



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.11.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject: Case No IV/M.1037 - Nomura/Blueslate

Notification of 20.10.1997 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 20 October 1997 Nomura International plc ("Nomura International") notified an operation involving the acquisition of sole control, within the meaning of Council Regulation (EEC) No 4064/89 ("the Regulation"), of four companies which are currently wholly-owned operating subsidiaries of Blueslate plc, and which together comprise the business of Blueslate. The companies concerned are William Hill Organisation Limited; Laystall Limited; Camec Limited; and William Hill Trustee Limited (collectively referred to hereafter as "the Blueslate subsidiaries").

I THE PARTIES

2. Nomura International is a UK-based, wholly owned subsidiary of Nomura Securities Co, an international investment bank based in Japan. Nomura International's principal activities are in brokerage, trading and underwriting of securities, principal finance and the provision of corporate finance and investment advisory services.
3. Blueslate plc is the name for what was formerly the William Hill Group Ltd. It operates, through the Blueslate subsidiaries, a betting business in connection with a variety of events, predominantly in horseracing and greyhound racing. Its interests are mainly in the UK.

II THE OPERATION

4. The entire issued share capital of the Blueslate subsidiaries will be acquired by the Grand Bookmaking Company Ltd ("GB Company"), a company specially set up for

the purpose. GB Company is in turn a wholly owned subsidiary of The Grand Bookmaking Holdings Limited (“GB Holdings”). GB Holdings’ authorised share capital of £1 000 is divided into 100 000 shares of £0.01 each. Only one share in GB Holdings has been issued, and this is owned by [...]¹ which is formally the ultimate parent company of the group through which the acquisition is being carried out.

5. Part of the financing for the acquisition of the Blueslate subsidiaries is being provided by Nomura International to GB Holdings. GB Holdings has issued [...]² warrants, pursuant to the terms of a warrant instrument. These warrants are all currently held by Nomura International. [...]². This mechanism (referred to hereinafter as “the [...]² warrant arrangement”) gives Nomura International the power to acquire up to [...]² of the share capital of GB Holdings.

III THE CONCENTRATION

6. In the notification it was argued that the [...]² warrant arrangement gave Nomura the possibility to exercise decisive influence, and hence sole control over GB Holdings, within the meaning of Article 3(3) of the Merger Regulation. As to whether GB Holdings or GB Company were also acquiring control it was submitted that, in line with the principles to be found in paragraph 10 of the Commission Notice on the notion of a concentration (94/C 385/02), GB Holdings and GB Company should be regarded merely as vehicles for the acquisition, who did not acquire any control on their own account.
7. The Commission however does not regard the [...]² warrant arrangement on its own as capable of giving Nomura International sole control for the purpose of the Regulation. It notes that, from the point of view of the warrant holder, the arrangement is effectively a share purchase option. Paragraph 15 of the Commission’s notice on the notion of a concentration (94/C 385/02) sets out the general principle that “an option to purchase or convert shares cannot in itself confer sole control unless the option will be exercised in the near future according to a legally binding agreement. However the likely exercise of such an option can be taken into account as an additional element which, together with other elements, may lead to the conclusion that there is sole control”.
8. In the course of investigation it was established that the parent of GB Holdings, [...]¹ has an authorised share capital of [...]², divided into [...]² ordinary shares of [...]² each, of which [...]² have been issued and are held by unconnected individuals, [...]³. The articles of association of [...]¹ provide that if a member becomes bankrupt, dies or suffers from a mental disorder then he can be called upon by the directors to transfer any shares registered in his name to such person or persons as may be nominated by the directors. [...]³. Any compulsory transfer made pursuant to the articles of association or [...]³ is made at market value, being a price agreed between

¹ Deleted. Business secret: name of private company.

² Deleted. Business secret.

³ Deleted. Business secret: refers to mechanisms by which Nomura International acquires sole control under the Merger Regulation.

the shareholder concerned and the directors. Failing agreement, the market value is determined by the directors of [...]¹. The directors may, in their absolute discretion, refuse to register any transfer of shares in [...]¹. [...]¹ currently has two directors, who do not hold shares, but [...]². Additional directors can be appointed by any member or members holding a majority in nominal value of the issued share capital.

9. [...]². Thus while Nomura International may not be the formal holder of the rights conferring control over [...]¹, the arrangement gives it a substantial level of influence over how the company is run.

10. [...]².

IV COMMUNITY DIMENSION

11. It was suggested initially that the only ‘undertaking concerned’ on the acquiring side was Nomura International, and that neither [...]¹, GB Holdings nor GB Company were undertakings concerned, because Nomura International was acquiring sole control of the Blueslate subsidiaries through its control over GB Holdings by means of the [...]³ warrant arrangement.

12. As Nomura is a financial institution, the threshold figures for world-wide and Community-wide turnover for the purposes of Article 1(2) of the Regulation have to be calculated in accordance with the provisions of Article 5(3). Thus for world-wide turnover the relevant figure is one-tenth of total assets. For community-wide turnover the figure is one-tenth of total assets, multiplied by the ratio between loans and advances to credit institutions and customers in transactions with Community residents and the total sum of those loans and advances. On this basis one-tenth of Nomura International’s total assets is ECU 7 799 million, and the figure for community-wide turnover is ECU 1 465 million.

13. A question arose as to whether the Nomura Group should be considered, for the purposes of Article 5(4) of the Regulation to have over [...]¹ or any of its subsidiaries any of the rights or powers listed in Article 5(4)(b), and hence whether any turnover from the [...]¹ group should be included. The particular issue for consideration was whether [...]² or the [...]³ warrant arrangement might fall within any of the categories in the 5(4)(b) list of rights and powers. If such a finding were made, then the undertakings whose turnover would also need to be brought into account would include not only the [...]¹ group, but also all other investment interests in relation to which Nomura International had devised similar [...]³ mechanisms.

14. It was accepted that the turnover of the [...]¹ group ([...]³ in total) was not sufficient to have any impact on the question of jurisdiction for the purpose of this notification. The notifying party also confirmed that, even if the turnover of all other UK business activities controlled by Nomura International through similar

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arrangements were to be taken into account, the ‘two thirds’ condition in Article 1(2) (which would have been satisfied in any event in relation to Blueslate) would not have been satisfied in relation to the UK turnover of the Nomura group as defined for the purpose of Article 5(4). It was unnecessary therefore for the present case to decide on the precise treatment of turnover arising from investments held by [...]¹ or similar vehicles.

15. Blueslate plc’s turnover for the year 1996, all of which arose from the activities of the four Blueslate subsidiaries, amounted to ECU 2 012 million. Almost all of this arose in the UK. A small amount, just over [...]², arose from telephone bets originating from outside the United Kingdom. In accordance with the principles outlined in paragraph 46 of the Commission notice on calculation of turnover (94/C 385/04) such turnover should be treated as arising where the customer is located, in this case outside the United Kingdom. However, the relatively small amounts of turnover concerned were not sufficient to alter the findings on jurisdiction, and therefore the question of precise geographical location of this turnover did not need to be pursued further.
16. The operation therefore has a Community dimension. But as neither Nomura International nor the Blueslate subsidiaries achieve turnover in any EFTA state which is a contracting party to the EEA agreement, the notification does not fall to be treated as an EFTA co-operation case.

V COMPATIBILITY WITH THE COMMON MARKET

The relevant product market

17. The notifying party contended that there are no overlaps between the activities of Nomura International and those of Blueslate. NI is part of the international investment banking group headed by The Nomura Securities Co Ltd of Japan. Nomura International’s activities focus on general banking activities and investment services for the European market, and include corporate advisory services, principal finance and trade in various product lines including equities, securities lending, fixed income, derivatives, asset trading and origination work. It has made a number of acquisitions of UK businesses in recent years, using [...]² structures similar to those described in this Decision. According to the notification these investments are all in sectors entirely distinct from the UK betting sector.
18. The Blueslate subsidiaries are active in betting (or “bookmaking”) services which comprise on-course and off-course betting and telephone betting.
19. The notification discussed the possibility of overlaps based on broader definitions of gambling. One was that Nomura International has invested, using similar [...]² warrant arrangements, in pubs in the UK, some of which would have had ‘fruit machines’ installed by the landlord, and from which Nomura is in principle entitled to a share of the revenue. A second area mentioned was the risk element involved in certain derivative products in transactions undertaken by Nomura International.

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² Deleted. Business secret.

However, in both cases the demand and supply side characteristics in relation to the business activities concerned are so different as to lead to the conclusion that they cannot be in the same market(s) as those which concern the activities of the Blueslate business.

20. In the absence of any competitive overlaps the precise product market definitions can be left open.

The relevant geographic market

21. The notifying party provided information describing NI as operating on at least a European if not a world-wide basis. As regards Blueslate's activities, the notifying party says that the relevant geographic market is limited to the UK.
22. In the absence of any product market overlap the precise geographic market definitions do not need to be addressed and can be left open.

Assessment

23. The information supplied provides no evidence of horizontal overlap, and on this basis no competition concerns arise.

Conglomerate aspects

24. According to the notifying party the other UK sectors business sectors invested in by Nomura, apart from pubs, are in equipment leasing, rail rolling stock, university accommodation, housing association and military housing sector. The only sector in which the businesses [...] ¹ had more than a 25% share was in rail rolling stock leasing. On the basis of the information provided, no competition concerns were found to arise.

VI CONCLUSION

25. In view of the above the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,

¹ Deleted. Business secret.