

***Case No COMP/M.5439 -  
OP TRUST / DEUTSCHE  
BANK LONDON /  
LLOYDS TSB BANK /  
BNP PARIBAS /  
PORTERBROOK  
LEASING***

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: 05/02/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.2.2009  
SG-Greffe(2009)D/655  
C(2009) 841

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties:**

Dear Sirs,

**Subject: Case No COMP/M.5439 - OP TRUST / DEUTSCHE BANK LONDON / LLOYDS TSB BANK / BNP PARIBAS / PORTERBROOK LEASING Notification of 27/10/2008 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>**

1. On 23.12.2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings OP Trust Private Markets Group ("OP Trust", Canada), Deutsche Bank AG ("DB", Germany), Lloyds TSB Bank plc ("Lloyds", UK) and Antin Infrastructure Partners FCPR ("AIP", UK), an investment fund sponsored by BNP Paribas SA ("BNP", France) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Porterbrook Leasing Company Limited and subsidiaries ("Porterbrook", UK), currently jointly controlled by DB, Lloyds and AIP, by way of purchase of shares.

**I. THE PARTIES**

2. OP Trust is active in administering one of the Canada's largest pension plans.
3. DB is a global provider of financial services.
4. Lloyds is a financial services group providing banking and financial services in the UK and overseas. Lloyds entered into an agreement to acquire HBOS plc (HBOS) - a UK-based banking and financial company - on the terms of a recommended acquisition by

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

Lloyds TSB of HBOS, on 18 September 2008. According to the parties' submission, this operation has not yet been completed at the time of notification<sup>2</sup>.

5. AIP is an investment fund controlled by BNP.
6. BNP is a provider of banking and financial services in France and abroad.
7. Porterbrook is a British rolling stock leasing company ("ROSCO") which specialises in the supply of all types of railway rolling stock and associated equipment to British passenger train operating companies ("TOCs") and freight companies ("FOCs") under the terms of operating leases. It has a number of wholly-owned subsidiaries, through which it owns leases and provides maintenance to its railway rolling stock fleet.

## II. THE OPERATION

8. According to the contractual arrangements<sup>3</sup>, following completion of the transaction OP Trust, together with initial partners DB, Lloyds and AIP, will hold 100% of Porterbrook's issued voting share capital, under the following proportions: DB [...]%, Lloyds [...]%, AIP [...]% and OP Trust [...]%. The acquisition of joint control by DB, Lloyds and AIP of Porterbrook has been authorized by Commission Decision of 1 December 2008 in Case M.5263 DEUTSCHE BANK LONDON / LLOYDS TSB BANK / ANTIN INFRASTRUCTURE PARTNERS (BNP Paribas) / PORTERBROOK LEASING.
9. OP Trust will acquire joint control through exercise of a call option under which OP Trust will be granted a right to acquire [...]% of the Porterbrook shares (together with voting rights) from DB and Lloyds. Voting rights will follow the proportions of the acquiring parties' respective shareholding interests. According to the Partnership Agreement and respective amendments thereof,<sup>4</sup> each acquiring party will exercise joint control via veto rights over "Special Majority Partner Matters", which *inter alia* include approving of the business plan, the appointment of executive management and chairman, and the capital expenditure.

## III. CONCENTRATION

10. The concentration concerns the proposed acquisition of joint control of Porterbrook by OP Trust, together with DB, Lloyds and AIP, which already jointly control Porterbrook.
11. Based on the above, the notified operation leads to the acquisition of joint control and constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

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<sup>2</sup> According to the information submitted by the parties, preliminary results show that the acquisition was approved by HBSO and Lloyds shareholders, and was subject to the court's approval at the end of 2008. It was expected that the Acquisition would be completed in mid January 2009.

<sup>3</sup> Partnership Agreement, signed on [...] (as amended on [...]); Call Option Agreement, signed on [...]; the Memorandum of Understanding, signed on [...] (the "Memorandum of Understanding"); and the agreed form of Second Partnership Agreement Amending Agreement, initialled by the notifying parties on [...].

<sup>4</sup> See fn. 3.

#### IV. COMMUNITY DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>5</sup> [OP Trust EUR 670, DB EUR 89,509 million, Lloyds EUR 37,445 million, BNP EUR 92,376 million, Porterbrook EUR 375.3 million]. OP Trust has no Community-wide turnover, while each of the remaining undertakings concerned has a Community-wide turnover in excess of EUR 250 million [DB EUR [...] million, Lloyds EUR [...] million, BNP EUR [...] million, Porterbrook EUR 375.3 million], but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
13. The notified operation therefore has a Community dimension.

#### V. COMPETITIVE ASSESSMENT

##### (1) Relevant product market

14. Porterbrook is one of the three major British rolling stock leasing companies (ROSCOs) and owns a large volume and variety of railway rolling stock in Great Britain. Its principal business activity is the supply of operating leases of all types of railway rolling stock and associated equipment to British TOCs and FOCs<sup>6</sup>.
15. The Parties submit, by reference to the Commission's decision in Case M.5236, that the only relevant market is the supply of operating leases of all types of railway passenger rolling stock and associated equipment to British TOCs. The distinction between operating leasing and financial leasing is in line with previous Commission practice<sup>7</sup>.
16. The notifying parties have also underlined in M.5263 that there is a fundamental distinction between passenger and freight rail stock leasing. While passenger rolling stock is usually leased at the time that a TOC is awarded a franchise to operate particular passenger rail services (or, in some cases, mid-franchise where there is a "cascade" of replacement rolling stock from one franchise to another), freight rolling stock is leased on an ad hoc basis.
17. For the purposes of the current case, it is not necessary to consider whether the relevant product market only includes operating leases of passenger rolling stock<sup>8</sup> or whether also freight rolling stock is included, as the case does not raise competition problems however the market is defined.

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<sup>5</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

<sup>6</sup> Porterbrook also supplies to TOCs maintenance services on the rolling stock it owns, where the provision of such maintenance services is included in the lease.

<sup>7</sup> See Case COMP/M.5263 Deutsche Bank London / Lloyds TSB Bank / Antin Infrastructure Partners (BNP Paribas) / Porterbrook Leasing; COMP/M.3090 - Volkswagen / Offset / Crescent / LeasePlan / JV of 29 June 2004 and Case COP/M. 4844 – Fortis/ABN Amro Assets of 3 October 2007; COMP/M.669 Charterhouse / Porterbrook Leasing Company of 11 December 1995.

<sup>8</sup> For the approach taken by the UK Competition Commission, see fn. 10 of the Commission's decision in Case M.5263.

## **(2) Relevant geographic market**

18. The parties submit that the supply of operating leases of all types of railway passenger rolling stock and associated equipment to British TOCs is confined to Great Britain. This view is in line with previous Commission decisions<sup>9</sup> and with the UK Competition Commission's findings.<sup>10</sup>

## **(3) Competitive assessment.**

19. Porterbrook has a market share of 31% in the market of supply of operating leases of all types of railway passenger rolling stock and associated equipment to British TOCs. Its main competitors are Angel with 36% and HSBC Rail with 28% market share. Voyager Leasing ("VL") has a 3% market share and other smaller parties have the remaining 2%.
20. The acquisition of joint control over Porterbrook by DB, Lloyds, and AIP has recently been analyzed in Case M.5263. None of them was found to be active in the same market as Porterbrook. However, a particular attention was paid to possible consequences of the announced acquisition by Lloyds of HBOS, which jointly controls VL (a smaller ROSCO with a market share of 3%). The Commission concluded that possible relationship with VL would not materially affect the market structure.<sup>11</sup>
21. OP Trust is not active in the same relevant product market as Porterbrook (or in any rail industry or wider asset leasing industry in Europe) and has no economic activity in any of the EU Member States. Therefore, the proposed transaction would not result in any additional overlaps among the parties to the transaction.
22. In view of the above, the proposed transaction does not raise serious doubts as to its compatibility with the Common Market.

## **(4) Coordinated effects**

23. The proposed operation is unlikely to lead to anti-competitive effects through coordination, as OP Trust is not active in any of the EU Member States.

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<sup>9</sup> Commission decisions in Cases COMP/M.5263 and COM/M.669, referred to above in fn.7.

<sup>10</sup> See fn. 9 and the Commission's decision in Case M.5263, para. 19.

<sup>11</sup> See Commission's decision in Case M.5263, paras. 23-26.

## **VI. CONCLUSION**

24. For the above reasons, 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