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*Case No IV/M.213 -
HONG KONG &
SHANGHAI BANK /
MIDLAND*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 21.05.1992

*Also available in the CELEX database
Document No 392M0213*

PUBLIC VERSION

MERGER REGULATION -
ARTICLE 6(1)b DECISION

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To the notifying party

Dear Sirs,

Re. : Case No IV/M.213 - Hong Kong and Shanghai Bank / Midland
Notification of 23 April 1992 pursuant to Article 4 of
Council Regulation No 4064/89

1. This case concerns the planned acquisition by HSBC Holdings plc (HSBC) of Midland Bank plc (Midland) by way of a public bid announced on 14 April 1992. HSBC made an offer for the whole of the issued share capital of Midland, other than the shares already owned, on 8 May 1992.
2. After examination of the notification, the Commission has concluded that the notified concentration falls within the scope of Council Regulation No 4064/89 (the Merger Regulation), and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. HSBC is an investment company and the ultimate parent company of the Hong Kong and Shanghai Banking Corporation Group which is active mainly in domestic and international banking and related financial services throughout the world but mainly in Asia and North America.
4. Midland is one of the principal full service banks in the United Kingdom. The Midland Group is active in banking, financial and related services throughout the world.

II. THE CONCENTRATION

5. The offer made by HSBC could lead to the acquisition of control of Midland within the meaning of Article 3(1) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The concentration has a Community dimension. The combined aggregate worldwide turnover of HSBC and Midland in 1991 was more than 5,000 million ECU (one-tenth of total assets of HSBC 12,346 million ECU, of Midland 8,555 million ECU).
The aggregate Community-wide turnover of each is more than 250 million ECU (2,062 million ECU for HSBC, 9,814 million ECU for Midland).
The parties do not achieve more than two-thirds of their Community-wide turnover in one and the same Member State.
7. As holding companies both undertakings have interests in different economic areas such as banking, insurance, financial and other services. Calculation of the geographic breakdown of turnover of the various business activities under the Merger Regulation requires a split of the assets according to the main activities.
8. Article 5 of the Merger Regulation sets out the rules governing the calculation of turnover with a view to determining whether or not the operation under scrutiny has a Community dimension within the meaning of Article 1. The rule contained in Article 1(2) aims in particular at measuring the impact of the concentration is the Community in order to exclude from the scope of the Merger Regulation those concentrations between companies which do not have an appreciable commercial activity in more than one Member State.

As a general principle, therefore, the Merger Regulation requires that turnover is allocated not by location of the seller of the product or service, but by the location of the consumer of the product or service. This principle is provided for in Article 5(1).
9. For banking activity, applying this principle in the context of Article 5(3)(a) requires analysis of lending in terms of location of the borrower.
10. For interbank lending, this means that loans and advances are best attributed by location of the borrowing bank branch in order to be consistent with the underlying aim of the Merger Regulation, even though, in risk assessment, which is at the heart of lending decisions, banks take into account the place of incorporation of the borrowing bank. The location of the branch of the bank to which the loan is made is presumptively the place at which the loan will be used. Interbank lending carried out by the HSBC and Midland was therefore required to be calculated on this basis.
11. For certain financial services carried out by HSBC and Midland (for example money transmission, stockbroking, pension consultancy) since no lending activity is involved, the principle provided for in Article 5(1) has to be used in determining the geographical breakdown of these activities.
12. In order to provide the breakdown required by the Merger Regulation, HSBC was required to gather specific data from all subsidiaries and branches in every country in which banking operations are carried out, and to demonstrate how the data reconcile to the audited published accounts. This data has been carefully checked by the Commission.

IV. COMPATIBILITY WITH THE COMMON MARKET

13. HSBC is based in the Far East. In 1990 it changed its legal domicile becoming an UK non-resident corporation for tax purposes. Following a merger with Midland the HSBC would become a fully-fledged UK bank.

The HSBC Group ranks as the world 23rd largest bank by shareholders' funds and 25th by assets. It is active mainly in Hong Kong, Asia-Pacific and the Americas. Its presence in Europe is relatively less significant representing around 18 % of its total assets.

Midland carries out its activities mainly in the UK. Midland is also present in the other main world financial centres. Midland group is the world 50th largest bank by shareholders' funds and the 40th by assets. Within the EC, Midland is currently the 19th largest bank.

The combined group would be the world 11th largest and EC 5th largest bank by shareholders' funds¹. 50 % of the combined assets and deposits of the group would be located in Europe.

14. In overall terms, the two undertakings are geographically complementary. There is no appreciable overlap in any Member State in 15 separate sectors analysed in the notification, these sectors grouping commercial activity of a similar type². The UK is the only Member State where both Midland and HSBC carry out significant business. Even in the UK, the actual or potential reduction in competition in these sectors following the merger would have no appreciable adverse impact on competition.
15. The only relevant product market identified as affected by the proposed concentration is that of Gilt-edged stock market-making³ in the UK, where Midland's subsidiary Greenwell Montagu Gilt Edged and HSBC's subsidiary James Capel Gilts Ltd are both market makers.
16. In this market, the Bank of England issues securities on behalf of the UK government. Only registered gilt-edged market makers (GEMMs) may purchase the stock from the Bank of England and deal with it subsequently. The GEMMs' customers are principally institutional investors such as banks, pension funds, and investment houses. The market is regulated and monitored by the Bank of England.
17. The market has operated in its present form since 1986. At the outset, the Bank of England accepted 27 GEMMs, 11 of which subsequently withdrew. There have been 3 new entrants, the latest of which, Deutsche Bank Gilts, joined in April 1992. Since 1990, the GEMMs overall have traded profitably. The Bank of England, and the customers contacted consider that there is strong competition between the GEMMs. Greenwell Montagu Gilt Edged is

1 After Credit Agricole, Barclays, National Westminster and Deutsche Bank.

2 The sectors identified are : retail deposits, retail lending, retail other banking, including credit and debit cards and travellers' cheques, corporate banking, trade finance, correspondent banking, treasury dealing, merchant banking, leasing, securities dealing, investment management, pension services, trustee services, insurance broking, and insurance underwriting.

3 Gilt-edged means UK government, or UK government-guaranteed stocks denominated in sterling. The market is a means of financing the UK public sector deficit.

among the top six GEMMs which together accounted for 63 % of retail turnover in 1991. James Capel Gilts is among the bottom six GEMMs which together accounted for 12 % of the market in 1991. The combination of Greenwell Montagu Gilt Edged and James Capel Gilts will have no material impact on competition in this market. This is confirmed by the Bank of England and the customers contacted.

V. OVERALL CONCLUSION

18. It follows from the above that the proposed acquisition would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or a substantial part thereof.

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For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation No 4064/89.

For the Commission,