

## **Anticipated merger between Just Retirement Group plc and Partnership Assurance Group plc**

**ME/6544-15**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 28 October 2015. Full text of the decision published on 27 November 2015.

**Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.**

### **SUMMARY**

1. Just Retirement Group plc (Just Retirement) has agreed to an all-share merger with Partnership Assurance Group plc (Partnership) (the Merger). Just Retirement and Partnership are together referred to as the Parties.
2. The Competition and Markets Authority (CMA) considers that the enterprises of the Parties will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of retirement income products to individuals, including annuities, care annuities, and equity release lifetime mortgages (LTMs), as well as in the supply of bulk annuity de-risking solutions to defined benefit pension schemes.
4. The CMA has assessed the Merger based on the prevailing conditions of competition. The CMA acknowledges that the recent reform of the rules relating to access to pension savings in the UK announced in the 2014 Budget (the Pension Reforms), which are designed to give consumers greater freedom over how to generate retirement income from their pension savings, has given rise to significant changes in demand for retirement income products. It also acknowledges the potential impact of the forthcoming implementation of the EU's Solvency II Directive (Solvency II) on the capital

requirements for retirement income product providers.<sup>1</sup> However, the CMA considers that the evidence available to it is not sufficient to identify an appropriate alternative counterfactual that should be adopted, other than the prevailing conditions of competition. The CMA has taken into account the changes brought about by the Pension Reforms and Solvency II where appropriate in its competitive assessment.

5. The CMA found in its merger investigation that there is limited substitutability between annuities that provide a guaranteed income for individuals in retirement and care annuities, which are a specific form of annuity for consumers who have long-term care requirements. Furthermore, based on the evidence it found, the CMA considers on a cautious basis that the specific features of other retirement income products, such as income drawdown and LTMs are not close substitutes for either annuities or care annuities. The CMA has therefore assessed the impact of the Merger in respect of (i) the supply of annuities (excluding care annuities) to individual customers in the UK, (ii) the supply of care annuities to individual customers in the UK, and (iii) the supply of bulk annuity de-risking solutions to defined benefit pension schemes in the UK.
6. In relation to the **supply of LTMs** to customers, there is limited overlap between the Parties and the third parties that responded to the CMA's merger investigation did not raise concerns. Therefore, the CMA does not believe that the Merger gives rise to a realistic prospect of a substantial lessening of competition in relation to the supply of LTMs and has not addressed this area in detail in this decision.
7. With respect to the **supply of annuities**, the CMA considered whether the Merger would give rise to unilateral horizontal effects, in particular in relation to the closeness of competition between the Parties in the supply of annuities underwritten on the basis of individuals' lifestyle factors and medical conditions (so-called 'enhanced' annuities). The CMA's merger investigation found that, while the Parties do compete closely, there are a number of strong competitors that will remain post-Merger. Furthermore, the CMA notes that in light of the recent reform of the rules relating to access to pension savings in the UK, which have had a dramatic impact on sales of annuities, assessing the Merger within a frame of reference comprising only annuities is a cautious approach and that going forward the Parties will also face significant constraints from providers of other retirement income products. Accordingly, the CMA does not believe that there is a realistic prospect that the Merger will

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<sup>1</sup> Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), 25 November 2009. See the [Banking and Finance](#) pages of the European Commission website for information on Solvency II.

result in a substantial lessening of competition in the supply of annuities in the UK.

8. With respect to the **supply of care annuities**, the CMA considered whether the Merger would give rise to unilateral horizontal effects, in particular arising from the reduction of the number of care annuity providers from three to two. The CMA's merger investigation found that Just Retirement is a weak recent entrant in the segment with a limited share of supply. The CMA considers that strong price competition will remain post-Merger between the merged entity and Aviva for the supply of care annuities and that alternative sources of funding for care, while not direct substitutes for care annuities, will also constrain the Parties post-Merger. Therefore, the CMA does not consider that there is a realistic prospect that the Merger will result in a substantial lessening of competition in the supply of care annuities in the UK.
9. With respect to the **supply of defined benefit bulk annuity de-risking solutions**, the CMA considered whether the Merger would give rise to unilateral horizontal effects, in particular arising from the closeness of competition between the Parties in the supply of medically underwritten defined benefit bulk annuity de-risking solutions. The CMA's merger investigation found that since their entry in 2012 both Parties have focused on differentiating their service proposition from that of existing providers through the use of medical underwriting. However, the CMA does not consider that there is a realistic prospect that the Merger will result in a substantial lessening of competition in the supply of defined benefit bulk annuity de-risking solutions because the Parties have a low combined share of supply and there are a number of significant, well-capitalised firms that compete with the Parties.
10. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the Act).

## **ASSESSMENT**

### **Parties**

11. Just Retirement is a specialist UK financial services group established in 2004 and listed on the London Stock Exchange since November 2013. Just Retirement focuses on the supply of retirement income products in the UK, providing annuities (including care annuities), LTMs, income drawdown products, and defined benefit scheme de-risking solutions. The turnover of Just Retirement in the financial year ending 30 June 2014 was approximately £1.2 billion, all of which was generated in the UK.

12. Partnership is a UK-based life insurance provider established in 1995 and listed on the London Stock Exchange since June 2013. Partnership also focuses on the supply of retirement income products in the UK, providing annuities (including care annuities), LTMs, and defined benefit scheme de-risking solutions. The turnover of Partnership in the financial year ending 31 December 2014 was approximately £760 million worldwide, of which approximately £[~~760~~] million was generated in the UK.

## Transaction

13. The Merger is a recommended all-share merger subject to the UK Takeover Code, pursuant to which Just Retirement will acquire the entire share capital of Partnership in exchange for its own shares in consideration. Following the Merger, Just Retirement's shareholders will hold approximately 60% and Partnership's shareholders will hold approximately 40% of the merged entity.
14. The Merger was announced on 11 August 2015 and is conditional on clearance by the CMA and consent from the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA).<sup>2</sup> The Parties announced a capital raise undertaken in connection with the Merger on 25 September 2015.<sup>3</sup> The Parties informed the CMA that the Merger is not the subject of review by competition authorities in any other countries.

## Jurisdiction

15. As a result of the Merger, the enterprises of Just Retirement and Partnership will cease to be distinct.
16. The UK turnover of Partnership exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
17. The CMA 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.
18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 4 September 2015 and the statutory 40 working day deadline for a decision is therefore 29 October 2015.

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<sup>2</sup> Just Retirement/Partnership, [Rule 2.7 Announcement](#), 11 August 2015.

<sup>3</sup> Just Retirement, [Placing and Open Offer Announcement](#), 25 September 2015; Partnership, [Issue of Equity](#), 25 September 2015.

## Background

19. Just Retirement and Partnership were both established as specialist pension annuities providers, developing and utilising medical underwriting in order to offer individual annuities aimed at attracting customers away from the provider with which they had accumulated their pension savings.<sup>4</sup> Accordingly, although each of the Parties has since diversified its product offering (eg into LTMs and bulk annuity de-risking solutions), both of them remain ‘decumulation’ product providers. That is, they provide products that allow individuals to obtain an income from accumulated pension funds, but do not themselves offer ‘accumulation’ products that allow individuals to build up such pension savings.
20. The CMA notes that without an ‘accumulation’ customer base, the ability of Just Retirement and Partnership to develop their annuity business as ‘challenger’ firms has been dependent on customers shopping around for a suitable product to provide them with income in retirement (commonly referred to as the ‘open market option’ or ‘OMO’). In that regard, the FCA has previously found that:
- many customers purchase annuities through their existing pension provider, despite the fact that shopping around on the open market and switching provider would often give them a higher income in retirement;<sup>5</sup> and
  - consumers’ tendency to buy annuities from their existing provider weakens competitive discipline because incumbent providers feel less pressure to offer competitive rates, with challenger firms finding it difficult to attract a critical mass of customers.<sup>6</sup>
21. The CMA therefore considers that challenger decumulation-only firms, such as the Parties, have to overcome significant customer inertia in favour of incumbent accumulation pension providers, which are able to leverage their existing relationships with customers.
22. There are broadly two channels through which consumers can purchase a retirement income product, both involving a financial intermediary: a sale with a personal recommendation (eg, following simplified, focused or full financial

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<sup>4</sup> For example, see the [Prospectus relating to the recommended all-share merger between Just Retirement and Partnership Assurance Group plc to create JRP Group plc](#), 28 September 2015, p98 onward and p117 onward.

<sup>5</sup> FCA, [Thematic Review of Annuities](#), February 2014. For example, the FCA found that in 2012, 60% of annuities were purchased through the customer’s existing pension provider or a third party with which their provider had an arrangement (p12) and that, overall, 80% of those purchasing an annuity from their existing pension provider would benefit from shopping around and switching (p14).

<sup>6</sup> FCA, [Retirement income market study: Final report](#), March 2014, paragraph 1.11.

advice) or a sale without a personal recommendation (eg, following the provision of information-only or execution-only services). Such retail investment advice is provided by pension providers themselves, independent financial advisers and other intermediaries, such as brokers. There has also been the development of other intermediary firms in the market, known as introducers, who introduce customers to sources of retail investment advice, typically through websites that offer an annuity comparison service.<sup>7</sup>

23. Challenger firms and incumbent pension providers seeking to win business in the open market have sought to build relationships with independent financial intermediary networks and price comparison websites. Following the Retail Distribution Review announced in 2006 by the then Financial Services Authority, new standards have been imposed on firms offering independent advice to ensure that clients receive unbiased and unrestricted advice. As part of these standards, which came into effect on 31 December 2012, firms should now be paid by charges or fees agreed upfront with clients, rather than commissions set by product providers.<sup>8</sup>
24. As a response to concerns about the annuities market not working well for consumers, the Chancellor of the Exchequer announced the Pension Reforms in the 2014 Budget.<sup>9</sup> In summary, whereas previously many defined contribution pension holders were restricted to purchasing an annuity, the Pension Reforms now allow them to: (i) take their pension savings as cash (in one lump sum or in smaller amounts over time, subject to 75% of the pot being charged income tax at the marginal rate); (ii) buy an annuity or other income-generating guaranteed product; (iii) use an income drawdown strategy (that is, leave their pension fund invested while drawing an income from it); or (iv) use a combination of the three options.<sup>10</sup>
25. Since the announcement of the Pension Reforms, and their subsequent implementation in April 2015, the market for the supply of retirement income products in the UK has been subject to significant change. Data from the Association of British Insurers (ABI) indicates that sales of annuities decreased significantly between Q1 2014 and Q1 2015,<sup>11</sup> and research carried out by the FCA suggests that sales have fallen even further since April 2015.<sup>12</sup> According to the FCA, sales of pension annuities fell from 89,896

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<sup>7</sup> FCA, [Retirement income market study: Interim Report](#), December 2014, p24.

<sup>8</sup> FCA, [Retirement income market study: Interim Report](#), December 2014, p31.

<sup>9</sup> HM Treasury, [Freedom and choice in pensions](#), 19 March 2014.

<sup>10</sup> FCA, [Retirement income market study: Interim Report](#), December 2014, p11.

<sup>11</sup> [ABI retirement income statistics Q1 2015](#).

<sup>12</sup> FCA, [Pension freedoms data collection exercise](#), analysis and findings, September 2015.

annuities sold in Q2 2013 to 20,600 annuities sold in Q1 2015 and 12,418 annuities sold in Q2 2015.<sup>13</sup>

26. The FCA's research also indicates that the most popular options for customers since the implementation of the Pension Reforms have been full encashment or income drawdown.<sup>14</sup> The FCA notes that the popularity of income drawdown and encashment post-April 2015 may reflect pent up demand from customers who have been waiting to be able to exercise their new rights since the Pension Reforms were announced.<sup>15</sup> However, research undertaken by Mintel suggests that recent trends in favour of income drawdown building a greater share of the sales of retirement income products are set to continue.<sup>16</sup> Overall, the CMA considers that, based on the evidence before it, it is clear that the Pension Reforms have had a dramatic effect on the retirement income market in terms of a significant decline in sales of annuities and a substantial increase in the number of pension holders opting for income drawdown or encashment.
27. The CMA also notes that the FCA expects a significant level of product innovation following the Pension Reforms, including through the development of managed drawdown products, capital and income guarantee products, and blended solutions combining a number of product offerings marketed in the form of 'retirement accounts'.<sup>17</sup> The Parties have submitted evidence that a number of retirement income providers have launched, or have announced they will launch in the near future, new types of 'hybrid' retirement income products or 'retirement accounts', which generally combine annuity and drawdown features and offer consumers a mix of guaranteed income and investment risk ('hybrid' products). The fact there is a significant level of innovation and product development taking place in response to the changes introduced by the Pension Reforms has been confirmed by third party responses to the CMA's merger investigation.
28. A further regulatory change that has a significant bearing on suppliers of insurance-based retirement income products is the impending implementation of Solvency II on 1 January 2016. Solvency II is a fundamental review of the capital adequacy regime for the European insurance industry, which aims to establish a set of EU-wide capital requirements and risk management standards to protect policy-holders. In the UK, the PRA is responsible for the

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<sup>13</sup> FCA, [Pension freedoms data collection exercise](#), analysis and findings, September 2015, Figure 2.

<sup>14</sup> FCA, [Pension freedoms data collection exercise](#), analysis and findings, September 2015, paragraph 3.2.

<sup>15</sup> FCA, [Pension freedoms data collection exercise](#), analysis and findings, September 2015, paragraph 3.2.

<sup>16</sup> Mintel, Annuities UK, August 2015, p11.

<sup>17</sup> FCA, [Retirement income market study: Final report](#), March 2014, paragraph 3.2.

prudential regulation of insurance firms and has provided guidance on its approach to insurance supervision and the implementation of Solvency II.<sup>18</sup>

29. The PRA informed the CMA that [REDACTED]. One particular issue is the treatment of equity release mortgage assets, which both Parties hold, under the new rules introduced by Solvency II and on which the PRA has been consulting with the insurance industry.<sup>19</sup> In that regard, the CMA notes that one of the reasons for the capital raise announced by the Parties on 25 September 2015 was to provide further comfort over the transition to Solvency II<sup>20</sup> and that a number of the Parties' competitors have significantly larger back books and capital reserves than either Just Retirement or Partnership.
30. Overall, the CMA considers that the Merger should be assessed in the context of the significant changes that have taken place – and are continuing to take place – in relation to the supply of retirement income products in the UK. In that regard, the Parties have submitted that the rationale for the Merger is based on achieving strategic and financial benefits, improved operational efficiencies, and an enhanced capital position in order for the merged entity to have the scale to respond to the rapidly changing retirement income sector, continue to act as a disruptor to larger incumbent insurers, and grow in the defined benefit de-risking market.<sup>21</sup> The CMA considers, on the basis of views received [REDACTED], that the Merger will improve the Parties' ability to meet the capital requirements imposed by Solvency II and provide it with additional scale.

## Counterfactual

31. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is

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<sup>18</sup> See the [Solvency II](#) pages of the PRA website for information on the implementation of Solvency II in the UK.

<sup>19</sup> See PRA, 'Letter from Paul Fisher – Solvency II: equity release mortgages', 20 February 2015 available from the [Solvency II](#) pages of the PRA website.

<sup>20</sup> Just Retirement, [Placing and Open Offer Announcement](#), 25 September 2015; Partnership, [Issue of Equity](#), 25 September 2015.

<sup>21</sup> Just Retirement/Partnership, [Rule 2.7 Announcement](#), 11 August 2015.

a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>22</sup>

32. The Parties submitted that the Pension Reforms and the forthcoming implementation of Solvency II mean that the CMA should assess the Merger against a counterfactual other than the prevailing conditions of competition.
33. The Parties state that the relevant counterfactual absent the Merger is one in which: (i) [X]; (ii) the competitive landscape might not remain the same and [X]; (iii) there would be a deterioration in the levels of competition and value for money of the products sold to consumers; and (iv) [X].
34. The CMA acknowledges that, as outlined above, the Pension Reforms have given rise to significant changes in demand for retirement income products and that assessing the Merger without regard to that context is not appropriate in this case. However, the CMA considers that the evidence available to it is not sufficient to identify an appropriate alternative counterfactual that should be adopted. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual. The CMA has taken into account the changes brought about by the Pension Reforms and Solvency II where appropriate in its competitive assessment.

## Frame of reference

35. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>23</sup>
36. The Parties overlap in the supply of (i) annuities, (ii) care annuities, and (iii) defined benefit bulk annuity de-risking solutions. The CMA has therefore considered whether each of these candidate product markets is appropriate as the narrowest frame of reference for assessing the impact of the Merger.
37. The Parties also overlap in the supply of LTMs. However, based on the limited overlap between the Parties and the fact that third parties that responded to

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<sup>22</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

<sup>23</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

the CMA's merger investigation did not raise any concerns, the CMA does not believe that the Merger gives rise to a realistic prospect of a substantial lessening of competition in relation to the supply of LTMs. This area is therefore not addressed further in this decision.

## **Product scope**

### *Parties' views on an overall retirement income products market*

38. The Parties submitted that the relevant product scope for retirement income products should be all accumulation and decumulation retirement income products, including: (i) traditional insurance-based products, eg annuities; (ii) structured investment and income drawdown products provided by both insurance and non-insurance groups; and (iii) other non-insurance-based products, including LTMs.
39. The Parties considered that the FCA's retirement income market study presents the most relevant information for determining the frame of reference for the Merger, due to the fact that it is informed by the Pension Reforms, unlike the previous decisional practice of the European Commission<sup>24</sup> and the Office of Fair Trading.<sup>25</sup>
40. As explained above, accumulation products allow individuals to build up a pot of pension savings for retirement, whereas decumulation products allow individuals to obtain an income from that pension pot. The evidence received from third parties who responded to the CMA's merger investigation confirmed that, from the demand side, accumulation and decumulation products have different features, serve different purposes for customers and are not substitutable.
41. While the boundaries of the frame of reference are generally determined by reference to demand-side substitution alone, the CMA may widen the scope where there is evidence of supply-side substitution.<sup>26</sup> In that regard, the CMA notes that in *Aviva/Friends Life/Tenet* the European Commission decided that, on the basis of supply-side substitutability, there was no need to subsegment pension products into accumulation and decumulation products, given that the majority of insurance providers offer both accumulation and decumulation

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<sup>24</sup> For example, see: Case COMP/M.7478, [Aviva/Friends Life/Tenet](#), 13 March 2015 and Case COMP/M.6883, [Canada Life/Irish Life](#), 31 May 2013.

<sup>25</sup> For example, see: ME/3428/07, [Anticipated acquisition by Pearl Group Limited of Resolution plc](#), 28 December 2007 and ME/3429/07, [Anticipated acquisition by Royal London Mutual Assurance Society of certain assets and business of Resolution plc](#), 28 December 2007.

<sup>26</sup> [Merger Assessment Guidelines](#), paragraph 5.2.17.

products and that those which offer only one of the two do so out of commercial choice.<sup>27</sup>

42. However, the CMA has found insufficient evidence of supply-side substitution during its merger investigation to suggest that accumulation and decumulation products should be aggregated into the same frame of reference. The CMA therefore considers that the product frame of reference is unlikely to be wider than decumulation retirement income products and that this is supported by the fact that the Pension Reforms were explicitly aimed at strengthening competition in the supply of decumulation retirement income products.

### *Annuities*

43. An annuity is an insurance product sold to an individual that allows them to convert their pension savings into a guaranteed regular income during retirement, either for a fixed duration or, more commonly, for the rest of the individual's life. Various types of annuities are available with differentiated product features, eg based on the risk level, timing of payments and certainty of income received.
44. The Parties submitted that decumulation retirement income products should not be segmented by product type since the different products reflect the continuum of risk and retiree needs, which do not merit segmentation based on either their demand- or supply-side characteristics. In support of their submission, the Parties referred to the fact that the FCA, in its retirement income market study, considered three categories of retirement products: (i) annuities, (ii) income drawdown, and (iii) other related/alternative products (including equity release products such as LTMs), but did not conclude that these constitute separate product markets.<sup>28</sup>

### *Substitutability of annuities with income drawdown, LTMs and other products*

45. In its merger investigation, the CMA has received responses from third parties, including competitors and distributors, regarding the demand-side substitutability of annuities with income drawdown products, LTMs and other decumulation retirement income products.
46. LTMs are a form of equity release product that allow a consumer to access the equity they have acquired in their property while still being able to live there, with the loan and interest generally being repaid at the end of the mortgage holder's life, following the sale of the property. Most third parties

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<sup>27</sup> [Aviva/Friends Life/Tenet](#), recital 22.

<sup>28</sup> FCA, [Retirement income market study: Interim Report](#), December 2014, pp16–19.

that responded to the CMA's merger investigation did not consider LTMs to be substitutable for annuities by consumers on the basis that LTMs are loans secured on property, whereas annuities are a means of providing an income from accumulated pension funds.

47. Income drawdown products allow a consumer to leave their pension fund invested (and therefore subject to investment risk and market fluctuations) while withdrawing an income from it. As explained above, sales of income drawdown products have increased significantly since the implementation of the Pension Reforms. Third party views on the degree of substitutability between purchasing an annuity and opting for income drawdown were more mixed than for LTMs, but overall the majority of respondents, including both distributors and competitors, indicated that there are a range of factors that differentiate the two types of products, meaning that they are unlikely to be close substitutes for a significant proportion of customers:
- Risk averse customers are more likely to opt for an annuity because income drawdown products do not provide a guaranteed income for life.
  - The size of a customer's pension pot is likely to affect the choice of product. For example, customers with large pension pots may be more likely to invest their funds and opt for income drawdown rather than purchase an annuity; whereas customers with small pension pots may be more likely to withdraw the full amount rather than purchase an annuity.
  - Customers who value flexibility may prefer not to purchase an annuity because it is an irreversible decision, whereas income drawdown allows for some flexibility in managing funds.
  - Annuities cannot be passed on in the form of inheritance and some customers may prefer the option of being able to bequeath funds saved in their pension.
  - Customers with serious medical conditions and who have significantly reduced life expectancy may be more attracted to income drawdown.
48. Most third parties that responded to the CMA's merger investigation indicated that 'hybrid' products could potentially be substitutes for annuities, to the extent that they include a proportion of guaranteed income. However, they also indicated that the degree of substitutability would depend on the customer's preference for risk.
49. A small number of third parties that responded to the CMA's merger investigation indicated that buy-to-let investments could be an alternative source of retirement income under very specific circumstances. However, this

would only be the case if the customer was prepared to accept the risks related to this form of investment and be willing to manage the administrative aspects of letting-out property.

50. As explained in more detail below, the majority of third parties that responded to the CMA's merger investigation did not consider that care annuities are a substitute for annuities designed to provide a retirement income.

*Possible further segmentation of annuities based on assessment of risk*

51. The CMA has also considered whether there should be further subsegmentation of annuities based on the method of assessment of a customer's longevity risk. Third parties who responded to the CMA's merger investigation indicated that annuities are differentiated by the basis on which the provider assesses the longevity risk of the annuitant, with so-called 'enhanced' annuities providing a better rate for annuitants who are expected to have a shorter lifespan (eg because of lifestyle choices (such as smoking) or as a result of a medical condition). 'Enhanced' annuities are typically underwritten on a more individualised basis (eg using detailed medical and lifestyle data) than so-called 'standard' or 'conventional' annuities (which are more likely to be underwritten on the basis of proxies such as the post code or occupation of the annuitant).
52. The Parties submitted that there is no distinction between different types of annuity, since the underlying product remains the same and the different terms applied (eg 'standard', 'enhanced', 'individually underwritten', 'impaired'<sup>29</sup> etc) simply address the customer's pre-existing relationship with the provider or the factors taken into account when assessing the customer's position on the continuum of risk. The Parties also submitted that there is no consistent industry definition of a 'standard' or 'enhanced' annuity and that providers in the market use more or less sophisticated methods of individually underwriting annuities, depending on where that provider has positioned itself in terms of serving customers along the spectrum of longevity risk.
53. Competitors of the Parties that responded to the CMA's merger investigation confirmed that there is a range of different individual parameters used by providers to estimate the longevity of customers, from proxies based on post codes or occupation to detailed medical and lifestyle data, and that there is no clear distinction between the parameters used to underwrite 'standard' and 'enhanced' annuities. The CMA notes that financial intermediaries use a standard industry form (the Common Quotation Form) or online tools to

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<sup>29</sup> 'Impaired' annuities typically refer to annuities provided to individuals with severe health problems and who receive an improved rate based on their anticipated limited lifespan.

provide information about their clients when seeking quotes from a range of providers and that providers are free to request additional information from prospective customers to assist with their assessment of risk. Third parties that responded to the CMA's merger investigation also provided evidence that customers typically obtain quotes from a number of different providers, which compete across a range of risk factors.

54. The Parties submitted that on the supply side there are no material barriers to competitors in the supply of annuities developing or expanding their capability to individually underwrite annuities based on medical data, particularly given that reinsurers can provide underwriting systems and data to insurance groups that wish to improve their underwriting capabilities and take more risk factors into account. The reinsurers that responded to the CMA's merger investigation confirmed that certain reinsurers can, and do, provide such assistance to annuity providers, including to the Parties. Furthermore, responses received from competitors indicated that there has been recent expansion by some providers into offering annuities underwritten on an individual basis using lifestyle and medical data, as well as confirmation from some competitors that they are able to provide products across the spectrum of risk, but do not do so for commercial reasons.

*Conclusion on annuities as a frame of reference*

55. Given the different characteristics of income drawdown products, LTMs and other retirement income products indicated by the responses received from third parties, the CMA considers on a cautious basis that the supply of annuities forms a separate frame of reference for the assessment of the impact of the Merger.
56. The CMA does not consider that further segmentation according to the method of assessing customers' longevity risk or the factors taken into account is necessary as its merger investigation found that a number of the Parties' competitors write business across the spectrum of risk. Furthermore, as explained in more detail below, the CMA considers that care annuities should be excluded from this frame of reference, based on their distinct characteristics.
57. The CMA has, however, taken into account the constraint from other retirement income products in its competitive assessment. In particular, the CMA notes that, as explained above, annuity sales have fallen significantly following the Pension Reforms and a number of retirement income product providers are developing 'hybrid' products that combine different annuity and drawdown features (generally including a mix of guaranteed income and exposure to investment risk).

## *Care annuities*

58. Care annuities (also commonly referred to as ‘immediate needs annuities’) are a specific form of annuity for consumers who have long-term care requirements and offer a guaranteed fixed income paid directly to a registered care provider for the life of the customer. The product is individually underwritten and requires the customer to have a medical assessment and/or provide a care manager report. As such, care annuities provide a form of longevity insurance to the individual against the costs of receiving care from policy inception until death.
59. The Parties submitted that care annuities are not substantively different from any other individually underwritten annuity as the method of underwriting the individual policy is the same, albeit the payment is made to the registered care provider instead of to the customer.
60. As noted above, the majority of third parties that responded to the CMA’s merger investigation did not consider that annuities designed to provide a retirement income are a substitute for care annuities from a demand-side perspective. These third parties, which included financial advisers and care-fees advisers, informed the CMA that care annuities are: (i) designed to satisfy a specific, immediate need (ie to provide a guaranteed source of funding for care); (ii) generally purchased at a later stage of life and from funds other than a customer’s pension pot (ie, usually significantly after the customer has taken a decision on how to obtain retirement income from his or her pension pot); (iii) treated differently for tax purposes than income from other annuities (direct payments to care providers are tax free); (iv) often entered into by individuals acting under a power of attorney on behalf of the recipient of care; and (v) primarily sold through specialist care-fees advisers.
61. The Parties submitted that care annuities are a rare funding choice and are substitutable with, and compete against, other care funding solutions, such as cash savings, deferred payment agreements,<sup>30</sup> retirement income, sales of assets such as property, funding by families, LTMs, and relying on state support. However, most third parties that responded to the CMA’s merger investigation did not consider that other products, such as LTMs, investments or savings, are directly substitutable for care annuities, since care annuities are purchased with a lump sum and provide guaranteed payment for care provision for life. By contrast, cash savings held on deposit may run out if the individual receiving care lives longer than expected, LTMs provide a lump

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<sup>30</sup> A ‘deferred payment agreement’ is an arrangement with a local authority that offers the option of delaying care payments so that the individual going into care does not have to sell their home immediately. The local authority will usually ensure monies owed are repaid by taking a legal charge over the property.

sum rather than a regular income, and investments may not be suitable as funds are likely to be needed in the short term to pay for care fees (and therefore not available to be tied up in an investment product).

62. On the basis of the evidence before the CMA, it considers on a cautious basis that the supply of care annuities forms a separate frame of reference for the assessment of the impact of the Merger. The CMA has, however, taken into account the constraint from other sources of care funding in its competitive assessment.

#### *Defined benefit scheme de-risking solutions*

63. Defined benefit pension schemes guarantee a certain retirement benefit linked to the employee's salary before retirement, which means that the investment and longevity risks are borne by the sponsoring employer rather than the individual.
64. Defined benefit de-risking solutions allow a defined benefit pension scheme's trustees to de-risk all or a proportion of the pension scheme's risks, typically by either: (i) entering into a longevity swap, which involves insuring or hedging the longevity risk; or (ii) purchasing a bulk annuity, which transfers to the insurer the responsibility for meeting payments to the members of the scheme.
65. The European Commission has previously considered that longevity swaps and bulk annuity de-risking solutions constitute distinct product markets.<sup>31</sup> The Parties are only active in the provision of bulk annuity de-risking solutions and submitted that this is the appropriate product frame of reference.
66. The CMA notes that in *Rothesay Life/MetLife Assurance*, the European Commission considered the possible segmentation of the market for bulk annuity de-risking solutions into 'buy-in' and 'buy-out' transactions, but left the precise scope of the product market open.<sup>32</sup> The CMA has not found any evidence during its merger investigation that suggests the defined benefit scheme bulk annuity de-risking solution market should be segmented between 'buy-in' and 'buy-out' contracts.
67. The Parties' internal documents indicated that their recent entry into the bulk annuity de-risking market has been based on [REDACTED]. Third party responses from

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<sup>31</sup> Case/COMP M.7204, [Rothesay Life/MetLife Assurance](#), 29 April 2014, recital 19.

<sup>32</sup> [Rothesay Life/MetLife Assurance](#), recitals 20 to 23. A 'buy-in' bulk annuity contract involves the insurer bearing the risk of paying benefit payments to scheme members, but the pension scheme trustee remains responsible for the administration of the scheme, retains the relationship with the pension scheme members, and remains ultimately liable for the benefit payments. A 'buy-out' bulk annuity contract, by contrast, involves the full transfer of the risk and responsibility for managing the pension scheme to the insurer.

the Parties' competitors and from Employment Benefit Consultants (EBCs), who specialise in advising defined benefit pension scheme trustees on de-risking solutions, confirmed this.

68. The CMA has therefore considered whether it would be appropriate to further segment the bulk annuity market between medically underwritten bulk annuities and non-medically underwritten bulk annuities. However, the evidence the CMA has found during its merger investigation indicates that no further segmentation is necessary as, similar to individual annuities, medical underwriting is only one approach to assessing longevity risk, other factors are equally if not more important for providers in pricing bulk annuity de-risking solutions, and other providers (both those that use medical underwriting and those that do not) compete with the Parties for smaller transactions.
69. Accordingly, the CMA has assessed the impact of the Merger on the basis of a frame of reference comprising the supply of defined benefit bulk annuity de-risking solutions.

### ***Geographic scope***

70. The Parties submitted that they consider the relevant geographic market for retirement income products and defined benefit bulk annuity de-risking solutions to be national in scope, albeit noting that it may be feasible for an insurer outside the UK (in particular in another EU member state) to enter the UK.
71. The previous decisions of the European Commission and the Office of Fair Trading referred to above considered that the relevant geographic market for both retirement income products and defined benefit bulk annuity de-risking solutions were national.<sup>33</sup> The CMA has not found any evidence during its merger investigation that suggests the geographic frame of reference should be narrower or wider than the UK.
72. Therefore, the CMA considers that, based on the evidence before it, the geographic frame of reference for both retirement income products and bulk annuity de-risking solutions is the UK.

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<sup>33</sup> [Aviva/Friends Life/Tenet](#), recital 30; [Pearl Group Limited/Resolution](#), paragraph 12; [Rothsay Life/MetLife Assurance](#), recital 28.

## ***Conclusion on frame of reference***

73. For the reasons set out above, on a cautious basis the CMA has considered the impact of the Merger in the following frames of reference:
- The supply of annuities (excluding care annuities) to individual customers in the UK.
  - The supply of care annuities to individual customers in the UK.
  - The supply of bulk annuity de-risking solutions to defined benefit pension schemes in the UK.

## **Competitive assessment**

74. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.<sup>34</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors.
75. The CMA assessed whether it is or may be the case that the Merger may be expected to result, in a substantial lessening of competition in relation to unilateral horizontal effects in:
- the supply of annuities (excluding care annuities) to individual customers in the UK;
  - the supply of care annuities to individual customers in the UK; and
  - the supply of bulk annuity de-risking solutions to defined benefit pension schemes in the UK.

### ***Horizontal unilateral effects in the supply of annuities***

76. The Parties have both historically chosen to focus on the provision of annuities that are priced using individual risk factors such as age, medical history, post code, and lifestyle data. Third party responses to the CMA's merger investigation confirmed that the Parties' primary focus and strength is in providing individually underwritten annuities based on lifestyle and medical data.

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<sup>34</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

77. Accordingly, the CMA has examined, in particular, the extent to which competition concerns may arise from the closeness of competition between the Parties, particularly in respect of the supply of annuities individually underwritten using the medical or lifestyle characteristics of the annuitant. In that regard, the CMA notes that there is no precise industry definition of an ‘enhanced’ annuity, but uses the term in this context to refer to an annuity that provides an enhanced rate to a customer based on their specific individual characteristics (such as their medical history or lifestyle choices).

### *Shares of supply*

78. The Parties submitted that their combined share of supply of annuities in 2014 was [10–20]%, with an increment of [0–10]%, based on data from the ABI and total sales of annuities published by Towers Watson. The CMA’s merger investigation confirmed the Parties’ estimates and indicated that, [X], [Competitor A] is the largest provider of annuities, with a number of other providers of annuities with shares of supply of 5% or more. The estimated shares of supply provided by the Parties are set out in the table below.

**Table 1: Estimated shares of sales of annuities in 2014**

<i>Provider</i>	<i>Sales of annuities in 2014 (£m)</i>	<i>Estimated share (%)</i>
Just Retirement	[X]	[10–20]
Partnership	[X]	[0–10]
Merged entity	[X]	[10–20]
Competitor A	[X]	[20–30]
Competitor B	[X]	[10–20]
Competitor C	[X]	[0–10]
Competitor D	[X]	[0–10]
Competitor E	[X]	[0–10]
Others	[X]	[20–30]
Total sales	[X]	100

Source: Parties’ submissions based on data from the ABI and Towers Watson.

79. The Parties also submitted that each provider’s position should not be judged only in the context of new business written, but also on the robustness of its financial position based on a comparison of in-force back books. On that basis, at least four other providers had annuity assets exceeding those of the Parties combined, as of 31 December 2014.

80. Although the CMA does not consider that ‘enhanced’ annuities form a separate frame of reference for the assessment of the Merger, it has considered the shares of supply of the Parties in this narrower segment because of the Parties’ historic focus in this area. The Parties submitted that the data collected by the ABI on sales of ‘enhanced’ annuities is based on individual providers’ discretionary categorisation of their products and is not consistent across the industry. Responses from competitors to the CMA’s

merger investigation indicated that there is no clear definition of ‘enhanced’ annuities used consistently by providers and that they have different approaches to underwriting and categorising such products.

81. Notwithstanding the uncertainty of the share of supply data for the ‘enhanced’ annuity segment, the CMA notes that the data collected [REDACTED] suggests that the Parties are the two leading providers of ‘enhanced’ annuities and that [REDACTED].<sup>35</sup> However, the CMA’s merger investigation has confirmed that there are a number of other providers of ‘enhanced’ annuities, including Aviva, Canada Life, Legal & General, LV=, Prudential, Retirement Advantage, and Scottish Widows and that, according to the ABI, only around a quarter of all annuities sold are ‘enhanced’ annuities.<sup>36</sup> Therefore, the CMA considers that the shares of supply of the Parties in the supply of annuities, rather than a subsegment of annuities, provides the more reasonable proxy for assessing the impact of the Merger on competition.

#### *Closeness of competition*

82. As explained above, the Parties’ core annuity products are focused on the ‘enhanced’ segment, with both Parties using their underwriting capabilities to offer competitive rates by individually underwriting the annuities they offer. More generally, the CMA also notes that the Parties’ strategies and business models have historically been similar, eg both Parties provide only decumulation retirement income products, have sought to win business from incumbent accumulation providers, and base their funding strategy around equity release assets.
83. The Parties’ internal documents indicated that [REDACTED]<sup>37</sup> and all third parties that responded to the CMA’s merger investigation indicated that the Parties compete closely in the sale of annuities, particularly when offering individualised quotes for enhancements based on medical or lifestyle data. However, the Parties’ internal documents and responses from third parties also indicated that there are a number of other providers that compete strongly with the Parties. In that regard, the majority of the Parties’ competitors for the supply of annuities confirmed that they consider they are strong competitors to the Parties.
84. Several third parties, including competitors and distributors, who responded to the CMA’s merger investigation thought that the Merger would lead to at least some reduction in competition in relation to the supply of ‘enhanced’

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<sup>35</sup> [REDACTED].

<sup>36</sup> [ABI retirement income statistics Q4 2014](#).

<sup>37</sup> [REDACTED]

annuities, although their views in terms of the impact on rates were mixed with some suggesting that rates would be less competitive following the Merger, and others considering that the Merger would create a stronger player able to compete more effectively in the supply of retirement income products following the Pension Reforms.

85. Responses from third parties also indicated that historically Partnership was more focused on supplying annuities at the impaired end of the risk spectrum (ie to individuals with serious medical conditions) with Just Retirement mainly focused on underwriting annuities for customers based on lifestyle factors and less serious medical conditions. However, some third parties informed the CMA that more recently – and particularly following the Pension Reforms – both Partnership and Just Retirement have been quoting for business across a range of risks.
86. Based on the Parties' internal documents and responses from third parties, the CMA considers that the Parties are close competitors, particularly in the supply of 'enhanced' annuities. However, the CMA also considers, again based on evidence from the Parties' internal documents and third party responses, that there are a number of other providers that compete as closely with the Parties in this narrower segment.

#### *Pricing analysis submitted by the Parties*

87. The Parties submitted a pricing analysis to the CMA that sought to demonstrate that (i) there are a number of providers active in supplying annuities across a wide range of lifestyle factors and medical conditions and (ii) the Parties are not each other's closest competitors (assessed with respect to the frequency with which the Parties offer the top two quotes). The Parties submitted that the analysis shows that there is no realistic prospect that the merger would lead to a substantial lessening of competition in the provision of 'enhanced' annuities.
88. In brief, the exercise undertaken by the Parties in preparing the pricing analysis aimed at replicating the process followed by intermediaries (specifically independent financial advisers) and end customers when seeking a quote for an 'enhanced' annuity using online quote comparison tools. The Parties provided the CMA with a range of quotes based on a variety of lifestyle and medical factors (ranging from smoking and minor conditions such as hypertension and cholesterol to more serious conditions, such as lung disease, cancer and multiple sclerosis).
89. The CMA considers that the pricing analysis is helpful insofar as it confirms that there are several other competitors that can, and do, competitively quote

against the Parties for business across a range of lifestyle factors and medical conditions. However, the CMA notes that, as the Parties themselves explained, the quotes received by intermediaries from comparison tools do not provide the whole picture because although annuity providers will transact on the quotes offered, the rates are not necessarily final and may be subject to negotiation. Third parties who responded to the CMA's merger investigation confirmed that many financial advisers will contact providers after having obtained an online comparison and often succeed in obtaining a better rate for their client. Furthermore, third party responses indicated that vertical distribution arrangements between annuity providers and intermediaries may also affect the competitiveness of the rates offered, for example because of the identity of the person seeking the quotes, and that understanding the true market position of providers is not straightforward because the competitiveness of the rates offered by different providers will vary depending on the exact characteristics of the customer.

90. The CMA considers that, on balance, the pricing analysis does not conclusively demonstrate either the extent of the constraint that the Parties impose on each other or the constraint that other providers impose on each of the Parties. Accordingly, the CMA has taken the pricing analysis into account in its assessment, but has treated the findings with a degree of caution.

#### *Competitive constraints*

91. As identified by the Parties' internal documents, responses from third parties to the CMA's merger investigation, and the pricing analysis submitted by the Parties, there are several other significant competitors active in the provision of annuities individually underwritten using lifestyle factors and medical conditions or which are capable of using such data to underwrite annuities. These competitors include Aviva (which has been strengthened following its acquisition of Friends Life in 2015), Canada Life, Legal & General, LV=, Prudential, Retirement Advantage, and Scottish Widows. Third parties that responded to the CMA's merger investigation indicated that, notwithstanding the decline in the sales of annuities following the Pension Reforms, some providers have achieved growth in the 'enhanced' segment and that the factors used by different providers in order to underwrite annuities is based on their commercial choice.
92. The Pension Reforms have clearly had a significant impact on supply of retirement income products and the dynamic market conditions engendered by these changes have had significant implications for the sale of annuities. As explained above, sales of annuities have fallen dramatically since the announcement of the Pension Reforms in March 2014 and the available

evidence suggests that sales have fallen even further since their implementation in April 2015.<sup>38</sup> By contrast, sales of income drawdown products have increased substantially, with the ABI reporting that the number of drawdown contracts sold by ABI members during Q1 of 2015 increased by 64% over the previous year.<sup>39</sup>

93. The Parties submitted that the majority of their internal strategy documents do not provide a full picture of the current constraints on the Parties because they are generally based on a view of competition prior to the Pension Reforms that does not take into account the dynamic and evolving market. The Parties highlighted that whereas their internal documents previously tended to assess [✂].
94. Most third parties that responded to the CMA's merger investigation indicated that the Pension Reforms have had a significant impact on the supply of annuities and a number thought that other products, such as income drawdown products and 'hybrid' products, will increasingly compete with annuities in the future, albeit that an annuity will still be the right option for many consumers. The evidence published by the ABI and the FCA suggests that many consumers are already opting for income drawdown products instead of annuities and, as explained above, the FCA expects there to be significant innovation in the supply of retirement income products in the future.
95. Third parties that responded to the CMA's merger investigation explained that following the Pension Reforms customers have a wider choice of retirement income products. Some third parties also provided examples of the decisions that customers typically make. For example, some individuals, particularly those with short life expectancies, may prefer an income drawdown product to an annuity because it provides higher income over a shorter period and allows for inheritance. Similarly, customers with smaller pension pots may prefer encashment because of the relatively low income they could obtain through purchasing an annuity; whereas customers with larger pension pots may prefer income drawdown to allow them to keep their savings invested.
96. The CMA considers that it is too early to tell how popular 'hybrid' products will be with consumers or to conclude on the constraint they will provide on sales of annuities. However, it notes that [✂].<sup>40</sup> In addition, several of the Parties' competitors confirmed to the CMA that they are planning to offer 'hybrid' products that combine an element of guaranteed income with investment risk and the CMA notes that a number of providers not currently offering annuities

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<sup>38</sup> FCA, [Pension freedoms data collection exercise](#), analysis and findings, September 2015.

<sup>39</sup> [ABI retirement income statistics Q1 2015](#).

<sup>40</sup> [✂]

have publicly announced they are launching similar products, including Axa and MetLife.<sup>41</sup>

97. The Parties submitted that the supply of retirement income products is characterised by the presence of sophisticated financial advisers who provide advice to consumers on the products available in the market. Accordingly, the Parties submitted that the market knowledge and price sensitivity of financial advisers will continue to constrain the ability of the Parties to raise prices post-Merger. The CMA's merger investigation indicated that financial advisers typically seek multiple quotes from annuities providers and normally select the provider offering the best rate for their clients. Third parties that responded to the CMA's merger investigation also indicated that consumers are typically indifferent to the identity of their annuity provider and tend to choose a product based on the best rate available, which is reflected in providers competing primarily on price.
98. On the basis of the evidence available to it, the CMA considers that there are a number of significant competitive constraints that will constrain the Parties' ability to raise prices (ie reduce the annuity rate offered) post-Merger. In particular, the CMA notes that there are a range of large, well-capitalised providers competing with the Parties in the supply of annuities, many of which benefit from having relationships with existing accumulation customers, and that going forward the Pension Reforms mean that other retirement income products will increasingly impose a constraint on the Parties post-Merger.

#### *Conclusion on annuities*

99. Based on the evidence it has found during the merger investigation, and for the reasons set out above, the CMA considers that although the Parties compete closely, particularly in the provision of annuities underwritten on the basis of lifestyle factors and medical conditions, there are a number of strong competitors that will remain post-Merger, including some that compete closely with the Parties in the narrower 'enhanced' segment. In addition, the CMA considers that, in light of the Pension Reforms, assessing the impact of the Merger within a frame of reference comprising only annuities is a cautious approach and that the Parties will face significant constraints from other retirement products post-Merger, including income drawdown and 'hybrid' products.

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<sup>41</sup> ['AXA Wealth to offer access to income guarantees - the security of an annuity but with the flexibility of drawdown'](#), 17 February 2015; ['MetLife to deliver full pension freedom flexibility from April'](#), 26 February 2015.

100. Accordingly, the CMA does not believe that there is a realistic prospect of a substantial lessening of competition in the supply of annuities.

***Horizontal unilateral effects in the supply of care annuities***

101. Notwithstanding the Parties' views regarding the appropriate frame of reference as set out above, the Parties submitted that in any event competition concerns do not arise from the Merger in relation to care annuities because: (i) care annuities constitute a [redacted] proportion of each of Just Retirement's and Partnership's annual turnover ([0–10]% and [0–10]% respectively); (ii) the merger will [redacted]; (iii) Just Retirement is a new entrant and sold [redacted] care annuities in 2014; and (iv) [redacted]. The Parties also submitted that the care annuities market is very small and arguably *de minimis* as it comprises around 0.2% of sales of retirement income products and a tiny proportion of total long-term care spending in the UK.

***Shares of supply and closeness of competition***

102. The Parties submitted that that their combined share of supply in the provision of care annuities in 2014 was around [60–70]% with an increment of [0–10]%. The only other provider of care annuities in the UK is Aviva (following its acquisition of Friends Life), which has a share of supply of around [30–40]%.  
103. Partnership's significant share of supply of care annuities reflects the fact that it entered the market in 1999. By contrast, Just Retirement is a new entrant and has been supplying care annuities since 2013. The Parties explained that at the time of Just Retirement's entry, only Partnership and Friends Life were present in the care annuity segment, albeit there had been some other entry and exit prior to 2010.  
104. Responses from care-fees advisers to the CMA's merger investigation indicated that although the entry of Just Retirement into the market had been welcome, it has not been successful in growing its market share and generally is not as competitive in terms of rates as either Partnership or Aviva. This is consistent with information submitted by Partnership that [redacted]. In addition, [redacted].<sup>42</sup>  
105. All of the care-fees advisers that responded to the CMA's merger investigation commented that the Merger would lead to a reduction in choice for their clients and the majority raised concerns because of this. However, some of the care-fees advisers also indicated that, given Just Retirement's failure to

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<sup>42</sup> [redacted]

significantly penetrate the market, the impact of the Merger on rates was unlikely to be significant as there would still be two providers competing strongly for business (as there had been prior to Just Retirement's entry). Care-fees advisers also explained that the care annuity products offered by the three providers are similar, meaning that competition is driven by price.

106. The CMA considers that although the Merger will result in the reduction of the number of providers of care annuities from three to two, it is clear from the evidence it has found that Just Retirement is a weak third player in the segment and has not been successful in significantly growing its share following its entry in 2013.

### *Competitive constraints*

107. The Parties submitted that the total sales of care annuities in the UK, which amounted to £[~~8~~] in 2014, are very small when compared to the estimated £6 billion of long-term care costs privately funded by individuals in the UK.<sup>43</sup> The Parties also submitted, as explained above, that care annuities are a rare funding choice and are substitutable with, and compete against, other funding solutions, such as cash savings, deferred payment agreements, retirement income, sales of assets such as property, funding by families, LTMs, and relying on state support.
108. As set out above, most third parties who responded to the CMA's merger investigation did not consider that other products, such as LTMs, investments or savings, are directly substitutable for care annuities. However, care-fees advisers explained to the CMA that decision making around how to fund immediate care needs is not straightforward, particularly as the decision maker is often a relative or friend acting under a power of attorney.
109. In that context, the evidence the CMA found in its merger investigation indicated that although care-fees advisers may recommend the purchase of a care annuity (assuming it fulfils the customer's needs, they are eligible and have sufficient funds), there are a range of other care-funding options available. The Parties submitted evidence that a significant proportion of potential customers choose not to purchase a care annuity after having received an initial quote, including because they have secured alternative finance or the product is not considered good value.<sup>44</sup> The Parties provided

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<sup>43</sup> The Parties' estimate for the amount spent by individuals on private long-term care costs is based on an academic paper: Mayhew, L. (2009) *The Market Potential for Privately Financed Long Term Care Products in the UK*, Cass Business School, City University London, which states that the 'UK spends about £19 billion on long term care of which around a third is privately funded' (p2).

<sup>44</sup> Merger Notice, Annex 10a34 and presentation slides for Issues Meeting.

evidence [✂]. The CMA further notes that a number of care-funding options are summarised on the Money Advice Service website.<sup>45</sup>

110. The CMA considers that since other care-funding options do not provide the guaranteed care payments offered by a care annuity they are not directly substitutable; however, it considers that in view of the range of options available and the relatively small size of the care annuity segment they provide a constraint on providers of care annuities, particularly as customers are more likely to choose an alternative source of care funding if they perceive that care annuities do not offer value for money.
111. The Parties also submitted that since the care annuities segment is small and because demand for care annuities has not grown, there is no incentive post-Merger to raise prices as the primary concern in the care annuities segment is to increase volume. Care-fees advisers that responded to the CMA's merger investigation confirmed that the care annuity segment has not grown for ten to 15 years and suggested that the failure of the care annuities market to grow was a source of some frustration in the market. They attributed this primarily to a general lack of awareness of the product and potentially a reluctance on the part of customers to commit to purchasing an annuity product at a late stage of life when the life expectancy of the annuitant is short. The CMA considers that the relatively small size of the care annuities segment and the lack of growth in demand for the product are features that have resulted in there being a small number of care annuity providers.

#### *Conclusion on care annuities*

112. Based on the evidence it has found during the merger investigation, the CMA considers that Just Retirement is a weak third player in the segment and has not been successful in growing its share following its entry in 2013. Furthermore, the CMA considers that strong price competition will remain post-Merger between the merged entity and Aviva for the sale of care annuities and that alternative sources of funding for care will add sufficient constraint.
113. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to care annuities.

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<sup>45</sup> The [Money Advice Service website: Paying for care](#).

### ***Horizontal unilateral effects in the supply of defined benefit bulk annuity de-risking solutions***

114. The Parties are recent entrants to the defined benefit bulk annuity de-risking solutions market, both entering in 2012 and completing their first transactions in 2013.
115. The Parties submitted that the Merger does not give rise to competition concerns because they are new entrants, their market shares are low, and there are strong established competitors in the market. Furthermore, the Parties submitted that the Merger would, in fact, increase competition in the defined benefit bulk annuity de-risking solutions market because scale and financial strength are important and the merged entity would be able to [REDACTED], which the Parties individually are currently precluded from doing. Finally, the Parties submitted that this is a growing market with more players coming in.

#### *Shares of supply*

116. The Parties submitted that their combined share of supply in the provision of defined benefit bulk annuity de-risking solutions is around [0–10%]%, with an increment of [0–10]%, based on data from Lane, Clark and Peacock LLP and the Parties' own estimates.
117. Based on these shares of supply, the Merger does not raise *prima facie* competition concerns in relation to defined benefit bulk annuity de-risking solutions, particularly given that there are a number of other significant and well-capitalised providers operating in the market, including Legal & General, Pension Insurance Corporation, Rothesay Life, Prudential, and Aviva.

#### *Closeness of competition*

118. The Parties' internal documents indicate that [REDACTED].<sup>46</sup>
119. Third party responses to the CMA's merger investigation from competitors and EBCs confirmed that Just Retirement and Partnership compete for the same segment of small transactions within the defined benefit bulk annuity de-risking solutions market and that both have the capability to price on a medically underwritten basis. Some third parties suggested that in the short term the impact of the Merger could be to reduce price competition in respect of smaller medically underwritten transactions, albeit those third parties

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<sup>46</sup> [REDACTED]

acknowledged that the Merger would have little impact on the overall defined benefit bulk annuity de-risking solutions market.

120. However, both the Parties' internal documents and responses from third parties also indicated that other providers, including Aviva and Legal & General, compete closely with the Parties for business from smaller schemes and have the capability to offer medically underwritten bulk annuities.

#### *Competitive constraints*

121. All third parties that responded to the CMA's merger investigation indicated that the defined benefit bulk annuity de-risking solutions market is likely to expand and that the use of medical underwriting to price risk is increasingly accepted by customers. This is reflected in the fact that the market has seen recent entry, eg by the Parties and Scottish Widows, while another competitor has confirmed to the CMA that it has plans to enter the market imminently, with the ability to offer medically underwritten bulk annuities. This has also been confirmed by third parties aware of this imminent entry.
122. Furthermore, the CMA's merger investigation confirmed that there are a number of significant, well-capitalised firms in the market competing for larger transactions and that these larger firms typically have an advantage in respect of the key factors in pricing bulk annuities, which include yield from assets, scale efficiencies, and the cost of capital.
123. Finally, the CMA notes that in the defined benefit bulk annuity de-risking solutions market the pension scheme trustees are sophisticated and price-sensitive customers, advised by EBCs and other professional advisers.

#### *Conclusion on defined benefit bulk annuity de-risking solutions*

124. Based on the evidence set out above, the CMA considers that, as recent entrants in the supply of defined benefit bulk annuity de-risking solutions, the Parties have focused on differentiating their service proposition through the use of medical underwriting in order to grow their share of supply. Because of their relatively small size, they have also focused on competing for smaller transactions. However, the evidence indicates that there are a number of other significant and well-capitalised providers that will remain post-Merger.
125. Accordingly, the CMA does not believe that there is a realistic prospect of a substantial lessening of competition in the supply of defined benefit bulk annuity de-risking solutions.

## **Barriers to entry and expansion**

126. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>47</sup>
127. The Parties submitted that barriers to entry and expansion in the provision of annuities and care annuities are low, citing evidence of recent new entry in the provision of individually underwritten annuities, historic entry and exit in the provision of care annuities, the ready availability of information from customers on which to base underwriting, and the fact that new entrants with no pre-existing data in a particular area of risk can rely on reinsurers to obtain pricing rates and underwriting tools.
128. The Parties' competitors that responded to the CMA's merger investigation indicated that the barriers to expansion into individually underwritten annuities for an existing 'standard' annuity provider are not insurmountable and, as noted above, responses from reinsurers confirmed that they can assist insurers with the provision of mortality data and underwriting tools. One third party also explained that prior to the Pension Reforms a number of potential new entrants were rumoured to be preparing to enter the, then growing, individually underwritten annuities segment. However, following the Pension Reforms it appears that such would-be entrants have been deterred and the focus of new entry has instead shifted to the development of 'hybrid' products or income drawdown products.
129. In relation to care annuities, the CMA notes that, from a supply-side perspective, care annuities are not substantially different from other individually underwritten annuities and that new entrants may be attracted to invest in the care annuities segment in the future if demand increased.
130. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

## **Third party views**

131. The CMA contacted over 50 distributors (including financial advisers and care-fees advisers) and 20 competitors of the Parties, as well as reinsurers, EBCs and consumer groups. The CMA also received comments from the

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<sup>47</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

FCA, the PRA, the Financial Services Consumer Panel, and the Pensions Advisory Service.

132. Third party comments have been taken into account where appropriate in the competitive assessment above.

## **Decision**

133. Consequently, the CMA 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.

134. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Andrea Coscelli**  
**Executive Director, Markets and Mergers**  
**Competition and Markets Authority**  
**28 October 2015**