



DETERMINATION OF MERGER NOTIFICATION M/08/013 – HIBERNIAN/VIVAS

Section 21 of the Competition Act 2002

Proposed acquisition by Hibernian Group plc of sole control of Vivas Group Limited

Dated 28/04/08

Introduction

1. On 11 April 2008, the Competition Authority (“the Authority”), in accordance with section 18(1)(a) of the Competition Act 2002 was notified on a mandatory basis of the proposed acquisition by Hibernian Group plc (“Hibernian”) a wholly-owned subsidiary of Aviva plc (“Aviva”), of 70% of the issued share capital (representing sole control) of Vivas Group Limited.

The Undertakings Involved

The Acquirer

2. Aviva, a UK-registered company, is involved in the provision of insurance products, savings products and fund management services in Europe, North America, Asia and Australia. Aviva has three businesses based in Ireland:
 - Hibernian, which operates through a number of subsidiaries. Hibernian General Insurance Limited provides cover for all aspects of general insurance: motor, property, liability and other (travel and marine). Hibernian Life Holdings, through its subsidiaries Hibernian Life & Pensions Limited and Ark Life Assurance Company Limited, is involved in the manufacture and marketing (sales) of a range of life insurance products, including protection products, pensions and savings and investment products;
 - Norwich Union International, an offshore life and investment business. It offers various bonds and also provides a range of trust services and tax planning; and,
 - Hibernian Investment Managers Limited, which provides an asset and fund management service for both institutional and retail investors.
3. For the financial year ended 31 December 2006, Aviva had consolidated worldwide aggregate turnover of stg£41,464 million (approximately €60,821 million)¹, and [Hibernian General Insurance Limited and Hibernian Life Holdings had turnover in the State of €1,492.9 million.]

¹ Currency conversion provided by the parties.

The Target

4. Vivas Group Limited has two wholly owned subsidiaries: Vivas Insurance Limited ("Vivas"), trading as Vivas Health, and Vivas Financial Services Limited, which is non-trading.
5. The principal activity of Vivas is the provision of health insurance. It is licensed by the Financial Regulator to allow it to underwrite accident and sickness insurance, which is required for the sale of health insurance in Ireland. It does not carry out any other commercial activities and does not operate outside the State. For the financial year ended 31 December 2007, Vivas had turnover of €[..], all of which was achieved in the State.

Analysis

6. Although Hibernian and Vivas are both active in the design and manufacture (underwriting) of non-life insurance products, the Authority does not have competition concerns at a horizontal level, as:
 - Hibernian is not active in the manufacture of health insurance products; and,
 - Private health insurance occupies a separate product market to other non-life insurance products.²
7. There is some vertical overlap between the activities of the parties. In 2007, Hibernian Direct, a subsidiary of Hibernian General Insurance Limited, was appointed an agent of Vivas to sell a Hibernian Direct/Vivas co-branded product.
8. Hibernian Direct is a multi-agency intermediary (i.e. free to sell different products). It sells Hibernian products, co-branded products and other third party insurance products. The Hibernian Direct/Vivas co-branded product is the only private health insurance product sold by Hibernian.
9. Vivas only sells its own health insurance products, including the co-branded Hibernian Direct/Vivas product. Vivas also has distribution agreements with a number of intermediary companies, and its most significant distribution agreements are with AIB, Cornmarket, EBS and AA. Approximately [..]% of Vivas products are sold through the intermediary distribution channel.
10. The Authority does not consider that there will be foreclosure of the health insurance sector as a result of the proposed transaction, as the competitors of Vivas will still be able to sell their products either directly themselves or through various tied agents and multi-agency intermediaries. In any event, the Hibernian Direct/Vivas co-branded product was the only private health insurance product sold by Hibernian.
11. There are also many opportunities post transaction for third party sellers of health insurance products to sell the products of Viva's competitors, VHI Healthcare and Quinn Healthcare, and also of Vivas

² See, in particular, Appendix 2 of the Competition Authority, 2007, *Competition in the Private Health Insurance Market*, available at www.tca.ie.

itself. Vivas informed the Authority that it had approximately [100,000 – 200,000] members or [5% - 10%] of the private health insurance market as of 31 March 2008. The parties informed the Authority that post transaction, Vivas products would still be sold through intermediaries other than Hibernian, and that Vivas health insurance would still be available to be purchased as a “stand-alone” product.

12. In light of the above considerations, the Authority therefore considers that the proposed transaction does not raise competition concerns.

Ancillary Restraints

13. The notified share purchase agreement provides that [certain of the vendors] will not compete with the business being transferred for [...] years from completion of the proposed transaction. This non-compete is limited geographically and in subject matter to activities that would compete with the current business of Vivas.
14. The parties have satisfied the Authority that the restraints set out in the agreements are directly related and necessary to the implementation of the proposed transaction, in order to protect the value of Vivas’ goodwill and confidential know-how. This is important in particular given the development of Vivas’ product range from its specialist know-how and given the associations of the parties involved with the Vivas brand.

Determination

15. The Competition Authority, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed acquisition by Hibernian Group plc of sole control of Vivas Group Limited will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority