

***Case No COMP/M.5844 -  
JP MORGAN/ RBS  
SEMPRA***

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: 16/06/2010

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EUROPEAN COMMISSION

Brussels, 16.6.2010

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5844 - JP MORGAN/ RBS SEMPRA  
Notification of 10 May 2010 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 10.05.2010, the European 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 JP Morgan Chase & Co. ("JP Morgan") acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of the undertakings RBS Sempra Commodities LLP ("RBS Sempra") and The Royal Bank of Scotland plc ("RBS"), by way of purchase of shares and assets ("Target Business").

## **I. THE PARTIES AND THE OPERATION**

2. JPMorgan is a financial holding company incorporated under Delaware law. JPMorgan is one of the largest banking institutions in the United States and serves customers in more than 100 countries. Among its activities, JPMorgan is active in the financial trading of commodities, both for own account and as a broker-dealer. It is also active, but to a limited extent, in the physical trading of commodities.
3. The Target Business comprises RBS Sempra Commodities' physical commodities trading and associated operations with respect to a number of different products. It

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

does not include the North American natural gas and power and solutions trading businesses. RBS Sempra Commodities is a partnership between RBS and Sempra Energy Trading LLC (a U.S. utility group) that is solely controlled by RBS.<sup>2</sup> The Target Business also provides warehousing services with respect to exchange-traded base metals and so-called “soft commodities” (*i.e.*, cocoa, coffee, and plastics) through its UK-based subsidiary Henry Bath & Son Ltd, which operates a global network of warehouses<sup>3</sup>.

## II. CONCENTRATION

4. On February 16 2010, a Purchase and Sale Agreement was signed between JP Morgan, RBS Sempra, RBS, Sempra Energy and Sempra Energy Trading LLC pursuant to which JP Morgan intends to acquire certain legal entities that are subsidiaries of RBS Sempra as well as certain assets that are associated with the Target Business but that are on the balance sheet of RBS or Sempra Energy.
5. JP Morgan will therefore acquire sole control of the Target Business (the “**Proposed Transaction**”) within the meaning of art. 3(1)(b) of the Merger Regulation.

## III. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>4</sup> (JP Morgan: EUR [...] million; Target Business: EUR [...] million). Each of them has a EU-wide turnover in excess of EUR 250 million (JP Morgan : EUR [...] million; Target Business : EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
7. The notified operation therefore has a Union dimension.

## IV. COMPETITIVE ASSESSMENT

### *Relevant product and geographic markets*

8. The Target Business is mainly active in physical commodities trading and associated operations, and only has a limited involvement in financial commodities trading, to a

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<sup>2</sup> See COMP/M.4803, *RBS/Sempra*, decision of 30 November 2007.

<sup>3</sup> Its global warehousing facilities are approved to store and issue commodity warrants (bearer documents of title) by the London Metals Exchange (“LME”), the London International Financial Futures and Options Exchange (“NYSE Euronext.Liffe”), the Intercontinental Exchange (“ICE”) and the Dubai Gold & Commodities Exchange (“DGCX”).

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

large extent to hedge its own physical positions and not for clients<sup>5</sup>. It also has a commodity warehousing service for base metals, soft commodities (cocoa and coffee), and plastics. According to the notification, the Target Business does not provide financial market services to third party clients. JPMorgan, on the other hand, is mainly active in financial market services and also in financial trading, including the financial trading of commodities. It has only a minor presence in the physical trading of commodities<sup>6</sup>.

9. Therefore, according to the notifying party, its activities will overlap with those of the target in two possible product markets:
  - (1) Financial commodities trading, where both parties provide trading services in cash-settled futures and options on agricultural products, base metals, precious metals, oil, coal and freight, globally and in the EEA. Additionally they also engage in financial trading of electricity and natural gas in the EEA.
  - (2) Physical trading, where the parties' overlap is limited to natural gas and emissions trading, as these are the only two product types that are physically traded by JP Morgan, which has only recently started these activities.
10. The Commission has not previously considered the overall commodities trading sector in detail. In past decisions regarding the electricity sector, the Commission has sometimes suggested that financial trading should be distinguished from physical trading since the two types of trading pursue different objectives and are different in nature.<sup>7</sup> The Commission has also previously suggested that it might be appropriate to distinguish between financial and physical trading in respect of other commodities,<sup>8</sup> but has ultimately left the precise product market definition open. Financial trading normally involves cash-settled trading in derivatives and is principally a means of hedging risk associated with exposure to commodity prices. By contrast, physical trading involves the buying, selling, and delivery of a physical commodity for resale or consumption.

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<sup>5</sup> Commodities are basic goods that are interchangeable with other goods of the same type. The four traditional categories of trading commodities are: (i) energy; (ii) metals; (iii) “soft” commodities such as cotton; and (iv) agricultural products. More recently, there has been growing sophistication of commodities investments with the introduction of new “exotic” products, such as environmental emissions trading.

<sup>6</sup> According to the notification, JP Morgan has only recently initiated its activity in this area via the recent acquisition of Bear Stearns (active in physical trading in natural gas and electricity in North America) in 2008 and UBS’s global agricultural and Canadian commodities trading businesses in 2009.

<sup>7</sup> COMP/JV.28 – *Sydkraft/HEW/Hansa Energy Trading*, decision of 30 November 1999, paras. 15-20; financial electricity trading was singled out in COMP/M.3868 – *DONG/Elsam/Energi E2*, decision of 14 March 2006, para. 245; and COMP/M.4180 – *Gaz de France/Suez*, decision of 14 November 2006, para. 677; COMP/M.4517 – *Iberdrola / Scottish Power*, decision of 26 March 2007, para. 14; COMP/ M.5496 – *Vattenfall/Nuon Energy*, 22 June, 2009, para 9; COMP/M.5467 – *RWE/Essent*, decision of 23 June, 2009, para. 52); COMP/M.5711 – *RWE/Ensys*, decision of 15 December 2009, paras 28, 30. However, in a recent decision concerning the electricity sector, the Commission, with respect to the Belgium electricity market, found that it was not appropriate to distinguish financial and physical trading of electricity. It considered that the wholesale market was comprised of electricity generation, imports and trading both on-exchange and OTC for both physically and financially settled products, (COMP/M.5549 – *EDF/Segebel*, decision of 12 November 2009, paras.17-21.

<sup>8</sup> COMP/JV.28 – *Sydkraft/HEW/Hansa Energy Trading*, decision of 30 November 1999, para. 19.

11. The notifying party considers that it is appropriate to distinguish between financial trading and physical trading in respect of all commodities classes as the two types of trading are different activities and pursue different objectives.

#### *Financial Commodities trading*

12. Financial commodities trading involves, according to the notifying party, the trading of instruments such as commodities-based futures contracts, options, warrants, and derivatives. Trading in these financial products involves the trading of rights or obligations based on the underlying commodity, and trades are usually settled financially, i.e., with no direct physical transfer of those goods. These are traded as a means of hedging risk associated with the ownership of or future need for the underlying commodity. Financial trading/hedging in commodities takes place both on organized exchanges and on a bilateral over-the-counter (OTC) basis.<sup>9</sup> Many commodities, such as base metals, coal, electricity, natural gas, oil, precious metals, and emissions rights, can be traded in this way<sup>10</sup>.
13. JPMorgan defends the view that financial commodities trading should not be segmented by commodity but should encompass the financial trading of all commodity classes, as it considers that the basic instruments traded are the same in respect of all classes of commodities, so that in practice although knowledge of the specific commodity is important in identifying trading strategies, any financial trader could trade financial instruments based on the full range of commodities types. It also considers that there are no special set of skills or know-how that is needed to trade in a particular type of commodity. In a previous case, the Commission has considered that financial trading in electricity varies little from financial trading in other commodities.<sup>11</sup>
14. In the referred decision regarding the electricity sector, and by analogy with activities in financial markets, the Commission suggested that financial trading in certain commodity-based derivatives could be international in scope.<sup>12</sup> The Commission has also suggested that, insofar as a market exists for financial trading based on particular energy commodities, narrower geographic markets, such as a pan-Nordic or EEA-wide market, might be appropriate.<sup>13</sup>

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<sup>9</sup> According to JPMorgan there are many commodity and futures exchanges around the world. Exchanges may deal in several commodities or specialize in a single commodity. For instance, the New York Mercantile Exchange (NYMEX) is an important exchange that only trades energy commodities (though there are hundreds of such contracts traded). The most active commodity exchanges include the Chicago Mercantile Exchange (CME Group, which owns NYMEX), the Intercontinental Exchange (ICE), the Kansas City Board of Trade, and the LME.

<sup>10</sup> For example, base metal trades on the LME are always associated with a warrant that represents a specified quantity and quality of actual metal in an LME-approved warehouse, and the trade can always be settled by taking physical delivery of the metal.

<sup>11</sup> Case COMP/JV.28 – *Sydkraft/HEW/Hansa Energy Trading*, decision of 30 November 1999, para. 23.

<sup>12</sup> COMP/JV.28 – *Sydkraft/HEW/Hansa Energy Trading*, decision of 30 November 1999, para. 23.

<sup>13</sup> COMP/M.3868 – *DONG/Elsam/Energi E2*, decision of 14 March 2006, para. 46; COMP/M.4517 – *Iberdrola/Scottish Power*, decision of 26 March 2007, para. 18; COMP/M.5467 – *RWE/Essent*, decision of 23 June 2009, para. 53; COMP/M.5711 – *RWE/Ensys*, decision of 15 December 2009, paras. 32-33; COMP/M. 3268 – *Sydkraft/Grainige*, decision of 30 October 2003, para. 67.

15. JPMorgan considers that the same considerations tend to apply in respect of all commodities classes. Thus, JPMorgan puts forward the view that the geographic scope of the financial commodities trading market is global. It points to the fact that commodities exchanges serve worldwide markets<sup>14</sup> and that commodity prices on exchanges worldwide track each other closely, so that most commodities (including base metals, precious metals, and crude oil) are priced and traded globally.
16. However, in the present case there is no need to take a definitive position as to whether financial trading for the individual commodities constitutes a separate relevant market, given that even on the narrowest possible segmentation, the Transaction does not give rise to serious doubts as to its compatibility with the internal market in any segment as, according to the notification, the parties' combined market share remains below 15% at both worldwide and EEA level<sup>15</sup>.

### *Physical commodities trading*

17. Physical commodities trading involves the buying, selling, and delivery of a commodity for resale or consumption. Most physical commodities trading is done directly between principals on an over-the-counter (OTC) basis. The physical commodity trader essentially acts as a dealer who buys a commodity from a producer and tries to sell it to a consumer at a profit.
18. Physical commodities trading is in many cases also associated with a range of attendant logistics services, such as warehousing/storage. Commodity exchanges such as the London Metal Exchange (LME) approve and license warehouses and storage facilities where operators of the warehouses can provide services to market traders by making and taking delivery of the physical commodities, without owning them.
19. The Commission has previously considered that physical trading markets could be subdivided according to the individual traded commodity<sup>16</sup>. In the present case, given that JPMorgan has only very recently started to trade on the physical side and is only active on natural gas and emissions rights, these are the only two segments where overlaps occur. There are accordingly no affected markets in physical trading.
20. As regards the geographic market definition, the Commission has considered the scope of physical commodities trading in some cases to be worldwide<sup>17</sup>, but in others narrower (such as a pan-Nordic or EEA-wide market<sup>18</sup>).

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<sup>14</sup> As an example it refers to the LME that although based in London, states that over 95% of its business comes from overseas.

<sup>15</sup> As regards financial commodities trading, both parties are active in a number of commodity types, but have insignificant market presence in most such markets, with very minor sales, such as in (i) agricultural products (combined shares: less than [0-5]%), (ii) freight (combined shares: [5-10]%), oil (combined shares [0-5]%). In electricity trading the parties have combined market shares of [10-20]% at EEA level, and [10-20]% in UK and [10-20]% in the Netherlands.

<sup>16</sup> Case No. COMP/JV.28 – Sydkraft / HEW / Hansa Energy Trading, decision of 30 November 1999 or Case No. COMP/M.4517 – Iberdrola / Scottish Power, decision of 26 March 2007.

<sup>17</sup> Case No. COMP/JV.28 – Sydkraft / HEW / Hansa Energy Trading, decision of 30 November 1999.

<sup>18</sup> Case No. COMP/M.3868 – DONG / Elsam / Energi E2, decision of 14 March 2006 and Case No. COMP/M.4517 – Iberdrola / Scottish Power, decision of 26 March 2007.

21. In the present case there is no need to take a definitive position as according to the data provided by the notifying party and to the market investigation undertaken, the transaction does not raise serious doubts as to its compatibility with the internal market under any possible market definition.

#### *Exchange-Approved Base Metals Warehousing*

22. The Target Business is active via Henry Bath & Son Ltd. in an LME exchange-approved base metals warehousing business, i.e., in an activity which, according to the Parties, may be considered upstream from the commodities financial trading business for base metals<sup>19</sup>.
23. Although most trades on the LME are closed out before the contract reaches maturity, i.e. they are cash-settled, all LME futures contracts assume physical delivery. The holder of a long contract that is not closed out before delivery receives an LME warrant which is a bearer title to a specific lot of metal in a specific LME-approved warehouse, whilst the holder of a short position is required to deliver an LME warrant under the same circumstances.
24. The Commission has not previously taken a position regarding the definition of the relevant product market(s) in the base metals warehousing business.<sup>20</sup>
25. The notifying party considers that it is appropriate to distinguish between exchange-approved and general base metals warehousing. This is mainly because only metal stored in an exchange-approved facility (e.g., an LME-approved warehouse) on warrant is accepted as good delivery against a short futures position on the relevant exchange. In order to be LME approved for storage and to issue the warrants<sup>21</sup> underlying the commodities traded, a number of very specific requirements must be met by the warehouse. The Target Business's global base metals warehousing facilities are approved to store and issue commodity warrants (bearer documents of title) by the LME.

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<sup>19</sup> This activity is primarily vertically related to physical trading but as JP Morgan is only marginally active in the physical trading of base metals, such a vertical relationship does not give rise to an affected market.

<sup>20</sup> In COMP/M.2006 – *Enron/MG*, which concerned the proposed acquisition by Enron of MG, an independent metals trading company that participated in the LME and COMEX markets, the Commission stated that “*in addition MG has worldwide warehousing operations*” (decision of July 4, 2007, para. 4). The Commission did not define relevant product market(s) in the area of metals warehousing. In COMP / M.3884 - *ADM POLAND / CEFETRA / BTZ*, where the Target was active in terminal services (cargo handling and storage), the Commission distinguished between three types of cargo, i.e., i) parcel goods ii) dry bulk goods and iii) liquid bulk goods, and suggested that the market for terminal services for dry bulk cargo could be further subdivided according to the type of commodity handled, including metals (“*There are some indications that the market for terminal services for dry bulk cargo could be further subdivided into markets for agricultural goods, coal, metal and other dry bulk good [...]*”, decision of October 14, 2005, para. 11). With respect to other commodities, the Commission has found that separate product markets exist for the storage of gas (e.g., COMP/M.3410 – *Total/Gaz de France*, decision of 08/10/2004, para. 18), as well as for the (tank) storage of crude oil, petroleum, vegetable oils and chemicals, separately, owing to technical, commercial and regulatory considerations (e.g., COMP/M. 1621 – *Pakhoed/Van Ommereen (II)*, decision of September 10, 1999, paras. 8-11).

<sup>21</sup> These are the underlying instruments for the trade as they are bearer documents of title.

26. JPMorgan considers that exchange-approved base metals warehousing activity would most appropriately be viewed as a single global market, but has provided market data also for LME-approved warehousing alone (which covers all of the Target Business's activity).
27. In any event, the precise product market definition in the area of base metals warehousing can be left open, as the market investigation has confirmed that the transaction will not lead to serious doubts as to its compatibility with the internal market irrespective of the exact product market definition.

### *Competitive assessment*

28. After the transaction, the Parties' estimated combined market shares in each of the trading services markets would be below 15% under any alternative market definition, i.e., considering financial and physical trading separately, but also further breaking those down by individual commodity type where there is an overlapping activity.<sup>22</sup>
29. As regards financial commodities trading in base metals, where the Parties argue that there is a vertical link with the warehousing business of the Target Business, considering all exchanges the market share would be [0-5]% (JP Morgan [0-5]%; Target Business [0-5]%) and even considering only trading on LME (which is more directly linked to the warehousing activity of the Target) the aggregate market share would be [10-20]% (JP Morgan: [0-5]%; Target [10-20]%).
30. From the information provided in the notification and obtained from the market investigation, the commodities trading industry (including financial base metals trading) is and will remain fragmented and competitive, with a number of significant alternative players including major banks and specialized competitors. Further, the increment resulting from the transaction would in each of the possible segments be very minor, as the parties mainly have complementary activities. The transaction is thus unlikely to lead to any significant impediment to effective competition as a result of horizontal overlaps.
31. In the warehousing market, on average [20-30]% of the total stored LME base metal stocks were in warehouses owned by the Target Business in 2009. This figure has, however, according to the notifying party, been declining as the total volume of stored LME base metal stocks held globally has risen sharply during the past two years (as stock levels have risen due to the economic downturn). As of February 2010, the Target Business's share of total LME base metal stocks had declined to [20-30]%.
32. There are a number of other competitors to the Target Business that have been considered comparable alternatives to it during the market investigation, including US-based Metro International (which Goldman Sachs has recently announced it will acquire), UK-based NEMS Ltd. (which has recently been acquired by specialized Swiss commodities trading company Trafigura), Dutch-based C. Steinweg, Italy-based Pacorini, and Singapore-based CWT Commodities. The Target Business operates 91 warehouses worldwide compared to approximately the following number of warehouse

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<sup>22</sup> Figures are similar for both world-wide markets or for possible narrower market definitions, such as national markets for physical trading of natural gas. Figures are also similar if physical and financial markets are considered together.



units for its main competitors: C.Steinweg (156), Metro International Trade Services (92), Pacorini (80), CWT Commodities (30).

33. Therefore, considering that the combined market share in any of the possible trading services markets is below 15%, as well as the number of strong alternative players active in the related warehousing activity as confirmed by the market investigation, foreclosure effects are unlikely to result from the transaction.

## **V. CONCLUSION**

34. For the above reasons, the European 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