Anticipated acquisition by Phoenix Group Holdings of AXA's SunLife and Embassy businesses

Decision on relevant merger situation and substantial lessening of competition

ME/6624/16

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 2 August 2016. Full text of the decision published on 31 August 2016.

Please note that [✂] 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. Phoenix Group Holdings (**Phoenix**), through its wholly owned subsidiary Pearl Life Holdings Limited, has agreed to acquire AXA Sun Life Direct Limited and Winterthur Life UK Holdings Limited (and certain of its subsidiaries), which carry on the SunLife (**SunLife**) and Embassy (**Embassy**) businesses (the **Merger**). SunLife and Embassy are together referred as **the Target Businesses.** Phoenix and the Target Businesses are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that 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 and management of different types of life insurance policy in the UK. The CMA assessed the Merger by reference to the supply and management of life insurance policies in the UK overall, and in relation to the supply and management of each of the following types of life insurance policy in the UK (many of which overlap): protection policies, pension policies (in particular, accumulation pension policies), investments and savings

policies, ‘Guaranteed over 50s’ (**GOF**) policies,[1] non-profit policies, individual policies and group policies.

4. The CMA considered whether the Merger gave rise to competition concerns as a result of horizontal unilateral effects in each of these frames of reference.

5. The CMA found that the Parties’ combined shares of supply (measured in terms of gross written premiums) are below 10% in all the frames of reference mentioned above, with the exception of the supply and management of GOF policies in the UK. On the basis of this evidence, the CMA believes that, following the Merger, Phoenix will continue to face sufficient competitive constraints in the supply and management of life insurance policies generally in the UK and in all types of life insurance policy listed in paragraph 3 in the UK, other than with respect to GOF policies. The CMA considered GOF policies further.

6. With regard to the supply and management of GOF policies in the UK, the CMA found that the Parties do not exert any material competitive constraint on each other because:

   (a) Although SunLife is the largest supplier of GOF policies to new customers in the UK, Phoenix does not currently accept new customers and therefore does not impose a competitive constraint on SunLife;

   (b) Other suppliers of GOF policies will continue to be an alternative to SunLife for new customers of GOF policies; and

   (c) Existing Phoenix customers are unlikely to switch GOF providers because GOF policies do not typically carry a surrender value, and because premiums become higher with the age of the customer at the time of purchase.

7. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.

8. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

[1] These different type of life insurance policies are defined in paragraphs 19 to 23 below.

ASSESSMENT

Parties

9. Phoenix is active in the management and acquisition of closed life insurance funds,[2] operating primarily in the UK. Phoenix is listed on the London Stock Exchange and is a member of the FTSE 250. Phoenix's revenues (expressed in gross written premium) in 2015 were around £1 billion in the UK and [✄] outside the UK.

10. Embassy and SunLife are wholly owned and operated by AXA UK plc (**AXA**). SunLife operates open life insurance funds.[3] It specialises in the provision of GOF policies.[4] A GOF policy pays out a fixed amount upon death and its premiums are also fixed for the duration of the policy. Embassy is a provider of individual and group pension policies.

11. SunLife's revenues and Embassy's revenues (expressed in gross written premium) in the UK in 2015 were respectively around £[✄] and [✄]. They generated no revenue outside the UK. [5]

Transaction

12. On 27 May 2016, Phoenix entered into a Share Purchase Agreement to purchase SunLife and Embassy.

Jurisdiction

13. As a result of the Merger, the enterprises of Phoenix and the Target Businesses will cease to be distinct.

14. The UK turnover of the Target Businesses exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

[2] A closed life insurance fund is one that no longer accepts new business. It is managed for the existing policyholders, which can continue to top-up their policies.
[3] An open life insurance fund is one which continues to write new business and accept new customers.
[4] GOF policies are available to individuals over the age of 50, and can be subscribed to without the requirement of a medical examination.
[5] Revenues were calculated by the parties in a way consistent with the CMA's Guidance on Jurisdiction and Procedure (paragraph B.14): 'the value of the gross premiums received from residents of the UK after deduction of taxes and certain other premium-related deductions. Gross premiums received comprises all amounts received together with all amounts receivable in respect of insurance contracts issued by or on behalf of an insurance undertakings, including outgoing reinsurance premiums.'

15. 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.

16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 4 July 2016 and the statutory 40 working day deadline for a decision is therefore 31 August 2016.

Counterfactual

17. 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 believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.[6]

18. In this case, there is no evidence supporting a different counterfactual to the prevailing conditions of competition, and the Parties and third parties have not put forward any submissions in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Overlap between the Parties

19. 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, which may be invested by the fund in a number of ways (including equities, property, fixed interest securities and cash deposits).

20. The Parties overlap in the provision of life insurance policies in the UK. In particular, the Parties overlap in the supply and management of:

    (a) Protection policies, ie policies where, in return for a regular premium, the insurer agrees to pay a lump sum on a certain specified event such as death or serious illness;

[6] *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).

(b) Pension policies, in particular accumulation pension policies, which allow individuals to accumulate a pension fund and then obtain an income from that fund;[7] and

(c) Investments and savings policies.

21. Phoenix manages closed funds, while the Target Businesses operate open funds. An open fund is one which continues to accept new customers. A closed fund is one that no longer accepts new business and is managed for the existing policyholders, though existing policyholders can continue to top-up their policies.

22. Both of the Parties offer both individual and group life insurance policies.

23. The Parties overlap only in the supply and management of 'non-profit' policies (ie life insurance policies in which the value of the policy is linked directly to the performance of the underlying assets or guaranteed by the insurer). The Target Businesses do not provide 'with-profit'[8] life insurance policies, so there is no overlap with Phoenix in relation to these products.

Frame of reference

24. 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 merging 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.[9]

Product scope

Life insurance policies

Parties' views

25. The Parties noted that, in previous decisions, the CMA and its predecessors have considered different types of life insurance policy as separate frames of reference (see paragraphs 26 to 29). However, the Parties submitted that it is not necessary to distinguish between different types of life insurance policy because

[7] Decumulation pension policies allow individuals to obtain an income from an accumulated fund, but do not allow the individual to further accumulate within the fund.
[8] With-profit life insurance policies are those in which pay-outs are determined by bonuses declared by the insurer.
[9] *Merger Assessment Guidelines*, paragraph 5.2.2.

most policies satisfy similar consumer needs and most life insurance providers supply multiple types of policy.

CMA analysis

26. In previous decisions of the OFT[10] and the European Commission,[11] the supply of life insurance has consistently been considered in a separate frame of reference from non-life insurance and from reinsurance. Furthermore, previous decisions of the UK competition authorities have considered several possible frames of reference within the life insurance sector. A common distinction is that between protection policies, pension policies, and investments and savings policies.[12]

27. With regard to pension policies, the CMA in a recent case further distinguished between accumulation and decumulation pension policies. The supply and management of decumulation pension policies was further segmented into: (i) annuities, (ii) income drawdown policies, (iii) care annuities, and (iv) defined benefit scheme de-risking solutions.[13]

28. The OFT has also previously considered with-profit and non-profit life insurance policies as two different product frames of reference.[14]

29. The European Commission has previously considered individual and group policies as separate frames of reference.[15]

30. In the present investigation, the CMA has found no evidence to indicate that it should depart from the frames of references adopted in those decisions. For the purpose of the present analysis, and on a cautious approach, the CMA has therefore assessed the Merger by reference to the supply and management of life insurance policies in the UK overall, and to the supply and management of each of the following types of life insurance policy in the UK (many of which

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[10] For example: OFT decision, *Anticipated acquisition by Resolution plc of Friends Provident plc* (October 2007)
[11] For example European Commission decisions: M.7478 - *Aviva / Friends Life / Tenet* (March 2015); M.2400 - Dexia/Artesia (June 2001); M.2225 - *Fortis/ASR* (December 2000), and M.1989 - *Winterthur/Colonial* (June, 2000).
[12] See, for example, OFT decisions: *Anticipated acquisition by Royal London Mutual Insurance Society of certain assets and business of Resolution plc* (December 2007); *Anticipated acquisition by Resolution plc of Friends Provident plc* (October 2007); *Anticipated acquisition by Resolution plc of the Abbey National Life business* (July 2006); *Anticipated acquisition by Britannic Group plc of Resolution Life Group Limited* (August 2005). See, for example, European Commission decisions: M.7478 - *Aviva / Friends Life / Tenet* (March 2015); M.6848 - *Aegon / Santander / Santander Vida / Santander Generales* (April 2013); M.6521 - *Talanx International / Meiji Yasuda Life Insurance / Warta* (April 2012); M.4701- *Generali / PPF Insurance Business* (December 2007); M.4713 - *Aviva / Hamilton* (September 2007).
[13] See CMA decision, *Anticipated merger between Just Retirement Group plc and Partnership Assurance Group plc* (November 2015).
[14] See, for instance, OFT decisions, *Anticipated acquisition by Royal London Mutual Insurance Society of certain assets and business of Resolution plc* (December 2007); *Anticipated acquisition by Pearl Group Limited of Resolution plc* (December 2007).
[15] See, for example, European Commission decision, M.4701 - *Generali / PPF Insurance Business* (December 2007).

overlap): protection policies, pension policies (in particular, accumulation pension policies), investments and savings policies, non-profit policies, individual policies and group policies. However, it has not been necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Open and closed funds

31. The Parties said that suppliers of open funds and suppliers of closed funds are not sufficiently close competitors to operate within the same frame of reference.[i]

32. In a past decision of the OFT, open and closed life funds were considered as part of a single frame of reference since, in the absence of high switching or termination costs, the availability of competitively priced policies offered by open life funds may constrain the conduct of operators of closed life funds.[16]

33. In the present investigation, the CMA has found no evidence to indicate that it should depart from the principles recognised in that decision. For the purpose of the present analysis, the CMA has therefore assessed the Merger for each type of life insurance policy distinguished above considering open and closed funds together. However, the CMA has considered the asymmetric constraint between closed and open funds in its competitive assessment (see paragraph 54).

Supply and management of GOF policies

34. Given that SunLife is mainly present in the supply and management of GOF policies to new customers, the CMA has assessed whether the supply and management of GOF policies should be considered as a separate frame of reference.

Parties' views

35. The Parties submitted that the supply and management of GOF policies should not be considered as a separate frame of reference because:

(a) On the demand side, there are a number of different types of policy that can be used as vehicles to provide post-death lump sum cover, including term assurance policies, standard whole of life policies, funeral plans, and other mainstream life insurance.

[16] See OFT decisions, *Completed acquisition by Britannic Assurance plc of Allianz Cornhill Insurance plc's life operations* (May 2005); *Anticipated acquisition by Britannic Group plc of Resolution Life Group Limited* (August 2005).

(b) On the supply side, it would not be difficult for existing providers of other life insurance policies to commence supplying GOF policies.

(c) Previous merger decisions have not sought to segment the supply of life insurance as narrowly as a single product type as most life insurance policies satisfy similar consumer needs and have therefore been considered as substitutes.[17]

Internal documents

36. Internal documents provided by SunLife indicate that it is the largest provider of GOF policies to new customers in the UK. These documents suggest that [✂].[18]

Third Parties' views

37. Competitors who responded to the CMA's merger investigation stated that an increase of 5% in the price of GOF policies would not lead to many customers switching to other life insurance policies. One provider of GOF policies [✂] told the CMA that customers who buy this product do not consider alternative policies. Similarly, another provider [✂] submitted that customers attracted to the features of GOF policies (eg the simplicity of the product and the fact that no medical information needs to be provided) would not be attracted to a typical underwritten life plan even after a 5% price increase.[19]

38. These submissions indicate that GOF policies serve particular needs of customers and that demand substitutability with other type of insurance policies is limited.

CMA's analysis and conclusion on the supply and management of GOF policies

39. Given the evidence on limited demand substitutability between GOF policies and other life insurance policies, the CMA has, on a cautious basis and for the purposes of this investigation, assessed the Merger also with reference to the supply and management of GOF policies.

Geographic scope

40. The Parties submitted that the supply of all life insurance products takes place in a geographic frame of reference at least UK-wide, and possibly wider.

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[17] For example, OFT decisions: *Anticipated acquisition by Resolution plc of Friends Provident plc* (October 2007); Anticipated acquisition by Resolution plc of the Abbey National Life business (July 2006).
[18] See, for example, [✂].
[19] Similar views were expressed by [✂].

41. Previous decisions of the European Commission and the OFT considered that the relevant geographic frame of reference for the supply of life insurance was national as a result of national distribution channels, national regulatory frameworks and fiscal regimes, and national established brands.[20]

42. The CMA received no evidence during its present investigation to suggest that the geographic frame of reference should be narrower or wider than the UK.

43. For these reasons, and for the purpose of this investigation, the CMA believes that the appropriate geographic frame of reference is the UK.

Conclusion on frame of reference

44. For the reasons set out above, and on a cautious basis, the CMA has considered the impact of the Merger in the following frames of reference:

    (a) The supply and management of life insurance policies in the UK;

    (b) The supply and management of protection policies in the UK;

    (c) The supply and management of pension policies in the UK;

    (d) The supply and management of accumulation pension policies in the UK;

    (e) The supply and management of investments and savings policies in the UK;

    (f) The supply and management of non-profit policies in the UK;

    (g) The supply and management of individual life insurance policies in the UK;

    (h) The supply and management of group life insurance policies in the UK; and

    (i) The supply and management of GOF policies in the UK.

45. There are many overlaps between these frames of reference. For instance, the distinction between group and individual life insurance policies applies to life insurance policies in general and to each type of life insurance policy.

46. However, it has not been necessary for the CMA to reach a conclusion on the product frame of reference, since, as explained below, no competition concerns arise on any plausible basis.

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[20] See for instance Aviva / Friends Life / Tenet M.7478 (March 2015); Canada Life/Irish Life M.6883. For OFT decisions see for instance Anticipated acquisition by Royal London Mutual Insurance Society of certain assets and business of Resolution plc (December 2007).

Competitive assessment

Horizontal unilateral effects

47. 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.[21]

48. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in each frame of reference as a result of horizontal unilateral effects.

Life insurance policies

Shares of supply

49. Phoenix provided shares of supply in terms of gross written premiums in the UK. This is consistent with the CMA approach for the calculation of turnover[22] and is a more conservative approach than one based on shares of new business, as Phoenix does not accept new customers.

50. Table 1 summarises the Parties' shares in the supply and management of life insurance policies generally, and for the main types of life insurance policy in which the Parties overlap. The shares of supply were provided by the Parties, using 2014 data from the Association of British Insurers (**ABI**), which is based on survey responses from ABI members. The parties told the CMA that this dataset represents approximately 65% of the UK life insurance market.[23]

Table 1: Parties' shares of gross written premiums for life insurance policies, 2014

Type of policy	Phoenix	Target businesses	Post-Merger %
Life insurance	<[0-5%]	<[0-5%]	<[0-5%]
Protection policies	<[0-5%]	<[0-5%]	<[0-5%]
Pensions	<[0-5%]	<[0-5%]	<[0-5%]
Accumulation	<[0-5%]	<[0-5%]	<[0-5%]
Investments and savings	<[0-5%]	<[0-5%]	<[0-5%]
Individual	<[0-5%]	<[0-5%]	<[0-5%]
Group	<[0-5%]	<[0-5%]	<[0-5%]

Source: the Parties.

[21] *Merger Assessment Guidelines*, from paragraph 5.4.1.
[22] See CMA's Guidance on Jurisdiction and Procedure (paragraph B.14).
[23] The CMA found no reason to believe that these shares were not reflective of the whole market.

51. Based on the shares of supply presented in the table above, the Merger will result in a combined share of supply in the UK of less than 10% in the supply and management of life insurance policies generally and in each of the following types of life insurance policy: protection, pension (and accumulation pension), investments and savings, individual and group.

52. The Parties could not estimate their combined share of supply separately for non-profit policies. However, the Parties told the CMA that most new life insurance policies are non-profit. This has been confirmed to the CMA by the Financial Conduct Authority (**FCA**). Therefore, the shares of supply of the Parties in the supply and management of non-profit insurance policies are not likely to differ significantly from the shares of supply estimated in Table 1, which refer to both profit and non-profit life insurance policies.

CMA analysis - asymmetry in competitive constraints

53. As mentioned above, Phoenix is a specialist supplier of closed funds and does not accept new customers. Moreover, Phoenix told the CMA [✂]. Phoenix said that [✂],[24] and [✂].[25] This would conform with its publicly stated strategy of focussing only on closed funds.[26] On the basis of this evidence, the CMA believes that Phoenix's closed funds do not exert a competitive constraint on the Target Businesses and, absent the Merger, there is no reason to believe that they will do so in the future.

54. However, the CMA considered whether the Target Businesses might constrain Phoenix in the supply and management of life insurance policies if Phoenix's customers (other than its customers of GOF policies, as explained below) have the option of switching from their closed funds to one of the open policies sold by the Target Businesses. In other words, the competitive constraint exerted by the Parties on each other could be asymmetric, with the Target businesses constraining Phoenix to some extent but not the other way round.

55. However, shares of supply as low as the combined shares of supply of the Parties (see Table 1) will not often give the CMA cause for concern[27] as they indicate that the loss of constraint on the Target Businesses is very limited and, after the Merger, other suppliers of life insurance policies will continue to impose a sufficient competitive constraint on Phoenix.

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[24] Merger Notice, page 4.
[25] [✂]
[26] See Annex E.1 to the Merger Notice, Phoenix's annual report and accounts 2015: 'Closed funds represent the whole of our business. Because of this we are able to focus all our energy and expertise on improving their performance without being distracted by the need to win new customers'.
[27] See Merger Assessment Guidelines, paragraph 5.3.5.

Conclusion on life insurance policies

56. For these reasons, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply and management in the UK of life insurance generally, or of the following types of life insurance: protection, pension (including accumulation pension), investments and savings, non-profit, individual and group.

GOF policies

Share of supply

57. As mentioned above, internal documents provided by SunLife indicate that it is the largest provider of GOF policies to new customers in the UK (see paragraph 36). The Parties estimated that SunLife has a share of supply of [40-50]% by number of new customers (based on 2014 data). Its main competitors in the supply of GOF policies to new customers are [✂].[28] Phoenix is not active in the supply of GOF policies to new customers. This indicated that other suppliers of GOF policies will continue to be an alternative to SunLife for new customers of GOF policies.

Competitive constraint imposed by SunLife on Phoenix in the supply and management of GOF policies

58. As explained above, Phoenix does not exert any competitive constraint on SunLife (see paragraph 53). All Phoenix's GOF funds are closed and it has not accepted any new customers to these funds for more than [5-15] years. However, the CMA considered the extent to which SunLife might constrain Phoenix in relation to the supply and management of GOF policies.

59. Phoenix and competitors of SunLife which responded to the CMA's merger investigation told the CMA that switching between GOF policies is rare. This is because GOF policies have no surrender value,[29] or a very small surrender value,[30] and, if customers stop paying their premiums,[31] they lose their right to receive a payout on death. Moreover, switching customers would necessarily be

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[28] These market shares are taken from a Phoenix internal document of 29 February 2016 (Project Wolf Update), attached as Annex H.4 to the Merger Notice. The Parties gave the CMA slightly different estimates, which included [✂] in the group of competitors. However, [✂] told the CMA that it was no longer active in the supply of GOF policies.

[29] See merger notice, page 29, and Responses from [✂]. This is generally the case for GOF policies and is the case for those in Phoenix's portfolio.

[30] [✂] told the CMA that some of the GOF policies they manage offer a 'modest' surrender value.

[31] Competitors explained that many GOF policies require customers to pay monthly premiums until death. Some providers offer GOF policies for which premiums stop at the age of 90 or earlier. See [✂]'s responses to the CMA's questionnaire.

older than when they took out their original GOF policy,[32] which is likely to imply a higher premium or a smaller final payout after switching.

60. Competitors [✂][33] submitted that, as a result of these high switching costs, switching GOF provider is unusual, especially after several years from signing the policy.[34]

61. The CMA notes that competitors also did not mention Phoenix as a competitor of SunLife in the supply and management of GOF policies; and Phoenix's internal documents do not mention open funds (such as SunLife) as a competitive constraint on their closed funds.

Conclusion on GOF policies

62. For these reasons, the CMA believes that Phoenix does not exert any competitive constraint on SunLife and SunLife does not exert any material competitive constraint on Phoenix in the supply and management of GOF policies. The CMA therefore found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply and management of GOF policies.

Third party views

63. The CMA contacted competitors of the Parties. No third parties raised competition concerns about the Merger.

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

Decision

65. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.

[32] For any Phoenix customers considering switching, they would necessarily now be significantly older than when they took out their GOF policy, given that the Phoenix GOF book has been closed for more than 10 years.
[33] [✂] told the CMA that switching providers may be more common shortly after the initial purchasing decision, due to introductory gifts given on inception of some GOF policies.
[34] Cancellation of GOF policies, on the other hand, is a common occurrence. Cancellation of GOF policies, on the other hand, is a common occurrence. According to a YouGov survey from 2014, 28% of people who bought a GOF policy have cancelled it. Most cancellations occur in the first year of a policy. The reasons provided by the majority of customers cancelling their policy were either affordability (40%) or cessation of need for a policy (around a third). These reasons suggest that that the cancelled policy was not replaced by a new one, at least in the short term. [✂]

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

Andrew Wright
Director
Competition and Markets Authority
1 August 2016

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[i] Paragraph 31 should read: 'The Parties said that suppliers of open funds and operators of closed funds are not close competitors.'