms, local custody services to competing global custody providers post-Transaction.¹²¹

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

(106) As presented in Table 1 above, the Parties' combined market share in the upstream market for global custody in France is [30-40]%. The Targets are not active in the downstream market for asset management. Crédit Agricole SA is active in asset

¹¹⁷ Form CO, paragraphs 283-284, 292-293, 384-385 and Tables 25 and 40. The Notifying Party submits that its market share in local custody has not significantly varied over the last three years.

¹¹⁸ Input foreclosure for this vertical link is not assessed further in this decision as it can be excluded *a priori* due to the low market share ([10-20]%) of CACEIS in the upstream market. The rest of this section therefore focuses on customer foreclosure.

¹¹⁹ Form CO, paragraphs 386-401.

¹²⁰ Responses to questionnaire 1 to competitors, questions D.A.1 and D.A.2, and to questionnaire 2 to customers, question D.A.11.

¹²¹ Responses to questionnaire 1 to competitors, question E.2, and to questionnaire 2 to customers, question E.2.

management in France with a market share of [20-30]%.¹²² Therefore, an affected vertical link arises between global custody and asset management services in France.¹²³

5.2.3.1. The Notifying Party's view

(107) The Notifying Party submits that the Transaction will not result in input foreclosure on the markets for global custody services (upstream) and asset management services (downstream) in France because: (i) the vertical link is largely pre-existing since CACEIS is already active both upstream and downstream; (ii) there is no overlap downstream, meaning that the Transaction will not change the incentive to foreclose; (iii) the increment on the upstream market is *de minimis* at [0-5]-point and the combined post-merger share is [30-40]%; and (iv) the post-merger entity will face competitive constraint from strong players in the upstream market, the largest of which (BNP Paribas) is vertically integrated, meaning that the combined entity would lack significant market power and therefore ability to pursue a foreclosure strategy.¹²⁴

5.2.3.2. The Commission's assessment

(108) 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 global custody upstream and asset management downstream, regardless of the precise market definition, for the following reasons.

(109) *First*, the vertical link is largely pre-existing, since Crédit Agricole SA is already active both upstream and downstream. The increment from the Targets upstream is [0-5]-point, which represents only a very small change in market power. The Targets are not present downstream. Indeed, the low increment upstream and the lack of overlap downstream would point to low potential gains in the case of foreclosure.

(110) *Second*, as explained in Section 5.1.2.3 above, the Commission's market investigation confirmed that sufficient competitors, i.e. providers of global custody services, will remain upstream post-Transaction.¹²⁵

(111) *Third*, the majority of responding competitors and customers stated that they are not concerned that the Parties would stop providing, or provide with less favourable terms, global custody services to competing providers of asset management services post-Transaction.¹²⁶

¹²² Form CO, paragraphs 402 et seq., and Table 41.

¹²³ Customer foreclosure for this this vertical link is not assessed further in this decision as it can be excluded *a priori* due to the low market share ([20-30]%) of CACEIS in the downstream market. The rest of this section therefore focuses on input foreclosure.

¹²⁴ Form CO, paragraphs 405-418.

¹²⁵ Responses to questionnaire 1 to competitors, questions D.A.1 and D.A.2, and to questionnaire 2 to customers, question D.A.11.

¹²⁶ Responses to questionnaire 1 to competitors, questions E.2, and to questionnaire 2 to customers, questions E.2.

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

(112) As presented in Tables 2 and 3 above, the Parties' combined market share in the upstream market for fund administration services is [40-50]% in France and [10-20]% in Belgium. The Targets are not active in the downstream market for asset management in France or in Belgium. Crédit Agricole SA is active in asset management in France with a market share of [20-30]%.¹²⁷ Therefore, an affected vertical link arises between fund administration and asset management services in France.¹²⁸

5.2.4.1. The Notifying Party's view

(113) The Notifying Party submits that the Transaction will not result in input foreclosure on the markets for fund administration services (upstream) and asset management services (downstream) in France because: (i) the vertical link is largely pre-existing since Crédit Agricole SA is already active both upstream and downstream; (ii) there is no overlap downstream, meaning that the Transaction will not change the incentive to foreclose input; (iii) the increment on the upstream market is *de minimis* at [0-5]-point and the combined post-merger share is [40-50]%; (iv) the post-merger entity will face competitive constraint from strong players in the upstream market, one of which (BNP Paribas) is vertically integrated, meaning that downstream customers have alternative suppliers; and (v) there are strong competitors on the downstream market for asset management in France, including Natixis, AXA IM and BNP Paribas, who have strong bargaining power *vis-à-vis* Crédit Agricole SA.¹²⁹

5.2.4.2. The Commission's assessment

(114) 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.

(115) *First*, the vertical link is largely pre-existing, since Crédit Agricole SA is already active both upstream and downstream. The increment from the Target upstream in the provision of fund administration services in France is [0-5]-point, which represents only a small change in market power. The Targets are not active downstream. Indeed, the low increment upstream and the lack of overlap downstream would point to low potential gains in the case of foreclosure.

(116) *Second*, as explained in Section 5.1.3.3.3 above, the Commission's market investigation confirmed that sufficient competitors, i.e. providers of fund administration services, will remain upstream post-Transaction.¹³⁰

¹²⁷ Form CO, paragraphs 172 and, 402 *et seq.*, and Tables 7 and 41.

¹²⁸ Customer foreclosure for this this vertical link is not assessed further in this decision as it can be excluded *a priori* due to the low market share ([20-30]%) of CACEIS in the downstream market. The rest of this section therefore focuses on input foreclosure.

¹²⁹ Form CO, paragraphs 423-436.

¹³⁰ Responses to questionnaire 1 to competitors, question D.B.A.1, and to questionnaire 2 to customers, question D.B.A.1.

- (117) *Third*, the majority of responding competitors and customers stated that they are not concerned that the Parties would stop providing, or provide with less favourable terms, fund administration services to competing providers of asset management services post-Transaction.¹³¹

6. CONCLUSION

- (118) 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

¹³¹ Responses to questionnaire 1 to competitors, question E.2, and to questionnaire 2 to customers, question E.2.