

***Case No COMP/M.4860 -  
HRE / DEPFA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/09/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28-IX-2007

**SG-Greffe(2007) D/205790**

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.4860 – HRE/ DEPFA  
Notification of 24.08.2007 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

## **I. INTRODUCTION**

1. On 24/08/2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (“the Merger Regulation”) by which the undertaking Hypo Real Estate Holding AG, (“HRE”, Germany), together with its affiliates “Hypo Real Estate Group”, acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Depfa Bank plc, (“DEPFA”, Ireland), together with its affiliates “Depfa Group” by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

## **II. THE PARTIES**

3. **HRE** is the holding company of Hypo Real Estate Group, active in the field of real estate financing for corporate customers, mainly commercial real estate financing, in the field of financing of infrastructure projects in the framework of public-private partnerships, as well as in the field of issuing of covered bonds and unsecured bonds.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

4. **DEPFA** is active in the field of state financing, in the field of financing of infrastructure projects in the framework of public-private partnerships, as well as in the field of issuing of covered bonds and unsecured bonds.

### **III. THE OPERATION**

5. The parties have signed a Merger Agreement on July 23, 2007. The notified concentration concerns the acquisition of all shares in DEPFA by HRE and consequently the acquisition of sole control over Depfa Group by HRE.

### **IV. CONCENTRATION**

6. Leading to the acquisition of sole control the transaction therefore constitutes a concentration within the meaning of Art. 3(1)(b) of the Merger Regulation.

### **V. COMMUNITY DIMENSION**

7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 millions (Hypo Real Estate Group: EUR [...] millions; Depfa Group: EUR [...] millions). The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million (Hypo Real Estate Group: EUR [...] millions; Depfa Group: EUR [...] million) for 2006. While Hypo Real Estate Group generated two thirds of its income in 2006 in Germany, Depfa Group did not generate two thirds of its income in any Member State. The notified transaction therefore has a Community dimension.

### **VI. COMPETITIVE ASSESSMENT**

#### **A. RELEVANT PRODUCT MARKETS**

8. The parties consider that there are a number of product markets relevant for the purpose of the assessment of the current transaction. These are the Public Sector Financing, the Financing of Public-Private Partnership Project Companies (PPP), the Real Estate Financing, the Issuing of Covered Bonds, the Investment Banking and the Activities Related to Financial Markets.
9. The Commission has in previous decisions noted that the banking sector may be divided into broad sub-sectors: retail banking, corporate banking (including investment banking) and financial markets such as money markets and other financial services. These sectors may possibly be further sub-divided into individual product segments<sup>2</sup>. Given that the overlap of the activities of the parties exceeds 15% exclusively on a potentially separate market for the issuing of jumbo (volume of at least EUR 1 billion) covered bonds issued under German law, the product market definition may be in this case left open.

#### **B. RELEVANT GEOGRAPHIC MARKETS**

10. In previous decisions the Commission considered the market for Public Sector Financing as national in scope<sup>3</sup>. The parties believe that this market is not national any more but has

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<sup>2</sup> Cf cases M.3894 -*Unicredito/HVB* and M.2567 *Nordbanken/Postgirot*

<sup>3</sup> Cf case M.2400 – *Dexia/Artesia*

become at least EEA-wide. However, the parties have provided the Commission with market shares both for the EEA and for individual Member States. The relevant geographic market can be left open in this case.

11. The Commission has in previous decisions left open the exact geographical market delineation in the segment of corporate banking<sup>4</sup>. The parties believe that the markets for Financing of PPP and Real State Financing, as regards corporate customers, are at least EEA-wide. However, they have provided the Commission with market information for an EEA-wide market as well as for national markets. In the present case, the exact definition can also be left open.
12. The Commission has up to now not dealt with the market delineation in the area of covered bonds. Since covered bonds from different Member States are exchangeable from a demand perspective and the demand for covered bonds is international the parties assume an EEA-wide market for covered bonds. However, the parties have provided the Commission with information on the market shares on the basis of national markets as well. The exact geographic definition can be left open in the present case.
13. The Commission left open in the past whether the geographic market for investment banking is EEA-wide or national<sup>5</sup>. The parties submit that it is at least EEA-wide. However, given that the concentration will not give rise to any competition concerns under any possible market delineation, the geographic definition can also be left open in this case.
14. The parties agree with the Commission EEA-wide market definition<sup>6</sup> concerning the Activities Related to Financial Markets. However, for the purpose of this case, it is not necessary to define the relevant geographic scope, because the concentration does not create or strengthen a dominant position.

### **C. COMPATIBILITY WITH THE COMMON MARKET**

15. The only affected market is the market for jumbo (volume of at least EUR 1 billion) covered bonds issued under German law, assuming national markets for covered bonds, where the parties have a combined market share of [10-20%] (Hypo Real Estate Group [5-15%], Depfa Group [5-15%]).
16. The market share of Depfa Group in relation to the total portfolio of jumbo covered bonds issued under German law has receded in the last years because the Group issues the majority of its newly issued covered bonds under Irish law since a few years back. Furthermore, the market share of Depfa Group will probably reduce itself in this year because of the expiration of two jumbo covered bond issued under German law.

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<sup>4</sup> Cf cases M.4484 - *Danske Bank/Sampo Bank*, M.2400 *Dexia/Artesia*, or M.3894 *Unicredito/HVB*

<sup>5</sup> Cf case M.1856 - *Citigroup/Schroders*

<sup>6</sup> Cf case M.1764 - *Skandinaviska Enskilda Banken/BFG Bank*

17. The parties face competition from a number of competitors in this market (i.e. EuroHypo, with a market share of 17%, Essenhyp 11%, Corealcredit Bank 9%, DG Hyp 8% and Hypo Vereinsbank 7%). Recently, new competitors entered the market (Aareal Bank, Deutsche Kreditbank, WestLB, HSH Nordbank and Sparkasse KölnBonn). Up to the entry into force of the new German Pfandbrief Act only special banks under private law and credit institutes and state banks of the German Länder under public law were allowed to issue covered bonds. With the entry into force of the new German Act, every credit institute can issue covered bonds under German law, as long as it fulfils certain minimal requirements and has a respective regulatory concession. The only pre-conditions for the granting of the permission are that the financial institute can demonstrate that it will regularly issue covered bonds in a sustainable manner and that it possesses an adequate organizational structure to issue the bonds.
18. There are no vertically affected markets.

### **VIII. CONCLUSION**

19. For the above reasons, it can be concluded that the notified concentration will not raise serious doubts as to the compatibility with the common market or in a substantial part of it; therefore the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission,  
signed  
Neelie KROES  
Member of the Commission