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IMPACT ASSESSMENT

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COMMISSION REGULATION (EU) No ../..

**on the application of Article 101(3) of the Treaty on the Functioning of the European Union
to certain categories of agreements, decisions and concerted practices in the insurance
sector**

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ANNEX IV

RELEVANT INSURANCE MARKET

1. In order for insurance undertakings to assess the effects on competition of an agreement for the purposes of Article 101, it is first necessary to carefully define the relevant product and geographic market(s).
2. The main purpose of market definition is to identify in a systematic way the competitive constraints faced by an undertaking. The methodology adopted by the Commission for its definition of the relevant market in its Notice on the definition of the relevant market for the purposes of EU competition law¹ is normally based on an analysis of the substitutability of demand and supply. The relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by consumers, by reason of the products' characteristics, their prices and their intended use.
3. Given that substitutability of demand is theoretically zero, as the insurance of each risk category and even of specific risks within each category is not substitutable for the insured person for whom each insurance policy is unique, supply substitutability is particularly important in market definition analysis. An analysis of the substitutability of supply reveals that different types of risk can often be included in a single product market, since the conditions needed to insure them are similar. This suggests that different types of non-life insurance could be included in the same product market.² The conditions which may allow the insurance of different risks to be included in a single product market, are, inter alia, laws and regulations applicable, the distribution channels, the necessary expert know-how and the characteristics of the risk (frequency and scale of claims).
4. The Commission has generally distinguished between three large categories of insurance products: life insurance, non-life insurance and reinsurance³. In relation to life insurance the Commission has considered in previous decisions the following segmentations: life-individual, life-group and unit linked, or, alternatively, individual protection, group protection, personal pension, group pensions, savings and investments.⁴ In relation to non-life insurance the Commission has previously considered inter alia motor, fire, transport, health, property, general civil liability, casualty, litigation, working accidents and credit insurance.⁵ The precise segmentation of the non-life insurance markets retained in different cases has differed slightly from case to case, given in particular the classifications made of insurance under national laws⁶.
5. Although the Commission has not previously concluded definitively on the matter, it has been suggested that life and non-life insurance can be divided into as many product markets as there

¹ OJ C372, 9.12.1997, p.5.

² See e.g. Case No. COMP/M.4284 *Axa/Winterthur Decision* 27.07.2006 and decision quoted therein.

³ See e.g. Case No. COMP/M.4284 *AXA/Winterthur Decision* 27.07.2006, Case No. COMP/M.4701 *Generali/PPF Insurance Business Decision* 13.12.2007 and Case No. COMP/M.2676 – *Sampo/Varma/If Holdings/JV*, Decision 18/12/2001 and decisions quoted therein;

⁴ See e.g. Case No. COMP/4047 *Aviva/Ark life* 20/01/2006, Case No. COMP/M.4284 *Axa/Winterthur* 27/07/2006 and Case No. COMP/M.4701 *Generali/PPF Insurance Business* 13/12/2007.

⁵ See e.g. Case No. COMP/M.4284, *Axa/Winterthur*, Decision 27.07.2006, Case No. COMP/M.4701 *Generali/PPF Insurance Business*, Decision 03.12.2007; Case No. M.2676 *Sampo/Vama/IF Holding/JV*, 18/12/2001; Case No. COMP/M.2400

⁶ See e.g. Case No. COMP/M.5083 *Groupama/OTP Garancia* Decision 10.3.2008

are different kinds of risks covered, given that their characteristics, premiums and purposes are distinct and that there is typically no substitutability from the consumer's perspective between certain different risks insured, e.g. life-individual, life-group and unit linked for life insurance; motor, fire, transport, health, property, general civil liability, casualty, litigation, work accidents, and for non-life insurance⁷.

6. The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas⁸. In the insurance sector, the geographic market must be defined essentially by the actual cross-frontier provision of services: if customers unable to find appropriate insurance in their own countries obtain cover in another country, the market is international; if not, the market is national. Primary insurance markets for most risks tend to be national in scope, even when they are primarily served by consolidated multinational insurance groups. This is for a variety of reasons. The Commission in its previous merger decisions has defined the markets for life and non-life insurance as being mainly national in scope as a result of national distribution channels, established market structures, fiscal constraints and differing regulatory systems.⁹ Only in the case of reinsurance and non-life insurance covering large commercial risks were markets considered to be wider than national.
7. Insurance contracts for most risks are under written, and subject to, general national contract law as well as specific insurance law, and liability issues similarly arise under national law which may substantially vary from one jurisdiction to another. In addition, there is a need for a local presence, often for distribution and always for claims settlement, and language issues may arise.
8. It is also possible that an undertaking operates on a market larger than its domestic market but smaller than the world market (e.g. the European Union) or operates simultaneously on several geographic markets having different competitive conditions.
9. In some cases, the Commission's Services have defined the relevant product or geographic market in a broad way (e.g. an Austrian pool for international transport risks which appeared to obtain around one-third of its turnover abroad was considered to operate on a geographic market which was wider than Austria; the market share of another Austrian pool dealing with the insurance of Volkswagen-type cars was determined with reference to the wider product market for car insurance; and an Italian pool providing entrepreneurs or contractors with insurance against late delivery of their work was considered to operate in competition with financial institutions providing such companies with bank guarantees against the same event)¹⁰.
10. Entry for insurers seeking to enter new national markets has, to date, usually been through acquisition of a local company which becomes a subsidiary of the acquirer. Greenfield entry is uncommon. National markets tend as a consequence to be quite concentrated, especially in the major risk categories.

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ibid

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Notice of the Commission on the Definition of the Relevant Market for the Purposes of EU Competition Law, referred to above, paragraph 8.

⁹

See Case No COMP/M.4284 - AXA/Winterthur, para. 17.

¹⁰

Report from the Commission to the Council and the E P on the operation of the Commission Regulation n° 3932/92 concerning the application of Article 101 (ex-Article 85), paragraph 3, of the Treaty to certain categories of agreements, decisions and concerted practices in the field of insurance, p 16.