Anticipated acquisition by BMO Global Asset Management (Europe) Limited of F&C Asset Management plc

ME/6408/14

The CMA's decision on reference under section 33(1) given on 2 May 2014. Full text of the decision published on 19 May 2014.

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

Summary

1. Bank of Montreal (BMO) notified the anticipated acquisition by its subsidiary BMO Global Asset Management (Europe) Limited (BMO Europe) of F&C Asset Management plc (F&C) to the Office of Fair Trading (OFT) on 21 March 2014. The merger was investigated under the OFT's administrative timetable with a deadline for the decision to be announced by the Competition and Markets Authority (CMA) by 19 May 2014.

2. The acquisition was announced on 28 January 2014 and is intended to be completed by means of a Court-sanctioned scheme of arrangement on or shortly after 7 May 2014. The CMA considers that a relevant merger situation will be created, since it considers that the parties will cease to be distinct and that the turnover test is met.

3. The parties overlap in the UK in the provision of asset management services, and more specifically in the supply of active asset management services to institutional investors in relation to emerging markets equities-based funds and multi-asset global 'total return' funds.

Frame of reference

4. The CMA has focused its assessment of the acquisition on the services in which the parties overlap in the UK. However, given that no competition concerns arise as a result of the acquisition, the CMA has not considered it necessary to conclude on the appropriate frame of reference.

Competition assessment

5. Taking into account the low level of the parties' share of supply on any plausible measure, the lack of the closeness of competition between the parties and the continued presence of several significant competitors, the CMA does not believe, on the evidence available to it, that there is a realistic prospect that the acquisition will give rise to a substantial lessening of competition (SLC). No third parties raised concerns about the acquisition.

Decision

6. This merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the Act).

Parties

7. **Bank of Montreal:** BMO Europe is a wholly-owned subsidiary of BMO. BMO is a diversified financial services provider listed on the Toronto and New York stock exchanges. BMO's asset management business is conducted under the name BMO Global Asset Management (BMO GAM) and is mainly active in Canada and the USA, with less extensive activities in Asia and Continental Europe, with some activity in the UK (see paragraph 2). BMO GAM holds over £80 billion in assets under management globally. BMO's total UK turnover in 2013 was [✂].

8. **BMO Asset Management Services in the UK:** BMO GAM is active in the provision of asset management services in the UK through two wholly-owned subsidiaries of BMO: Pyrford International Limited (Pyrford) and Lloyd George Management (Europe) Limited (LGME). Both Pyrford and LGME offer asset management services to institutional clients in the UK. In the UK, BMO's assets under management in relation to asset management services amounted to approximately [✂] in 2013, including Pyrford and LGME's assets under management.

9. **F&C:** F&C is an investment management group based in the UK, listed on the London stock exchange. F&C is a predominantly Europe-based asset manager. F&C offers asset management services to individuals and institutional clients. F&C has assets under management of £82.1 billion. F&C's turnover in the UK in 2013 was [✂].

Transaction

10. BMO Europe will acquire the entire issued and to-be-issued share capital of F&C. The acquisition was announced on 28 January 2014 and is intended to

be completed by means of a Court-sanctioned scheme of arrangement on or shortly after 7 May 2014.

11. The OFT (now the CMA)[1] received a satisfactory submission from BMO on 21 March 2014. The CMA's administrative deadline for announcing its decision on whether to make a reference for a Phase 2 investigation is 19 May 2014.

Jurisdiction

12. As a result of this transaction BMO Europe and F&C will cease to be distinct. The UK turnover of F&C exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

13. 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.

Background

14. BMO submitted, and third parties confirmed, that asset management concerns the provision of investment advice, and the implementation of such advice through delegated powers from a client, using a variety of investment products and asset classes. Asset management services include the creation, establishment and marketing of collective investment schemes, such as mutual funds, unit trusts and collective investment companies, as well as the provision of portfolio management services.

15. Asset management involves converting a client's aims (eg managing a particular risk exposure or investing in line with a chosen risk profile) into a strategy for choosing, acquiring (or creating), employing and maintaining appropriate assets to achieve those aims. Asset management products can be based on a particular:

    (a) 'class' of asset (eg equities, fixed income, cash, real estate, currency, commodities, collectibles, derivatives etc);[2]

[1] The CMA was established on 1 October 2013. By virtue of the Enterprise and Regulatory Reform Act 2013 and the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional Provisions and Savings) Order, No 416 of 2014, the OFT's merger control functions were transferred to the CMA on 1 April 2014.
[2] Funds can also be based on more than one kind of asset. These so-called 'multi-asset' funds are portfolios of assets in which the weights and types of asset classes vary according to the exposure sought by the individual investor.

(b) geographic territory (eg UK, USA, developed markets, emerging markets etc);

(c) sector (eg utilities, oil and gas, industrials etc); and/or

(d) investment strategy (eg dividend-paying stocks, low/high-volatility stocks etc).

16. Asset management schemes can be 'actively' managed, where an asset manager will constantly monitor and amend the composition of the scheme with the aim to optimise performance (within the predefined scope of the scheme) on behalf of their investor customer. Alternatively, 'passive' asset management products automatically replicate the performance of a given index (eg the FTSE 100, DAX, CAC 40 indices etc) without any active management at generally lower fees.

17. Customers in the asset management sector can generally be split into the following categories:

(a) **'Institutional' customers:** such as banks, pension funds and insurers. In some cases, high-net-worth clients are also included as 'institutional' customers rather than 'retail' customers as their drivers and activity in the market form a better fit with other 'institutional' investors. Typically, 'institutional' investors will purchase asset management products directly from the provider.

(b) **'Retail' customers:** such as general corporate clients, small and medium-sized enterprises and private individuals. Typically retail customers purchase asset management products through an intermediary.

Frame of reference

18. The CMA's approach to identifying an appropriate frame of reference is generally to consider the narrowest plausible candidate markets first and then to consider whether they can be widened through substitution on the demand side. If appropriate, the CMA then considers if substitution on the supply side allows several products that are not demand-side substitutes, to be aggregated into one wider market.[3]

[3] See *Merger Assessment Guidelines*, joint publication of the Competition Commission and the OFT, September 2010, paragraphs 5.2.6–5.2.20. The Merger Assessment Guidelines have been adopted by the CMA (see Annex D to CMA2 *Mergers: Guidance on the CMA's Jurisdiction and Procedure*, January 2014).

Product scope

19. BMO and F&C overlap in the provision of asset management services in the UK. In previous cases the European Commission and the OFT have defined the relevant product market for the supply of asset management services to be the provision of both:

    (a) the creation, establishment and marketing of retail pooled funds (mutual funds, unit trusts, investment trusts and open ended investment companies); and

    (b) the provision of portfolio management services to pension funds, institutions, international organisations and private individuals.[4]

    The CMA did not receive evidence to suggest that it should depart from this market definition. The CMA considered whether it was appropriate in this case to delineate the product market further by customer type, between actively and passively managed funds and/or between different types of funds.

Should asset management services in the UK be differentiated by customer type?

20. Asset management services could potentially be further differentiated by customer type, namely between institutional and individual (or retail) customers. In previous cases, although not concluding on the scope of any frame of reference, the OFT and the European Commission have made similar distinctions as part of their competitive assessment of similar markets. For example:

    (a) In the *Credit Agricole/Societe Generale Asset Management* case, the European Commission conducted its competitive assessment on the basis that 'a distinction needs to be drawn [in the French Market] between asset management for institutional clients (and potentially also for high net worth private clients) and retail collective investment schemes as conditions of competition are dissimilar between these two segments.'[5]

    (b) In the anticipated acquisition by Resolution plc of Friends Provident plc case, the OFT assessed its competitive assessment of 'the impact of the present transaction … on the UK asset management market as well as on

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[4] **EU cases:** COMP/ M.6812: *SFPI/Dexia,* 21 February 2013*;* COMP/M.5728: *Credit Agricole/Societe Generale Asset Management,* 22 December 2009*;* COMP/M.5580: *BlackRock/Barclays Global Investors UK Holdings,* 22 September 2009*.*
UK cases: OFT Decision: *Anticipated decision by BlackRock of the exchange traded funds business of Credit Suisse,* 13 June 2013*;* OFT Decision: *Anticipated Acquisition by Resolution plc of Friends Provident,* 12 October 2007*;* OFT Decision: *Anticipated Acquisition by Old Mutual plc of Försäkringsaktiebolaget Skandia,* 30 November 2005*.*
[5] COMP/M.5728: *Credit Agricole/Societe Generale Asset Management*, 22 December 2009, paragraph 31.

the various possible segments by funds and by customers'[6] having distinguished customers as being institutional or retail earlier in the decision.[7]

21. BMO and third parties did not present any evidence that the CMA should diverge from this approach. The parties overlap in the provision of asset management services to institutional customers but not to retail customers. Therefore, whilst not concluding on the appropriate frame of reference, the CMA has considered the provision of asset management services to institutional customers only in its competitive assessment.

Should asset management services in the UK be differentiated between active and passive asset management?

22. As noted above (paragraph 16), asset management can be active or passive. In its assessment of the product market in BlackRock/Barclays Global/ Investors UK Holdings,[8] the European Commission noted that it had concerns with the parties' proposed market definition of asset management as a whole rather than the narrower segments that the Commission had previously used, including a distinction between active and passive asset management, although the Commission did not reach a conclusion on product definition in that case.

23. In the present case, customers explained to the CMA that, on the demand side, the role of brokers and investment managers was, in the first instance, to match their investor investment profile and desired risk exposure with available products on the market. Active and passive strategies offer very different risk profiles and are not considered to be substitutes for each other, even though most investment portfolios will hold a mixture of active and passive funds.

24. The parties overlap in the provision of active but not passive asset management services. Therefore, whilst not concluding on the appropriate frame of reference, the CMA has considered the provision of active asset management services only in its competitive assessment.

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[6] OFT Decision: *Anticipated Acquisition by Resolution plc of Friends Provident,* 12 October 2007, paragraph 32.
[7] Idem, paragraph 15.
[8] OFT Decision: *Anticipated decision by BlackRock of the exchange traded funds business of Credit Suisse,* 13 June 2013, paragraphs 19–35.

Should asset management services in the UK be differentiated between different types of funds?

25. BMO submitted that asset management schemes are broadly broken down between similar individual funds that provide the same specific investment exposure (for example, those which track (for passive funds), or manage investments in (for active funds) the same, or equivalent, market indices).[9]

26. As outlined in paragraph 23, brokers and investment managers match investment profile and desired risk exposure with available products on the market. This approach also leads brokers further to consider investments in a narrow category of products (such as these asset classes, or investment strategies) as suitable substitutes for other products in the same category.

27. One customer suggested that in some circumstances, a client's requirements could be particularly detailed, or unusual, in which case there would be only one fund that would be a fit to its client's needs and that no other fund would be considered to be substitutable. However, this third party pointed out that this was very rare.

28. The parties only overlap in the provision of a limited range of funds, ie emerging markets equities-based funds and multi-asset global 'total return' funds. Therefore, whilst not concluding on the appropriate frame of reference, the CMA has focused its assessment on the provision of both of these types of funds.

Conclusion

29. For the reasons set out above, the CMA has considered the following frames of reference in its competitive assessment: active asset management services to institutional customers in relation to both emerging markets equities-based funds, and multi-asset global 'total return' funds. However, given that, for the reasons explained further below, the CMA is of the view that no realistic prospect of an SLC exists in any plausible frame of reference in this case (nor has this case attracted any third party competition concerns), the CMA does not consider it necessary to conclude on the appropriate frames of reference in this case.

[9] See also OFT Decision: *Anticipated decision by BlackRock of the exchange traded funds business of Credit Suisse,* 13 June 2013, paragraphs 19–35.

Geographic scope

30. BMO submitted that the geographic scope adopted by the OFT in previous cases, involved taking a cautious approach and assessing the impact of the transition on the basis of the UK as the narrowest definition. BMO considered that a national geographic scope of the UK would provide the most conservative possible estimate of the parties' activities.[10] BMO further pointed out that the previous decisions of both the European Commission and the OFT in the asset management sector suggest that the geographic scope of the market may be wider than national. Third parties similarly suggested that there were no real barriers to trade that would indicate that the geographic scope of the market should be limited to a national level.

31. Based on a cautious approach, the CMA has examined the transaction on a UK-wide frame of reference. However, given its view that no realistic prospect of an SLC exists in any plausible geographic frame of reference, the CMA does not consider it necessary to reach a conclusion on the appropriate geographic frame of reference.

Horizontal issues

32. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices on its own and without needing to coordinate with its rivals.[11]

33. The starting point for the CMA's assessment has been to consider the extent of competition between the merging parties in the supply of active asset management services to institutional customers in relation to both emerging markets equities-based funds, and multi-asset global 'total return' funds.

34. In this regard, the CMA has taken into consideration *(a)* the shares of supply of the parties and *(b)* further evidence available about the closeness of competition between the parties. The CMA has then considered the extent to which competitive constraints may mitigate any possible competition concerns in relation to the supply of asset management services.

Shares of supply

35. BMO submitted its estimates of the merging entities' shares of supply on a number of bases. The parties' combined shares of supply on any plausible

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[10] OFT Decision: *Anticipated Acquisition by Resolution plc of Friends Provident,* 12 October 2007, paragraph 18.
[11] See *Merger Assessment Guidelines*, section 5.4.

basis, including the frames of reference set out above, in the UK are [0–5]% with an increment of [0–5]%. Third parties agreed that the parties will not have a significant share of supply of any market in the UK following the merger.

36. The CMA does not therefore consider that shares of supply at this level are in themselves indicative that competition issues may emerge as a result of the merger.

Closeness of competition

37. BMO submitted that the merged entity will face a significant number of alternative suppliers post-transaction. Third parties confirmed that both parties' products compete with a number of other products to attract investors. Neither BMO nor F&C are considered to be particularly close competitors of each other, rather third parties informed the CMA that the parties are both competing for business against investment funds which hold significantly greater shares of supply, such as BlackRock Investment Management, Legal and General Investment Management and M&G Investments.

38. The CMA therefore does not consider that BMO and F&C are particularly close competitors to each other.

Barriers to entry and expansion

39. BMO submitted that there are low barriers to entry. Third parties noted that the markets that the parties operate in in the UK are regarded as reasonably specialist, in which case a new entrant to the market could face difficulties attracting business as their fund management team may not have an in-depth knowledge of the market, nor a lengthy track record of success. However, third parties went on to say that the lack of market knowledge and track record could be overcome by installing an experienced fund manager who would merit investors' respect.

40. Although it therefore appears that barriers to entry may not be insurmount-able, it was not necessary for the CMA to reach a conclusion on this given the lack of competition concerns arising from the merger.

Third party views

41. The CMA received a number of comments from competitors and customers during the course or its investigation. No third parties expressed concerns about the competitive impact of the merger on competition, in fact some commented that the merger may improve competition by combining one party (F&C) with a strong track record of performance with the other party (BMO)

with significant capital reserves. Some third parties considered that this combination may allow the merged entity to compete effectively against more established competitors in the market.

42. All third party views and information have been assessed by the CMA and are reflected in the analysis above where relevant.

Conclusion

43. For the reasons set out above, in particular the parties' low shares of supply, the lack of closeness of competition between them and the presence of significant competitors, the CMA does not believe, on the evidence available to it, 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 UK.

Decision

44. This merger will therefore not be referred under section 33(1) of the Act.