

***Case No COMP/M.6058 -
BANK OF SCOTLAND/
BARCLAYS BANK/ KEW
GREEN HOTELS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/02/2011

***In electronic form on the EUR-Lex website under
document number 32011M6058***



EUROPEAN COMMISSION

Brussels, 28.2.2011
C(2011)1379 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE - PHASE I
ARTICLE 6(1)(B) DECISION

PUBLIC VERSION

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.6058 – BANK OF SCOTLAND/ BARCLAYS BANK/ KEW GREEN HOTELS
Notification of 24 January 2011 pursuant to Article 4 of Council Regulation N° 139/2004¹.**

1. On 24 January 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Regulation N° 139/2004 by which the Bank of Scotland plc, whose ultimate parent is Lloyds Banking Group plc (together "LBG") and Barclays Bank plc ("Barclays") (together the "notifying parties") acquire joint control over Kew Green Hotels Limited ("Kew Green"), by way of purchase of shares and contract.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

I. THE PARTIES

2. Barclays is a financial services provider and currently has no activities in the hotel sector.
3. Kew Green operates 20 hotels across the UK, under 5 hotel brands: Holiday Inn, Holiday Inn Express, Crowne Plaza, Days Hotel and Courtyard by Marriott. Each of these brands is owned by third parties, with Kew Green operating the hotels under a franchise agreement.² In addition, Kew Green operates Richmond Hill Hotel, a four star hotel in South West London.
4. LBG has sole or joint control in the following hotel interests within UK: [...]
5. As regards [...], the parties consider that they should not be considered as being controlled by LBG for the purposes of a competitive assessment either because they are leased to third parties which operate them or because LBG's rights are, according to the parties, limited to the protection of LBG's minority shareholder rights. The parties consider therefore that LBG has no influence over the operation of these hotels. It is not necessary to decide whether these hotels should be considered to be part of LBG or not, as the proposed operation does not raise competition [concerns]* in any event.
6. LBG also holds interests, without amounting to control, in other companies active [...]

II THE CONCENTRATION

7. Prior to the transaction, Barclays and LBG do not own shares or voting rights in Kew Green but were creditors to Kew Green.
8. Upon closing of the proposed transaction, LBG (through its wholly owned subsidiary [...]) will hold [...] and Barclays (through its wholly owned subsidiaries [...]) will hold [...] of the voting rights of Kew Green. These voting rights are attached to A-class shares. The management team of Kew Green will hold the remaining [...] of voting rights, attached to C-class shares. Only A-class and C-class shares have voting rights.
9. Each of LBG and Barclays will have certain veto rights under Clause 5.2.1 and Schedule 8 to the Investment Agreement [...]³ None of the other shareholders have any similar veto rights (as they do not own A-shares).
10. [Description of voting rights A and C-shares]
11. The proposed operation therefore concerns the acquisition of control within the meaning of Article 3(1)(b) of the EU merger regulation by Barclays and LBG (and by these shareholders only) of Kew Green.

² The Holiday Inn, Holiday Inn Express and Crowne Plaza brands are owned by Intercontinental Hotels Group, the Courtyard by Marriott brand is owned by Marriott International, and the Days Hotel brand is owned by Wyndham Worldwide.

* Clerical mistake

III EU DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ [LBG: EUR 50,842 million, Barclays EUR [...] million and Kew Green EUR 59 million]. At least two of the parties concerned have EU-wide turnover in excess of EUR 250 million [LBG EUR [...] million and Barclays EUR [...] million], but not all the undertakings concerned achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

IV. RELEVANT MARKETS

Relevant product market

13. In previous decisions, the Commission has left the exact product market definition of the hotel sector open, whilst considering that the market for hotel accommodation could be segmented by:
- (a) price/comfort level based on the grading or stars awarded to the particular hotel⁵ which indicates the standard and facilities the customer may expect; and/or
 - (b) ownership, distinguishing between chain hotels and independent hotels.⁶
14. The notifying parties take the view that:
- (a) overlaps in prices and facilities among hotels in different star categories lead to a continuous chain of substitution among hotels. Consequently, an all hotels product market exists;
 - (b) With regard to a segmentation based on ownership, from a demand perspective, independent and chain hotels are entirely substitutable, particularly at a local level. The parties recognise however that the distinction between chain and independent hotels is relevant when competition is evaluated at national level, in view of the fact that large companies, tour operators, and travel agencies may prefer dealing with chain hotels because they can set up global agreements.

³ [...]

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

⁵ Case No. COMP/M.4816 - *Blackstone/Hilton* paragraph 10; Case No. COMP/M.1596 - *Accor/Blackstone/Colony/Vivendi* paragraphs 23 and 24; Case No. COMP/M.2451 - *Hilton/Scandic* paragraph 8; Case No. COMP/M.2997 - *Accor/Ebertz/Dorint* paragraph 7; Case No. COMP/M.3858 - *Lehman Brothers/SCG/Starwood/Le Meridien* paragraph 16; and Case No. COMP/M.4624 - *EQT/Scandic* paragraph 8.

⁶ Case No. COMP/M.4816 - *Blackstone/Hilton* paragraph 10; Case No. IV/M.126 - *Accor/Wagons-Lits* paragraph U; Case No. IV/M.1133 - *Bass PLC/Saison Holdings B.V.* paragraph 11; and Case No. COMP/M.4624 - *EQT/Scandic* paragraph 8.

Geographic scope of the market

15. In previous decisions, although the Commission has left the exact geographic market definition of the hotel sector open, it has noted that the relevant geographic market may be both national and local.⁷ The notifying parties agree with this view.

Conclusion as to relevant markets

16. It is not necessary to conclude on whether an 'all hotels' product market exists or narrower markets can be distinguished on the basis price/comfort levels or ownership. Similarly, it can be left open whether such markets may be national or local. Indeed, the parties have also considered the position by reference to certain narrower categorisations, in particular:
- (a) at national level: for chain hotels; and
 - (b) at local level: for (i) chain hotels and (ii) hotels in narrower, star-rating based price/comfort levels.

None of these narrower markets gives rise to competition concerns.

Horizontal effects

17. LBG's interests in [...] are taken as being part of the LBG group for the purposes of this competitive assessment.

⁷ Case No. COMP/M.4816 - *Blackstone/Hilton* paragraph 15; Case No COMP/M.3858 - *Lehman Brothers/SCG/Starwood/Le Meridien* paragraphs 18 and 19; Case IV/M.1596 - *Accor/Blackstone/Colony/Vivendi* paragraph 29; and Case No COMP/M.2197 - *Hilton/Accor/Forte/Travel Services JV* paragraph 28.

National market, all hotels market

Table 1: UK hotel market shares by number of rooms – chains and independents

HOTEL COMPANY/GROUP	NO. OF ROOMS	MARKET SHARE OF TOP CHAINS + ALL PARTIES' HOTELS
Whitbread Hotel Company	40,553	8.5%
InterContinental Hotels Group	34,530	7.2%
Travelodge Dubai International	26,148	5.5%
Hilton Hotel Corporation	18,952	4.0%
Marriott International	15,610	3.3%
Wyndham Worldwide	15,305	3.2%
Thistle Hotels	11,436	2.4%
Choice Hotels International	10,589	2.2%
Ramada Jarvis Hotels	7,725	1.6%
De Vere (AHG)	7,560	1.6%
Jurys Inns	7,310	1.5%
Millennium Copthorne Hotels	7,040	1.5%
Accor Hotels	7,000	1.5%
Best Western	6,034	1.3%
Carlson Hotels Worldwide	6,020	1.3%
Britannia Hotels	4,538	1.0%
The Rezidor Hotel Group	4,496	0.9%
Macdonald Hotels	4,412	0.9%
Mitchells & Butlers	4,250	0.9%
[...]	[...]	[0-5]%
Shearings Hotels	3,932	0.8%
Kew Green	2,370	0.5%
[...]	[...]	[0-5]%
[...]	[...]	[0-5]%
[...]	[...]	[0-5]%
Others	225,133	47.2%
Parties combined (excluding [...])	[...]	[0-5]
Parties combined (including [...])	[...]	[0-5]%
Market: All UK rooms	477,187	100 %

Source: *Snapshots Report – UK Hotels*. Parties' own data

18. The parties' combined market share of all hotels in the UK is approximately [0-5]% when [...] is excluded and [0-5]% if [...] is included. The parties would continue to face strong competition from a number of larger competitors.
19. The Commission considers that the proposed transaction will not raise serious doubts as to its compatibility with the internal market as regards horizontal effects in a market comprising chain and independent hotels that is national in scope because the parties' combined market share is very modest and is well below the level which would enable the parties to exert market power.

National market, Chain hotels

Table 2: UK hotel market shares by number of rooms – Top UK chains and the parties' chain hotels

HOTEL CHAIN	NO. OF ROOMS	MARKET SHARE OF TOP CHAINS + PARTIES' CHAIN HOTELS
Whitbread Hotel Company	40,553	16.1%
InterContinental Hotels Group	34,530	13.7%
Travelodge Dubai International	26,148	10.4%
Hilton Hotel Corporation	18,952	7.5%
Marriott International	15,610	6.2%
Wyndham Worldwide	15,305	6.1%
Thistle Hotels	11,436	4.5%
Choice Hotels International	10,589	4.2%
Ramada Jarvis Hotels	7,725	3.1%
De Vere (AHG)	7,560	3.0%
Jurys Inns	7,310	2.9%
Millennium Copthorne Hotels	7,040	2.8%
Accor Hotels	7,000	2.8%
Best Western	6,034	2.4%
Carlson Hotels Worldwide	6,020	2.4%
Britannia Hotels	4,538	1.8%
The Rezidor Hotel Group	4,496	1.8%
Macdonald Hotels	4,412	1.8%
Mitchells & Butlers	4,250	1.7%
[...]	[...]	[0-5]%
Shearings Hotels	3,932	1.6%
Kew Green	2,370	0.9%
[...]	[...]	[0-5]%
[...]	[...]	[0-5]%
Parties combined (excluding [...])	[...]	[5-10]
Parties combined (including [...])	[...]	[5-10]
Market: Top chains + Parties' chain hotels rooms	251,786	100%

Source: *Snapshots Report – UK Hotels 2009. Parties' own data*

20. The parties' combined market share of all chain hotels in the UK is [5-10]%, when [...] is excluded and [5-10]%, if [...] is included. These figures overstate the parties' position, as the total market size given here only comprises of the top 20 hotel chains in the UK and a significant number of other chain hotel rooms are excluded from this list. The parties would continue to face strong competition from a number of larger competitors.
21. The Commission therefore considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards horizontal effects in a market comprising only chain hotels that is national in scope because the parties' combined market share remains modest and is well below the level which would enable the parties to exert market power.

National market, independent hotels only

22. Kew Green operates only one hotel as independent, non-chain hotel. The competitive effect of the proposed operation on a national market comprising only independent hotels is therefore insignificant.
23. The Commission therefore considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards horizontal effects in a market comprising only independent hotels that is national in scope.

Local markets

24. If [...] is not controlled by LBG, overlaps exist in the local markets⁸ of Northampton and Slough. If LBG has control over [...]⁹, the overlapping towns/cities would, in addition, comprise Coventry, Milton Keynes, and Norwich. Kew Green has only one hotel that is operated as an independent, non-chain hotel, which has no overlap in a local market. Independent hotels are therefore not considered further below.

Coventry

Table 3: Coventry - Share of hotel rooms (including [...])

Party	Overall hotel market	All chain hotels	Budget, 2, 3, and 4 star hotels
LBG ([...])	[5-10]%	[5-10]%	[5-10]%
Kew Green	[0-5]%	[0-5]%	[0-5]%
Combined	[5-10]%	[10-20]%	[5-10]%

Source: Parties' own analysis

25. On a narrower market comprising only 3 star hotel rooms, the combined market share of the parties would be [10-20]%.

Milton Keynes

Table 4: Milton Keynes - Share of hotel rooms (including [...])

Party	Overall hotel market	All chain hotels	Budget, 2, 3, and 4 star hotels
LBG ([...])	[5-10]%	[5-10]%	[5-10]%
Kew Green	[0-5]%	[0-5]%	[0-5]%
Combined	[10-20]%	[10-20]%	[10-20]%

Source: Parties' own analysis

⁸ In order to identify local markets, the parties have, first, analysed the position by reference to all hotels from which the driving distance is five miles (approximately eight kilometres) or less to a city centre. To the extent that both parties do not have a controlling interest in a hotel within that five mile radius, the parties have then verified that no hotel in which another party has a controlling interest is within five miles of the relevant Kew Green hotel. Only if that was the case, it was presumed that there is no overlap between the parties' hotels in the local market in which the given hotel is located.

⁹ Hotels under franchise arrangements are allocated to the franchisee rather than the franchisor. In fact, if supply of hotel rooms were allocated to the franchisor, Kew Green's market share in each local market would be 0% because all but one of Kew Green's hotels are operated as franchises and the sole exception is not located in an local market.

26. On a narrower market comprising only 3 star hotel rooms, the combined market share would be [10-20]%.

Northampton

Table 5: Northampton - Share of hotel rooms

Party	Overall hotel market	All chain hotels	Budget, 2, 3, and 4 star hotels
LBG ([...])	[5-10]%	[5-10]%	[5-10]%
Kew Green	[5-10]%	[5-10]%	[5-10]%
Combined	[10-20]%	[10-20]%	[10-20]%

Source: Parties' own analysis

27. On a narrower market comprising only 3 and 4 star hotel rooms, the combined market share would be [10-20]%. On even narrower markets comprising only 3-star or only 4-star hotels, no overlaps would occur.

Norwich

Table 6: Norwich - Share of hotel rooms (including [...])

Party	Overall hotel market	All chain hotels	Budget, 2, 3, and 4 star hotels
LBG ([...])	[5-10]%	[10-20]%	[5-10]%
Kew Green	[5-10]%	[10-20]%	[5-10]%
Combined	[10-20]%	[20-30]%	[10-20]%

Source: Parties' own analysis

28. On a narrower market comprising only 3 and 4 star hotel rooms, the combined market share would be [10-20]%. On even narrower markets comprising only 3-star or only 4-star hotels, no overlaps would occur.
29. Norwich is a small city¹⁰. For such a small city, according to the parties, it is unrealistic to regard the geographic market as only extending five miles from the centre. As no other hotels of the parties are located in the proximity, their market shares mentioned-above will almost certainly overstate the competitive positions of [...] and Kew Green.

¹⁰ The population of Norwich on the basis of the 2001 census was only 121,550 (all age groups included).

Slough

Table 7: Slough (5 mile radius) – Share of hotel rooms

Party	Overall hotel market	All chain hotels	Budget, 2, 3, and 4 star hotels
LBG	[20-30]%	[20-30]%	[20-30]%
Kew Green	[5-10]%	[5-10]%	[5-10]%
Combined	[20-30]%	[30-40]%	[20-30]%

Source: Parties' own analysis

30. On a narrower market comprising only 3 and 4 star hotel rooms, the combined market share would be [20-30]%. On even narrower markets comprising only 3-star or only 4-star hotels, no overlaps would occur.
31. Slough is a small town¹¹. For such a small town, it is unrealistic according to the parties to regard the geographic market as only extending five miles from the centre of Slough. Moreover, it should be noted that Slough is very close to London Heathrow Airport (eight miles) and a large number of hotels and hotels in the vicinity of Slough advertise themselves as being convenient for Heathrow, indicating that hotels located in Slough and at Heathrow may constitute partial substitutes that exercise a competitive constraint.
32. Accordingly, the parties have also provided market shares for a relevant geographic market in the Slough area that should more realistically be extended to include hotels within a 10 mile driving distance of Slough, as well as hotels around Heathrow airport.

Table 8: Slough (10 mile radius) and Heathrow Airport hotels– Share of hotel rooms

Party	Overall hotel market	All chain hotels	Budget, 2, 3, and 4 star hotels
LBG	[5-10]%	[5-10]%	[5-10]%
Kew Green	[0-5]%	[0-5]%	[0-5]%
Combined	[5-10]%	[5-10]%	[5-10]%

Source: Parties' own analysis

33. On a narrower market comprising only 3 and 4 star hotel rooms on a 10 miles radius market that included Heathrow, the combined market share would be [5-10]%. On even narrower markets comprising only 3-star or only 4-star hotels, no overlaps would occur.
34. On local markets, the parties' combined market shares only rises significantly over 20% for Slough assessed on 5 miles radius basis. However, in view of its taking into account the size of Slough and its proximity to Heathrow, it is unlikely that

¹¹ The population of Slough on the basis of the 2001 census was only 119,067 (all age groups included)

the operation will significantly lessen competition on the product market that can be defined as having a geographically local dimension comprising Slough.

35. The Commission therefore considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards horizontal effects in local hotel markets because the parties' combined market share generally remains modest and is below the level which would enable the parties to exert market power in all cases.

Conclusion as to horizontal effects

36. In view of the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards horizontal effects in any of the potential markets.

Vertical effects – No affected markets

37. There are no affected upstream markets as Barclays and LBG do not hold significant interests, in companies that provide important inputs, such as food and drinks wholesaling and linen rental and laundry services¹², to hotels.
38. There are no affected downstream markets as Barclays and LBG do not hold significant interests, if any, in companies such as booking agents, third party booking websites or tour operators/travel agencies from which hotels derive revenues.
39. In view of the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards vertical effects in any of the potential markets, whether national or local in geographical scope.

¹² The parties consider food and drinks wholesaling and linen rental and laundry services as the most important inputs because only these services constitute more than 10% of the hotel's input costs.

VI. CONCLUSION

40. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the European Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the European
Commission*