Decision

Proposed acquisition of DAS UK Holdings Limited by ARAG SE (C-063)

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Jersey Competition Regulatory Authority
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1. Summary

1.1 ARAG SE (the **Purchaser**) is proposing to acquire the entire issued share capital of DAS UK Holdings (the **Target**) from ERGO Versicherung AG (the **Seller**) (the **Proposed Transaction**).

1.2 The Proposed Transaction was notified to the Jersey Competition Regulatory Authority (**the Authority**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (**the Law**). The Authority has determined the Proposed Transaction will not lead to a substantial lessening of competition in any relevant market in Jersey and hereby approves the Proposed Transaction.

2. The Application

2.1 A notice of application regarding the Proposed Transaction was published by the Authority on 13 November 2023. The 10-day consultation period ended on 24 November 2023. No submissions or comments were received from the Authority's consultation process.

3. The Parties

The Purchaser

3.1 The Purchaser is a German incorporated insurance company (registration number HRB66846). The Purchaser is the parent company of the ARAG Group, which is active in 19 countries with over 4,700 employees worldwide, and insurance premium income totalling around EUR2.2 billion. The ARAG Group operates through a mixture of branch offices, subsidiaries, and shareholdings in numerous international markets. Neither the Purchaser, or any part of the ARAG group, operates in Jersey nor do they have a legal or physical presence in Jersey. ARAG Group's activities (outside of Jersey) involve the provision of legal expenses insurance (**LEI**) and/or assistance cover.

3.2 In the UK, the Purchaser is primarily active as an insurance intermediary[1] and works with a number of UK-based brokers who places LEI and/or assistance policies. These policies are, on occasion, placed with Jersey residents (estimated earned commission for 2022 was [REDACTED] for each of LEI and assistance respectively). None of these UK brokers actively market themselves in Jersey and the Purchaser does not place any policies directly with Jersey-based policy holders.

The Seller

3.3 The Seller is a German incorporated and listed company which wholly owns the Target. The Seller is a unit of the Munich Re Investment Partners Group, also based in Germany. For a

[1] The Purchaser is also active to a limited extent as an insurer/reinsurer in the UK, through its UK branch.

limited period following completion of the Proposed Transaction the Seller will provide the following transitional services to the Target under a Transitional Services Agreement:

(1) [REDACTED]

(2) [REDACTED]

The Target

3.4 The Target is a company incorporated in England and Wales (registration number 03457687) which is a holding company and the parent company of the DAS Group. The Target operates as a standalone business with shareholder oversight from the Seller.

3.5 The Target directly owns 100% of three subsidiaries; (i) DAS Legal Expenses Insurance Company Limited; (ii) DAS Law Limited (DAS Law); and DAS Services Limited (DAS Services) and is only active in the UK and the Channel Islands.

3.6 The Target supplies LEI and assistance cover including to Jersey-based distributors (insurance providers) for their end customers (policy holders). The Target currently obtains LEI and assistance reinsurance services solely from its current parent, the Seller.

Reason for the Proposed Transaction

3.7 The Target is an established, UK regulated legal expenses insurer with significant experience in this area. These elements will enable the Purchaser, who has a clear strategic focus on legal expenses insurance products and services, to strengthen its position in the UK market. Lastly, through access to greater non-financial resources, the Proposed Transaction will enable continued investment in innovation and digitisation in the Target.

4. Requirement for Authority approval

4.1 Under Article 2(1)(b) of the Law, a merger or acquisition (referred to in this paper as a 'merger') occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. Article 20(1) of the Law provides that a person must not execute certain mergers or acquisitions except and in accordance with the approval of the Authority.

4.2 The Competition (Mergers and Acquisitions) (Jersey) Order 2010 (**the Order**) defines the mergers and acquisitions that must be approved by the Authority prior to execution. Most relevant to this case is Article 3(1) of the Order, '*Vertical mergers or acquisitions',* which provides that a merger or acquisition must be notified to the Authority for approval under the Law if:

(a) one or more of the undertakings involved in the proposed merger or acquisition has an existing share of 25% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey; and

(b) another undertaking involved in the proposed merger or acquisition is active in the supply or purchase of goods or services of any description that are upstream or downstream of those goods or services in which that 25% share is held.

4.3 According to the information provided by the parties, the Target has an existing share of supply of LEI and assistance cover which exceeds 25%. In addition, the Purchaser is active in the UK as an insurance intermediary and places LEI and/or assistance policies on behalf of its insurer partners. Upon completion of the Proposed Transaction, the Target would obtain LEI and assistance reinsurance services solely from the Purchaser. On this basis, and with reference to Article 3(1) of the Order, the Proposed Transaction is a vertical merger which requires the approval of the Authority prior to its execution.

5. Market definition

Approach

5.1 Under Article 22(4) of the Law, the Authority may refuse to approve a merger if it is satisfied the merger would substantially lessen competition in Jersey or in any part of Jersey.

5.2 To determine if a merger would substantially lessen competition, as an initial step, the Authority will identify the markets which are likely to be affected by the merger. Defining the market provides a framework within which the competitive effects of a merger can be assessed.

5.3 When defining a market, the Authority may take note of its own previous decision-making practice and/or market definitions applied by other competition authorities. These previous decisions are not precedents and are not binding, either on the merging parties or on the Authority. Competition conditions may change over time which impacts the market definition, and so the market definition will always depend on the prevailing facts.[2]

Views of the Parties

Product Market

5.4 The parties consider the relevant product market for assessing the competition effects of the Proposed Transaction is (i) the supply of LEI and (ii) the supply of assistance cover.

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[2] This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 [2000] ECR II-01733, paragraphs 81-82. Article 60 of the Law requires the Authority to attempt to ensure that so far as possible questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of corresponding questions arising under European Union law in relation to competition within the European Union.

5.5 LEI relates to insurance cover for the cost of legal proceedings, such as lawyers' fees and disbursements incurred during litigation. LEI can cover both claimants and defendants in legal action, and can be taken out either before or after the relevant cause of legal action occurs. LEI is commonly sold to policyholders as an optional 'add-on' insurance to a standalone 'main' insurance policy.

5.6 Assistance cover relates to insurance cover for the provision of immediate assistance in the event of an emergency. For example, an assistance policy might be offered alongside a motor or home insurance policy, providing services such as vehicle breakdown recovery or emergency tradespeople such as a plumber or a locksmith. As with LEI, assistance cover is commonly sold to policyholders as an optional 'add-on' insurance to a standalone 'main' insurance policy.

5.7 In reaching this conclusion, the parties considered decisions of other competition authorities:

(1) For example, the Netherlands Authority for Consumers and Markets has considered LEI to form part of the wider (national) markets for motor, liability, assistance and miscellaneous financial loss insurance in respect of which LEI policies were typically offered as add-ons. In doing so, it noted that that "*there are hardly any barriers for Dutch non-life insurers to also become active in the field of legal expenses insurance*", that *"the risk to be insured in legal expenses insurance is not of a special nature"* and required *"largely the same [knowledge as] required for offering other types of non-life insurance."*[3]

(2) However, the European Commission has in practice previously assessed distinct market segments for: (i) the supply of "legal protection insurance" (referred to above as LEI); and (ii) "assistance services" (referred to above as "assistance").[4] In each case the European Commission considered these segments on a national basis.

5.8 The parties also noted that, from a regulatory perspective, the Insurance Business (Jersey) Law 1996 and the European Commission's Solvency II Single Rulebook lists each of LEI and assistance as standalone regulatory classes of nonlife insurance.[5]

Geographic Market

5.9 The parties submit that, consistent with previous Authority decisions concerning the insurance sector, the geographic market is limited to Jersey. In reaching this conclusion, the parties noted

[3] See Case 4007/21 DAS Holding N.V./Les Assurés Réunis S.A.-N.V./DAS Rechtsbijstand N.V./LAR Rechtsbijstand (2004).

[4] See Case COMP/M.8905 AXA Konzern AG / Roland Rechtsschutzversicherungs AG (2018); Case COMP/M.8257 NN Group / Delta Lloyd (2017); and Case COMP/M.7233 Allianz / Going Concern of Unipolsai Assicurazioni (2014).

[5] Class 17, "Legal expenses" is described as "Legal expenses and costs of litigation"; class 18, "Assistance" is described as "Assistance for persons who get into difficulties while travelling, while away from their home or their habitual residence."

that LEI and/or assistance insurers are required to obtain authorisation from the Jersey Financial Services Commission (**JFSC**) in order to offer LEI and assistance products in Jersey.[6]

Authority consideration

5.10 The relevant product market is defined primarily by reference to the likely response of consumers and competitors.[7] It will comprise products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, prices and intended use. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can easily switch to other service providers.

Product market

5.11 Whilst typically an 'add-on' to main insurance policies, it is possible to buy standalone LEI policies. LEI and assistance cover are not substitutable for other insurance products and, with reference to the Insurance Business (Jersey) Law, an insurer offering LEI and/or assistance cover would require a licence from the JFSC to do so. Based on these factors, it appears reasonable to consider LEI and assistance cover as two distinct product markets.

Geographic Market

5.12 There are low barriers to entering the LEI and/or assistance cover market. The principal barrier to entering the Jersey market is the regulatory requirements to register either as an insurer or provider of insurance mediation services with the JFSC. However, for any well-established UK or global insurer, this will not be material barrier. Aside from this, there are few obstacles to entry or expansion as it is not necessary to establish a physical presence in Jersey in order to market or provide services to local clients. Consequently, it appears more likely that the relevant competitive market is the UK and Channel Islands.

5.13 Notwithstanding the above, the precise product and geographic market definition can be left open since, for the reasons set out below, the proposed transaction would not lead to a substantial lessening of competition on any plausible basis.

6. Effect on Competition

Approach

6.1 After defining the relevant market, the Authority considers the respective market shares of the competitors in that market, both before and after the proposed transaction. These shares can be

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[6] bupa-insurance-ltd-civil-service-healthcare-society-ltd-decision.pdf (jcra.je)

[7] JCRA Guideline 7 – Market Definition.

used as an indication of the overall level of market concentration which will be brought about as a result of the merger.

6.2 The analysis will consider whether the merger creates or enhances the ability or incentive to exercise market power, either unilaterally or in co-ordination with competitors), and whether other market forces (such as the entry of new competitors or countervailing power of customers) will eliminate this risk. The assessment will also consider any pro-competitive effects or efficiencies that may result from the merger.

6.3 For vertical mergers, the Authority's focus will be on assessing whether the merged entity would have the ability or incentive to foreclose the market to competitors, either by denying access to important inputs upstream, or by denying access to 'routes to market' downstream.

6.4 When assessing mergers, the Authority will have regard to the guidelines produced by the European Commission. It may also consider the substantive merger guidelines applied by the Competition and Markets Authority in the UK, as well as those of other competition authorities.

Views of the Parties

6.5 The Target, as parent company of the DAS Group, supplies LEI and assistance cover to Jersey-based distributors (insurance providers) for their end customers (policy holders). The Target insures c. [REDACTED] LEI policies and c. [REDACTED] assistance policies in Jersey. Currently, the Target obtains 100% of its LEI and assistance reinsurance services from the Seller. On completion of the Proposed Transaction, the Target would obtain 100% of its LEI and assistance reinsurance services from the Purchaser.

6.6 The Target derives [REDACTED] of its Jersey revenues from its relationship with Islands Insurance[8]. In a recent decision[9] the Authority found Islands Insurance to have a market share greater than 25% of general insurance distribution in Jersey. The Target is not aware that Islands' Insurance sources LEI or assistance cover from any other insurers. On this basis, the parties estimate that the Target has a share of supply of LEI and/or assistance cover to Jersey in excess of 25%.

6.7 [REDACTED] The parties therefore consider that the Target's share of supply does not reflect its market power, but instead reflects its relationship with one key distributor.

6.8 The Target has relationships with [REDACTED] of Islands Insurances five key competitors[10], however [REDACTED]. The parties also noted there are 10 other insurance providers listed on

[8] A Jersey registered and JFSC licenced insurance company.
[9] islands-insurance-hepburns-insurance-decision.pdf (jcra.je)
[10] As identified in the islands-insurance-hepburns-insurance-decision.pdf (jcra.je)

the JFSC website as being approved and regulated to provide LEI and/or assistance cover in Jersey.

6.9 The parties submit that there is no credible risk of input foreclosure or customer foreclosure that would arise from the Proposed Transaction. With regards to input foreclosure, the parties noted that the Purchaser does not provide services to any Jersey-based customers, nor any insurers that market their services in Jersey. With regards to customer foreclosure, the Target currently obtains LEI and assistance reinsurance services solely from its current parent, the Seller, and not from any third parties.

6.10 The parties consider that the LEI segment is relatively easy to enter. Entry into the supply of LEI and/or assistance cover in Jersey would be most straightforward for an existing non-life insurer already registered in Jersey. This is in particular the case where the insurer already provides LEI and/or assistance elsewhere.

6.11 As such the parties submitted that, on no plausible basis, the Proposed Transaction would substantially lessen competition in Jersey.

Authority consideration

6.12 Vertical mergers are mergers where one party has a 'vertical' relationship with the other (for example, as a supplier to or customer of that party). According to the parties, the Target currently obtains 100% of its LEI and assistance cover service from the Seller. Following the Proposed Transaction, the Target would obtain 100% of its LEI and assistance reinsurance services from the Purchaser. The Proposed Transaction therefore, would not result in any change to the supply of LEI or assistance cover to Jersey. However, as set out at paragraph 5.12 above, it appears more likely that the relevant competitive market is the UK and Channel Islands. On this basis, the Target's share of supply would fall below 25%.

6.13 Whilst vertical mergers are generally considered less likely to produce negative economic effects and so less likely give rise to a substantial lessening of competition, they can give rise to competition concerns on the grounds of input or customer foreclosure. The assessment of these types of mergers therefore focusses on the ability and incentive to foreclose an actual or potential rival's access to supplies or markets as a result of the merger and whether such a strategy would have a significant detrimental effect on competition either up or downstream.

6.14 The Authority considers the Proposed Transaction is unlikely to give rise to vertical anti-competitive foreclosure since the Target is largely reliant upon is relationship with Islands

Insurance. Islands Insurance has the choice of many UK and global suppliers of LEI and assistance cover and can decide, at any time, to use one of these other suppliers.

6.15 Further, with there being a large number of other LEI and/or assistance cover providers, it is unlikely the Purchaser would be in a position to prevent competitors of the Target from obtaining LEI and/or assistance cover by refusing to supply them.

6.16 In addition to these points, barriers to entering the are relatively low. The principal barrier to entry the regulatory requirements to register either as an insurer or provider of insurance mediation services with the JFSC.

6.17 On this basis, it is unlikely the Proposed Transaction would have a significant detrimental effect on competition, up or downstream. Therefore, the Authority concludes the Proposed Transaction would not substantially lessen competition in Jersey.

7. Decision

7.1 The Authority concludes the Proposed Transaction will not substantially lessen competition in Jersey or any part of Jersey; and are therefore approved under Article 22(4) of the Law.

08 December 2023 **By Order of the Jersey Competition Regulatory Authority**