EN

Case No COMP/M.5580 - BLACKROCK / BARCLAYS GLOBAL INVESTORS UK HOLDINGS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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. 5580 - BlackRock/ Barclays Global Investors UK Holdings Notification of 18 August 2009 pursuant to Article 4 of Council Regulation (EC) No 139/2004

1. On 18 August 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004[1] ("EC Merger Regulation") by which the undertaking BlackRock, Inc. ("BlackRock", US) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation control of the whole of the undertaking Barclays Global Investors UK Holdings Limited, including its subsidiaries, ("BGI", UK) by way of purchase of shares.

I. THE PARTIES

2. **BlackRock** is a U.S. publicly traded company active in the provision of global investment management, risk management and advisory services to institutional and retail clients around the world. BlackRock manages assets on behalf of institutional and individual investors worldwide through a variety of fixed income, cash management, equity and balanced and alternative investment separate accounts and funds. In addition, through BlackRock Solutions, the company offers risk management and advisory services that combine capital markets expertise with BlackRock's systems and technology.

1 OJ L 24, 29.1.2004, p. 1.

3. **BGI** is a UK company and is owned by Barclays Bank plc. BGI is a global asset manager and provider of investment management products and services. BGI currently offers structured investment strategies such as indexing, global asset allocation and risk-controlled active products as well as related investment services such as securities lending, cash management and transition management services, primarily to institutional clients.

II. THE CONCENTRATION

4. The proposed concentration concerns the acquisition by BlackRock of BGI from Barclays Bank plc by means of a Stock Purchase Agreement signed in June 16 2009 between BlackRock, Barclays plc and Barclays Bank plc, pursuant to which BlackRock intends to acquire 100% of the issued and outstanding equity interest in BGI from Barclays Bank plc. Barclays plc is the ultimate parent of Barclays Bank plc and of BGI[2].

5. The transactions leads to the acquisition of sole control of BGI by BlackRock and therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[3] (BlackRock: EUR 3,443 million, BGI EUR […] million). Each of them has a Community-wide turnover in excess of EUR 250 million (BlackRock EUR […] million, BGI EUR […] million) and, they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

7. The parties' activities overlap in asset management, transition management services, securities lending and cash management.

(1) Asset Management

8. Asset management concerns the provision of investment advice and often also the implementation of this advice with delegated powers from the client. To this end, a variety of investment products and asset classes, such as equity, fixed income, real estate, exchange traded funds and others, are used. These investment instruments cater for differing needs of

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2 Also, pursuant to the Agreement, Barclays plc intends to acquire an aggregate of 37.8 million shares in BlackRock Common Stock, Series B Convertible Participating Preferred Stock and Series D Participating Preferred Stock, collectively representing approximately (and in no event greater than) a 4.9% voting interest and an aggregate 19.9% economic interest in BlackRock.

3 Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

investors with a distinct risk profile, management charges, yield/growth potentials, investment horizon and volume, liquidity (i.e. ease of trading large quantities without moving the price), transaction costs, transparency, amongst many other factors.

9. Asset management services therefore include the creation, establishment and marketing of retail pooled funds (mutual funds, unit trusts, investment trusts and open-ended investment companies) and the provision of portfolio management services to pension funds, institutions, international organisations and private investors. The Commission has left open the question whether the retail and institutional segments constitute separate product markets but has pointed out that asset management excluded the provision of portfolio management services to individuals (so-called private banking).[4]

10. In more recent decisions, the Commission has also considered the possibility of further segmenting the asset management market, based upon the investment strategy, ie. active versus passive asset management[5,6].

11. The notifying party takes the view that the relevant market is the asset management market as a whole, and that the narrower segments previously referred to (institutional vs retail, active vs passive) are not relevant for the competition analysis. In its view, a high degree of demand and supply-side substitution exists between the different types of asset management products.

12. On the demand side, BlackRock refers to the ease of switching by clients between different asset management products and services and also that there is a chain of substitution between investment products as each product is directly substitutable with several other investment products which have common features (e.g. transaction cost, risk profile, etc…). As regards supply side substitution, BlackRock argues that suppliers can easily switch or reposition from one type of investment product or strategy to another, given the very low barriers to entry, expansion and repositioning between the different types of products, referring to an increasing number of products that combine elements of "active" and "passive" strategies.

13. The market investigation undertaken in the present case does not wholly support the arguments put forward by BlackRock. In particular, as regards supply side substitutability, the majority of competitors refer to the difficulty of switching between active asset management to passive asset management, referring to factors such as differing skill sets, intellectual capital, investment processes, technology requirements and the importance of economies of scale in passive products, without which a competitive offering cannot be achieved. On the demand side, some customers also considered that it was difficult to shift

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4 See for example, COMP M. 4844 Fortis/ABN AMRO Assets; COMP/M. 3894 Unicredito/HVB; COMP/M. 1453 AXA/GRE.

5 Case COMP/M. 5341 Allianz / Cominvest, December 18, 2008.

6 Active asset management consists of strategies in which the investment manager makes specific investments with the goal of outperforming a benchmark (e.g., an index), while passive asset management consists of strategies which merely seek to replicate the performance of an index (e.g., Exchange Traded Funds (ETFs)). Passive asset management services therefore normally have lower management fees than active asset management services.

from an active manager to a passive manager, and vice versa. The question can, however, be left open since the concentration does not raise serious doubts as to its compatibility with the common market on any of the alternative possible market definitions considered.

14. Asset management has previously been looked at on the basis of either a national or international/EEA scope[7]. The market investigation in recent cases[8] , as well as in the present case, has provided some support for the view of the notifying party that the market is wider than national, in particular for passive products, but it is not necessary to conclude on the exact scope of the geographic market as no serious doubts as to the compatibility of the proposed transaction with the Common Market arise under any alternative market definition.

(2) Transition management services

15. Transition management services (TMS) are provided to clients wishing to transition their portfolio holdings from one investment manager to another. The Commission has not considered this market in its earlier decisions.

16. Although the Parties argued that TMS might be viewed as part of the broader asset management market, they recognized that due to regulatory constraints this activity was conducted separately from their asset management activities.

17. The market investigation suggested that these services should be distinguished from asset management as well as from investment brokerage because they are provided by asset managers, brokers, investment banks and custodian banks – therefore by a number players whose core focus is in markets other than asset management – and because they imply a program/project approach in addition to requiring trading skills and technology. The market investigation also showed that these services are provided sometimes on an agency/fiduciary basis, as they are by the Parties, and sometimes on a principal basis by entities other than asset management firms.

18. The market investigation therefore suggested that these services have a number of characteristics of a distinct relevant product market, without, however, allowing the Commission to conclude definitively in this regard.

19. The market investigation also suggested that some customers might have a preference for TMS provided on an agency basis, without however allowing the Commission to conclude that this typified any particular type of customer or transition scenario. On a conservative basis, the Commission nonetheless also considered a market limited to services provided on an agency basis.

20. In the present instance it is, however, not necessary to reach a definitive conclusion on the market definition in this area since, regardless of whether or not TMS are considered to

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7 COMP/M. 3894, Unicredito/HVB; COMP/M.1453, AXA/GRE; IV/M.1043, BAT/Zurich.

8 COMP/ M.4844, Fortis/ABN AMRO Assets

constitute a distinct relevant product market, serious doubts as to the compatibility of the transaction with the common market do not arise.

21. The Parties submitted that the geographic market for transition management services was global or at least EEA-wide in scope, given that the Parties and their competitors provide these services on a global basis from a few centralized locations.

22. The market investigation did not allow the Commission, however, to exclude that transition management might constitute a national market owing to the importance of local presence, knowledge and contacts. However, the ability to provide services on a global basis was clearly of importance for certain clients.

23. In the present case it is not necessary to conclude as to the geographic scope of the relevant market since serious doubts do not arise as to the compatibility of the transaction with the common market in this area, regardless of the geographic scope considered.

(3) Securities Lending

24. According to the Parties, securities lending consists in the lending of securities, whereby the borrower borrows certain securities and provides the lender with collateral, in the form of cash, government securities or a letter of credit of a value equal to or greater than the lent securities. As payment for the loan, the Parties negotiate a fee, usually quoted as an annualized percentage of the value of the loaned securities. In a typical transaction, the Parties would lend securities to a securities borrower such as an investment bank.

25. The Commission has in prior cases considered whether securities lending is part of the asset management market or whether securities lending constitutes a separate market, however it has left the question open[9].

26. The Parties also submit that the geographic market for securities lending services is global or at least EEA-wide in scope, given that the Parties can provide these services on a global basis from a few centralized locations.

27. There is no need to take a definitive position as to whether securities lending services constitute a separate market, nor on the geographic scope of such possible relevant market, given that, even assuming for argument's sake that securities lending was a separate relevant market, the proposed transaction does not give rise to serious doubts as to its compatibility with the Common Market, since the parties combined market share is significantly below 15% at a worldwide, EEA, and Member State level.

(4) Cash Management

28. According to the notifying Party, both parties are also active in cash management, which refers to the management of money market funds, which can consist of pooled funds of a

[9] Case COMP/M.3511, Wiener Boerse et al/Budapest Stock Exchange/Budapest Commodity Exchange/KELER/JV, Commission Decision of 22 March 2005, para 27.

multitude of investors or separate accounts of large investors[10]. Money market funds pool money-market securities and allow investors to diversify risk among the various company securities in the fund. Money market securities refer to short-term money market and bond instruments issued by governments and financial companies, which have a weighted average life/maturity of one year or less, including negotiable certificates of deposit (CDs), bankers' acceptances, U.S. Treasury bills, commercial paper, municipal notes, federal funds and repurchase agreements (repos). Given that these debt instruments are very liquid and have a very short term maturity, they essentially amount to short term liquidity investments for a wide range of institutional and distributor investors and for securities lending cash collateral management.

29. There is no need to take a definitive position as to whether cash management services constitute a separate market, nor on the geographic scope of such possible relevant market, given that, even assuming for argument's sake that cash management was a separate relevant market, the proposed transaction does not give rise to serious doubts as to its compatibility with the Common Market, since the parties combined market share is significantly below 15% at a worldwide, EEA, and Member State level.

V. COMPETITIVE ASSESSMENT

30. The proposed concentration leads to overlaps of the Parties' activities in respect of institutional asset management, active asset management and passive asset management at a worldwide level, in the EEA, and in a number of Member States. Affected markets arise only if the passive asset management segment is considered. Despite uncertainties in the market share calculations, the transaction also leads to probable affected market segments for transition management services at EEA level and/or in the UK, particularly if restricted to such services provided on an agency basis.

31. In the fields of securities lending and cash management, the combined market shares of the Parties at worldwide, EEA and Member State level are below 15% and the increment resulting from the transaction is limited[11]. Therefore, this market will not be further examined as serious doubts can be excluded on the basis of market share alone.

(1) Asset Management

32. Considering the overall asset management market, it can be concluded with confidence that the combined market shares provided by the parties and based on assets under management (AUM) in 2008, whilst uncertain, would be significantly below 15% at world-wide, EEA and Member State level.

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[10] Cash management in this sense is, of course, to be distinguished from *cash handling* (Case No COMP/M.5293, Banco Santander/Alliance & Leicester, para 16) as well as *treasury management* (Case No COMP/M. 3216, Oracle/PeopleSoft, footnote 22) and refers to the optimization of investment returns on liquid assets.

[11] In securities lending BlackRock only has […] in the EEA, with […] of Assets on loan in and EEA market of […].

33. Should the asset management market be further segmented on the basis of the type of investor (i.e., into institutional and retail asset management), there would be overlaps on both the institutional and retail asset management segments.

34. Considering the institutional segment, it can again be concluded with confidence that the combined market shares provided by the parties and based on assets under management (AUM) in 2008, whilst uncertain, would be significantly below 15% at worldwide, EEA and Member State level.

35. In the retail segment, BGI is present only through iShares, its ETF brand, which is bought by retail investors through intermediaries. BGI is unable to estimate the proportion of these products which is actually held by retail as opposed to institutional investors (or investors based in the EEA as opposed to investors based elsewhere), but the figure of total AUM at end 2008 of […] represents in any event well below [10-20] % of the estimated EEA retail asset management market and would clearly be lower still if the institutional and non-EEA elements were excluded. BlackRock is exclusively active in the retail segment through mutual funds, whilst BGI only offers pooled funds to institutional investors. In the EEA, BlackRock's market share is below [0-5] %. The Parties' combined market share is therefore well below 15%.

36. In Case COMP/M. 5341 Allianz / Cominvest, the Commission considered the possibility of looking separately at active and passive funds within the retail segment but left this open[12]. In the present case, if such a distinction were to be made there would be no overlap between the Parties, since BlackRock does not offer ETFs whilst BGI does not offer retail mutual funds, i.e. actively managed retail funds.

37. On the basis of investment strategy type used, overlaps between the activities of the Parties would result on both the active and passive asset management segments, although market shares would remain well below 15% for all possible geographic segmentations for active asset management.

38. The only possible segment where the parties would hold more than 15% combined market share is the passive asset management segment, considered at worldwide or EEA level or at the level of certain Member States. At worldwide level, market shares as calculated by the Parties may be slightly above [20-30] %[13], but the overlap is limited as BlackRock only has a limited presence in passive asset management (around [0-5] %). This is explained by the notifying party by the fact that BlackRock has traditionally focused on actively managed products and has only a marginal presence in passive investment products, a fact which was confirmed in the market investigation. Furthermore, a number of important competitors are present in this segment at worldwide level, with players such as Legal & General, State Street, Vanguard, Société Générale, amongst others.

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12 Case COMP/M. 5341 Allianz / Cominvest, December 18, 2008, recital 15.

13 Uncertainties about the market size do not allow this to be concluded with certainty.

39. In all other possible geographic areas for passive asset management, market shares would, according to the data supplied by the notifying Party, be below 25%, with BlackRock being only marginally present within the EEA, with AUM of […], representing less than [0-5] % of the market. Thus the parties would hold just [10-20] % at EEA level, and in two Member States (the UK and Sweden) market shares would rise slightly [20-30] %. In all markets, the parties would face a number of competitors including State Street, Legal and General, Vanguard, UBS, HSBC, Lyxor and Deutsche Bank.

40. A vertical relationship may exist between the asset management market and the market for provision of investment risk management systems, since BlackRock, through its *BlackRock Solutions* platform, offers risk management solutions (based primarily on the *Aladdin* investment and risk management platform) and financial advisory services. BGI does not offer any such services in the EEA or elsewhere in the world.

41. It can, however, be concluded that this relationship will not give rise to any anticompetitive effects. Firstly, the *Aladdin* platform is not product specific, i.e., it can be used for all types of asset management products (e.g., fixed income, equities, cash) and investment systems (e.g., active and passive). Secondly, BlackRock's investment system and risk management solutions are primarily bought by institutional investors.[14] Thirdly, BlackRock estimates that its share in the provision of investment systems and risk management solutions is below [10-20] % both on a global and EEA basis (both in terms of revenues and AUM). Fourthly, BlackRock's presence in Europe is minimal (less than […]), as the vast majority of BlackRock's turnover from the sale of *Aladdin* investment system to third parties was realized […]. Finally, there a number of competing providers of investment systems (comparable to *Aladdin*) and risk management services that include Charles River, Murex, Latent-Zero, Calypso, Simcorp Dimension, Barra, Algorithmics, RiskMetrics, and Polypaths.

(2) Transition management services

42. In their initial submission, the Parties suggested that the combined firm would have a market share of between [5-10] % and [10-20] % on a worldwide basis and about [5-10] % on an EEA basis, with BGI contributing around three-quarters of the total. As a national market was not considered, no data relating to national markets were initially provided by the Parties. On this basis, the transaction was considered by the Parties not to lead to any affected markets.

43. During the market investigation, certain respondents raised specific concerns in this segment relating to potential dominance and pricing power of the combined firm post-merger. These concerns were raised in particular in relation to the UK.

44. The Commission therefore undertook extensive further fact-finding both vis-à-vis the Parties and by contacting well-placed sources within the industry in order to validate the Parties' figures and more generally determine the competitive situation on this market.

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[14] According to the notifying party, less than ten asset managers use BlackRock's *Aladdin* platform, one of which is BGI.

45. These inquiries suggested that the Parties were indeed significantly stronger, at least in the UK segment of the market, than their initial submission had suggested.

46. It was generally confirmed that there were a relatively large number of participants in this market – at least 15 – although there had been some consolidation in 2008 and 2009 with several players exiting the market. It was also confirmed that there were no reliable sources of third-party data. However, according to one source BGI was considered to be the number two player in the market with 15-20%, behind the market leader, State Street. Blackrock was considered a medium-sized player with around 10% of the market. A second source estimated somewhat lower figures, although only slightly lower if the market were to be restricted to TMS provided on an agency basis. It was also observed that a number of players, although present on the market, have limited market share.

47. The Parties themselves subsequently provided an estimate of their UK market share at [10-20] %, possibly rising to slightly over 15% if limited to agency TMS only. They provided estimates of a similar order of magnitude for Italy and the Netherlands. They further provided data on TMS tenders which showed that there were a number of competitors on such business throughout the period and that the Parties frequently did not compete on the same business.

48. All sources viewed the Parties as high-quality providers who might appeal particularly to certain fund managers who were concerned to transact business on an agency basis. However, it was suggested that this preference was more a personal matter than a characteristic of particular market segments, at least in Europe.

49. It was acknowledged that it was not difficult to start an activity in this area, but nonetheless a certain number of barriers to entry were recognized since access to clients required brand recognition and size was needed to achieve market share. Barriers to expansion were considered to be lower for entities that already had some business and an established brand. Despite exits and consolidation, there have also been signs of re-entry and expansion by existing providers.

50. It follows from the considerations above that, although the combined firm will be a very important player, and possibly the market leader, at least in the UK, its market share will remain in all likelihood below 30% – even if the market were limited to TMS provided on an agency basis – there are a number of qualified competitors and the market is contestable. On this basis, the Commission is able to conclude that serious doubts do not arise as to the compatibility of the transaction with the common market.

VI. CONCLUSION

51. 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