

Anticipated acquisition by Royal London Mutual Insurance Society of certain assets and business of Resolution plc

No. ME/3429/07

The OFT's decision on reference under section 33(1) given on 28 December 2007. Full text of decision published 18 January 2008.

Please note that square brackets indicate figures or text which have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Royal London Mutual Insurance Society Limited (Royal London)** is a mutual life insurance company, providing life protection, pensions and investment products in the UK.
2. **Resolution plc (Resolution)** is a specialist manager of life funds which operates closed and open funds, seeks to acquire closed funds and operates an asset management business. Resolution's UK turnover in 2006 was [greater than £70 million].

TRANSACTION

3. Royal London will be purchasing certain Resolution assets and businesses relating to Resolution's new business capability (including that of the off-shore life protection business) and in-force funds. This transaction will be carried out after Pearl Group Ltd (Pearl) has completed the acquisition of the whole of Resolution,¹ partly using finance provided by Royal London (which will then be used as a part payment for the on-sale). In the interim

¹ The OFT has assessed this merger under a separate decision. See OFT decision of 28 December 2007 on the anticipated acquisition by Pearl Group Ltd of Resolution plc.

period until the on-sale, Resolution and Royal London will have joint control over those assets to be sold. Although Pearl and Royal London envisage that the joint control will be limited in scope and time (up to three months), the OFT has taken a cautious approach and completed its assessment on the basis that Royal London will be acquiring control over the whole of Resolution.

4. Royal London notified the OFT on 23 November 2007. The extended statutory deadline is 9 January 2008.

JURISDICTION

5. As a result of this transaction Royal London and Resolution will cease to be distinct. The UK turnover of Resolution exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

FRAME OF REFERENCE

6. Royal London and Resolution overlap in the provision of asset management and the provision of life insurance products and services in the UK. This gives rise to overlaps in the markets for life insurance, consolidators of closed funds, off-shore life insurance and asset management, each of which are considered below.

Life insurance

Product market

7. Life insurance is a contract between the policy owner and the insurer, whereby the insurer agrees to pay a sum of money on the occurrence of the policy owner's (or some other named person's) death, attainment of a particular age or succumbing to a critical illness. In return, the policy owner agrees to pay a premium at regular intervals, which may be invested by the fund in a number of ways (including equities, property, fixed interest securities and cash deposits).

8. Life insurance can be segmented into three sub-categories: protection policies, pensions and annuities policies, and investment savings products. Previous OFT decisions have not reached a conclusion on whether the three products should be considered in the same frame of reference.² Royal London submitted that there was a degree of supply-side substitutability within the life insurance product market, as most insurance providers are present in most, if not all, parts of the market and that most life insurance products satisfy similar consumer needs and can therefore be considered demand-side substitutes.
9. One competitor considered that, depending on the context, the three categories of life insurance should be considered as separate markets, while another competitor that responded to the OFT information request agreed with Royal London's approach. Further segmentation may be also possible between with-profits and non-profit funds³ and between closed and open funds.⁴
10. The OFT has considered the various frames of reference described above in the context of the present case. However, given that the merger raises no competition issues even on the narrower frames of reference, the OFT does not consider it necessary to conclude on the appropriate frame(s) of reference in this case.

Geographic market

11. Royal London submits there is a separate UK market for the provision of life insurance products. Despite a trend towards intra-community selling, the European Commission in *Axa/Wintherthur*⁵ noted that markets remain national in scope as a result of national distribution channels, established market structures, fiscal constraints and differing regulatory regimes. In the absence of evidence to suggest a sufficient number of individuals look

² See OFT decision of 10 August 2005 on the anticipated acquisition by Britannic Group plc of Resolution Life Group Limited; and, the OFT decision of 12 October 2007 on the anticipated acquisition by Resolution plc of Friends Provident plc.

³ A non-profit policy is one where the value of the policy is linked directly to the performance of the underlying assets or guaranteed by the insurer; a with-profits policy is one where payouts are determined by bonuses declared by the insurer.

⁴ Closed funds are those that no longer accept new business and are managed solely for existing policy holders, who can continue to top up their policy. Conversely, open funds continue to write new business and accept new customers.

⁵ COMP M.4284, EC decision of 28 August 2006.

beyond the UK for life insurance, the OFT considers the UK to be the relevant geographic frame of reference.

Consolidators of closed funds

Product market

12. Some companies, such as Resolution, specialise in and actively buy closed funds, which may indicate that there is a market for such 'consolidators' of closed life funds and past cases have acknowledged that it may be the case that consolidators of closed funds form a separate frame of reference.⁶
13. The transaction raises no competition concerns on any basis, particularly as Royal London is not active in the acquisition and consolidation of closed funds, and it is therefore not necessary to conclude whether consolidators form a separate product frame. However, as it would be relatively simple for Royal London to become an active acquirer of closed funds, the competitive assessment takes a cautious approach and considers the consolidation of closed funds as a separate frame of reference.

Geographic market

14. A number of the bidders in auctions for closed funds detailed in information submitted by the notifying parties are from outside the UK. However, in the absence of any conclusive evidence, the OFT takes a cautious approach and considers the geographic frame to be UK wide.

Off-shore life insurance

Product market

15. Off-shore life insurance allows funds to be invested in a low-tax jurisdiction which is not the policy holder's country of residence. While supply side substitution appears straightforward (most suppliers of off-shore life

⁶ See OFT decision of 6 May 2005 on the completed acquisition by Britannic Assurance plc of Allianz Cornhill Insurance plc's life operations; OFT decision of 16 August 2005 on the anticipated acquisition by Britannic Group plc of Resolution Life Group Limited; and, the OFT decision of 12 October 2007 on the anticipated acquisition by Resolution plc of Friends Provident plc.

insurance are also suppliers of onshore life insurance), it is acknowledged that from a demand perspective, investors may prefer off-shore investments where there are greater potential gains than from a fund subject to a different taxation regime. Such a return may or may not be greater than an equivalent 5-10 percent increase in premiums and as such off-shore funds may not be considered substitutable with onshore life insurance. While no competition concerns arise on either basis, the competitive assessment takes a cautious approach and considers off-shore life insurance as a separate frame of reference.

Geographic market

16. While it is straightforward for consumers to be supplied by providers operating in different countries, some of the same factors that make onshore life insurance national in scope are also present, particularly national distribution channels and established market structures. While the competitive assessment does not materially differ under either a UK or global frame of reference, the OFT has not come to a conclusion but takes a cautious view for the purposes of the competitive assessment and the relevant frame of reference is considered to be the supply of off-shore life insurance to UK consumers.

Asset management

Product market

17. Royal London submits that asset management constitutes a single market incorporating the creation, establishment and marketing of retail pooled funds and the provision of portfolio management services. Operating a life fund involves ownership of the fund but also the management of the funds and administration of the policy portfolio. The latter two can be carried out internally, but also outsourced to third parties who may or may not themselves be life insurance providers or specialist asset management companies. In addition, we consider that firms which currently only provide asset management internally may be able to switch with relative ease to providing such services to third parties.

Geographic market

18. Royal London submits that the market is increasingly international. Past cases⁷ have noted that many asset management companies operate on an international basis but that a national presence can have a commercial advantage, particularly where customers have a preference for local managers. As the competitive assessment does not materially differ under either a global or UK market, the OFT takes a cautious view for the purposes of the competitive assessment and considers the frame of reference to be the UK.

HORIZONTAL ISSUES

Market shares

Life insurance

19. The OFT was provided estimates (taken from various independent sources such as Standard & Poor's and the Association of British Insurers) of shares of supply based on a number of measures: new business, net written premia and total long-term assets or assets under management (AuM). By any measure, the parties combined share and the increment are low. The industry is highly fragmented with numerous competitors and, post merger, Royal London would be the eleventh largest provider in the market with a share of supply of [0 – 5] percent (increment of [0 – 5] percent). Even if the market were considered to be narrower, such smaller segments outlined above, the parties' share in any segment would remain below [10 – 15] percent, with competition from a number of alternative suppliers and new non-traditional entrants.

⁷ For example *ISIS Asset Management/Foreign & Colonial* (OFT, August 2004).

Consolidators of closed funds

20. Royal London, while managing its own closed funds, does not seek to acquire or consolidate other closed funds. In comparison, there are a number of companies involved in acquiring closed funds, including a significant new entrant (Deutsche Bank) and a wide range of potential purchasers (other insurance companies, banks, hedge funds, private equity). There has been evidence of increasing price competition in auctions for closed funds over recent years, with a significant increase in prices paid to acquire closed funds between July 2004 and June 2007. The OFT did not receive any contrasting evidence in its investigation.

Offshore life insurance

21. Royal London submits that both they and Resolution write only relatively minor volumes of off-shore life insurance so that, post-merger, Royal London will account for less than [0 – 5] percent of the market based on new business premiums. Off-shore life insurance is a highly competitive sector with many other suppliers.

Asset management

22. Royal London estimates that the combined share of supply in the UK asset management service market to be less than [0 - 5] percent. Asset management is a highly competitive sector with a significant number of large players in the industry, many of whom specialise in asset management.

Barriers to entry and expansion

23. FSA authorisation is required to operate in the UK life insurance sector, however the Royal London submits that the life insurance sector is served by a wide range of third party administration firms (including insurance companies operating in other sectors) which would allow entry without major capital expenditure. Expertise is available at low cost through the highly competitive UK reinsurance market and there are low costs to access the network of brokers and independent financial advisors that make up an important distribution channel. Royal London estimates that it would take approximately 12 months for a new entrant to set up. For closed funds, it would require the acquisition of an existing life insurance

company. Royal London submits that there have been a number of acquisitions where competitors or potential competitors appear to have entered or bid with ease.

24. Royal London provided evidence of a number of recent new entrants such as existing insurance providers or financial services companies acquiring closed funds and non-traditional entrants with an established distribution network, such as supermarkets.

Buyer power

25. The parties customers are numerous and disparate, with none making up a significant share of either of the parties' respective businesses. Buyer power is highly unlikely however the lack of any competition concerns means that it is not necessary for the OFT to conclude on the matter.

VERTICAL ISSUES

26. The OFT is not aware of any vertical issues arising in this case.

THIRD PARTY VIEWS

27. The OFT received very few third party comments, receiving responses from just two competitors and one customer. None raised any merger-specific competition concerns.

ASSESSMENT

28. Royal London and Resolution overlap in the provision of asset management and life insurance products and services in the UK.
29. For the purposes of this assessment, the OFT has considered the impact of the anticipated transaction on the life insurance market in the UK, as well as the market for the consolidation of closed funds in the UK, the provision of off-shore life insurance in the UK and asset management in the UK. Although Royal London will only be purchasing a part of the business and assets of Resolution, the OFT has considered the impact as if Royal London purchased the whole of Resolution in case of any material influence that

may occur during the period of limited joint control between the time of the initial acquisition of the whole of Resolution by Pearl and the final on-sale.

30. On this basis, this merger raises no competition concerns given that shares of supply in any of the segments looked at under this competitive assessment are below [10 – 15] percent with increments below [0 – 5] percent, and that the market is fragmented with a number of larger competitors.
31. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

32. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.