



DETERMINATION OF MERGER NOTIFICATION M/18/032 - PHOENIX/SLAL

Section 21 of the Competition Act 2002

Proposed acquisition by Phoenix Group Holdings of sole control of Standard Life Assurance Limited

Dated 28 May 2018

Introduction

1. On 1 May 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended ("the Act"), the Competition and Consumer Protection Commission (the "Commission") received a notification of a proposed transaction whereby Phoenix Group Holdings ("Phoenix") would acquire sole control of Standard Life Assurance Limited ("SLAL") and certain of its subsidiaries (the "Proposed Transaction").
2. The Proposed Transaction will be implemented pursuant to a sale and purchase agreement ("SPA") dated 23 February 2018 and amended and re-stated on 28 May 2018, between Phoenix and Standard Life Aberdeen Plc ("SLA"), which is the ultimate parent company of SLAL. Under the terms of the SPA, Phoenix will acquire the entire issued share capital and thus sole control of SLAL.

The Undertakings Involved

Phoenix

3. Phoenix is a UK-focused consolidator of closed life insurance funds.¹ Its business model is to acquire and manage closed life and pension funds, generating efficiencies through economies of scale.² Phoenix writes limited new policies (only as increments to existing policies, annuities for current policyholders when their policies mature, and a limited

¹ Closed life funds are life insurance and pension funds which are closed to new business.

² PWC: European Life Insurance Back Book Management 2017:

<https://www.pwc.co.uk/audit-assurance/assets/pdf/european-life-book-survey-2017.pdf>



set of direct protection policies). Phoenix's activities are conducted almost entirely in the UK. Phoenix is listed on the London Stock Exchange.

4. In the State, Phoenix controls Pearl Group Management Services (Ireland) Limited ("PGMSIL"), a management service company incorporated in the State which provides administration services to Scottish Mutual International DAC ("SMI"), which is also located in the State. SMI was formerly owned by Phoenix and was sold by Phoenix to Harcourt Life Ireland DAC in 2015.³ When Phoenix sold SMI to Harcourt Life Ireland DAC, it was agreed that PGMSIL would continue to provide administration services to SMI for a transitional period. Phoenix also manages a closed book of life insurance products in the State under the brand, *Phoenix Ireland*.⁴
5. For the financial year ending 31 December 2017, Phoenix's worldwide turnover was approximately €1.3 billion, of which approximately €[...] was generated in the State.

SLAL

6. SLAL is a provider of long-term savings and investment propositions, primarily based in the UK. SLAL represents the majority of SLA's current UK and European life insurance business.
7. In the State, SLAL provides savings, investments and pensions products and services to retail customers located in the State, predominantly through financial intermediaries such as brokers. SLAL has approximately [...] policies in the State. SLAL does not offer group or corporate products in the State, but it does have a closed book of corporate pension schemes.
8. In addition, Standard Life International DAC ("SLIDAC"), a wholly-owned subsidiary of SLAL, is located in the State and sells tax efficient savings vehicles to customers located in the UK.

³ Harcourt Life has acquired a number of closed book undertakings since 2015, including Scottish Mutual International DAC, Augura Life Ireland DAC and Union Heritage Life Assurance Company DAC. Following the approval of the High Court of Ireland of a scheme of transfer, with effect from 31 March 2018 these portfolios of life business have now been amalgamated within Harcourt Life Ireland DAC.

⁴ http://www.phoenixireland.com/about_us.html



9. For the financial year ending 31 December 2017, SLAL's worldwide turnover was approximately €17.5 billion, of which approximately €[...] was generated in the State.

Rationale for the Proposed Transaction

10. The Parties state the following in the notification:

“The Proposed Transaction gives Phoenix the opportunity to enlarge its business as a manager of life insurance and pension funds, applying its specialist skills in the management of this type of business, and is expected to deliver cost and capital synergies and enhance Phoenix's cash flows and dividend sustainability.”

Third Party Submissions

11. No submission was received.

Competitive Analysis

Horizontal Overlap

12. There is a horizontal overlap between the activities of Phoenix and SLAL in the State with respect to the supply of closed life insurance products.

Relevant Markets

13. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In previous decisions relating to the insurance sector, the European Commission has distinguished between product markets for life insurance/assurance, non-life insurance and re-insurance.⁵ In another decision, the European Commission has further considered segmenting the overall life insurance market according to the purpose served by the product, distinguishing between: (i) pure protection products; (ii) savings and investment products; and (iii) pension products.⁶ However, the European Commission did not definitively conclude as to whether these segments constitute distinct product markets.

⁵ See Case COMP/M.6883 – Canada Life / Irish Life, paragraphs 9-11.

⁶ See COMP/M.4701 Generali/PPF Insurance business, COMP/M.6521 Talanx International Meiji Yasuda Life insurance/Warta.



14. In addition, given that certain life insurance products can be offered on both a group and individual basis, the European Commission has considered a possible segmentation of these potential product markets between group and individual products.⁷ However, the European Commission has not taken a definitive view as to the precise scope of the relevant product market in any of the decisions referred to above.
15. The Commission has followed a similar approach to the European Commission when defining markets in previous merger assessments in the insurance sector in the State, for example, in M/18/002 Aviva/Friends First⁸, Standard Life/Aberdeen (M/17/023)⁹ and Liberty/Ironshore (M/17/010)¹⁰. However, the Commission has not reached a final conclusion on the scope of the relevant product market or markets in this sector.
16. In the UK, a number of merger decisions of the Competition and Markets Authority (and of its predecessor, the Office of Fair Trading), for example, ME/3428/07 Pearl/Resolution¹¹, ME/3429/07 Royal London/Resolution¹² and ME/3299/07 Resolution/Friends Provident¹³, comment specifically on whether open book and closed book life insurance products may form separate product markets, but do not reach a definitive conclusion on this point.
17. In this instance, the Commission does not need to come to a definitive view on the precise relevant product market since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is broad (e.g., a single product market for the provision of all life insurance products) or narrow (e.g., separate product markets for the provision of open book life insurance products and for closed book life insurance products). In this instance, the Commission has assessed the likely competitive impact of the Proposed Transaction with reference

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

8 <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m18002-friends-firstaviva/>

9 <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m17023-standard-lifeaberdenn/>

10 <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/mergers-competition-consumer-protection-act-criminal-enforcement-civil-competition-enforcement-consumer-enforcement-mergers-acquisitions-m17010-libertyironshore/>

11 <https://assets.publishing.service.gov.uk/media/555de3aa40f0b669c40000c5/Pearl.pdf>

12 <https://assets.publishing.service.gov.uk/media/555de3a740f0b666a20000a6/RoyalLondon.pdf>

13 <https://assets.publishing.service.gov.uk/media/555de3a8e5274a70840000ba/Resolution.pdf>



to both broad (i.e. the provision of all life insurance products) and narrow (i.e. the provision of closed book life insurance products) potential product markets.

18. With respect to the geographic scope of the relevant potential product markets, the parties state in the notification that “the CCPC and European Commission precedents indicate that life insurance markets are national.” In order to determine whether the Proposed Transaction might result in a substantial lessening of competition in the State, the Commission has analysed its competitive impact by reference to the State. The Commission considers that there is no reason to depart from this approach for the purposes of assessing the likely impact of the Proposed Transaction on competition.

Competitive assessment

19. The life insurance sector in the State is mature and relatively stable. Life insurance products are typically priced on the basis of annual premiums or commissions. Life insurance products are sold directly, via brokers or via bancassurance.
20. Life insurance providers differentiate their offerings on the basis of price but also on the basis of service and innovative features, for example, the quality of online access platforms.

Relative market shares

21. Table 1 below presents estimated market shares of providers of life insurance products in the State in 2015.¹⁴

Table 1: Estimated market shares of providers of life insurance products in the State in 2015

Provider of life insurance products	Market share, 2015
SLAL	12.7%
Phoenix	<0.2%
Irish Life	39.5%

¹⁴ Market shares are calculated by reference to Total Premium Income i.e. single and annual premiums paid by customers.



New Ireland	15.5%
Zurich	19.7%
Aviva/Friends First	9.9%
Others ¹⁵	Approximately 2.6%

Source: Central Bank of Ireland Insurance Statistics 2015, Table 3 – Total Premium Income.

22. Table 1 shows that Phoenix's share of the provision of life insurance products is less than 0.2% and SLAL's market share is 12.7%. Therefore, post-transaction the combined market share of the parties will remain virtually unchanged. The CCPC considered market share estimates (taken from Central Bank of Ireland data) based on a number of measures: Total Premiums, Investment Income and Assets Under Management. Post-transaction, by any of these measures, the increase in the market share of the combined entity will remain minimal. In addition, there will remain four significant and large competitors to Phoenix, namely Irish Life, Zurich, New Ireland and Aviva/Friends First, who collectively account for approximately 84.6% of the potential market for the provision of life insurance products in the State (with market shares of 39.5%, 19.7%, 15.5% and 9.9%, respectively).
23. The Commission therefore considers that the Proposed Transaction will not give rise to horizontal competition concerns in relation to the potential broad market for the provision of life insurance products in the State.
24. The Commission also considered a potential narrower market for the provision of closed book life insurance products in the State. The life insurance products managed by Phoenix in the State are closed book only. Closed book life insurance products do not compete for new customers. Accordingly, Phoenix does not compete with SLAL for new customers. Furthermore, Phoenix faces competition in acquiring closed book insurance

¹⁵ The sum in this table does not add up to 100% as there are a number of smaller providers of life insurance in the State with shares amounting to less than 1%. The Central Bank's insurance statistics lists 75 life insurance companies operating in the State.



products both from life insurance companies and other financial institutions. In its decision ME/3428/07 Pearl/Resolution, the UK's Office of Fair Trading (which is now the Competition & Markets Authority) noted that there was a wide range of potential purchasers of closed books (such as other insurance companies, banks, hedge funds and private equity firms).¹⁶

25. On the basis of the above information, the Commission considers that the Proposed Transaction will not give rise to horizontal competition concerns in relation to the potential narrow market for the provision of closed book life insurance products in the State.

Vertical Relationship

26. The parties have stated in the notification that there is no vertical relationship between Phoenix and SLAL. The Commission has not identified any vertical relationship between Phoenix and SLAL in the State. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

27. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

28. The SPA contains non-solicitation and non-compete obligations on Standard Life Aberdeen Plc in relation to any business which competes in any material respect with Phoenix's business of providing and administering pensions and long-term savings products in [...], [...], [...]and [...] for [...] following completion of the Proposed Transaction. The duration of the restrictive obligations does not exceed the maximum duration acceptable to the Commission.¹⁷ The Commission considers the non-compete and non-solicitation obligations, in the form contained in the SPA submitted to the

¹⁶ <https://assets.publishing.service.gov.uk/media/555de3aa40f0b669c40000c5/Pearl.pdf> (pars 21-22)

¹⁷ In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



Commission with the notification, to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Phoenix Group Holdings would acquire sole control over Standard Life Assurance Limited and certain of its subsidiaries, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh
Member
Competition and Consumer Protection Commission