

***Case No COMP/M.2086 -  
DEUTSCHE BANK /  
HAMBURGISCHE  
IMMOBILIEN  
HANDLUNG / DLI***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/08/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.08.2000  
SG(2000) D/ 106410

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.2086 - Deutsche Bank/Hamburgische Immobilienhandlung/DLI**

Notification of 27 July 2000 pursuant to Article 4 of Council Regulation No 4064/89.

1. On 27 July 2000, the Commission received the notification of a joint venture between the Deutsche Bank AG ("Deutsche Bank"), Germany, and HIH Hamburgische Immobilienhandlung GmbH ("HIH"), Germany, controlled by M.M. Warburg&Co. KgaA ("Warburg"), Germany.
2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No. 4064/89 ('the Merger Regulation') and does not raise serious doubts as to its compatibility with the common market or with the functioning of the EEA agreement.

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

Deutsche Bank is a commercial bank providing banking and financial services world-wide. HIH is active in integrated real estate services and investments. Warburg is an investment bank. Both companies will found a joint venture under the commercial name Deutsche Logistik ImmobilienAG ("DLI"). The joint venture will acquire, manage and sell real estate suitable for logistics, distribution and warehousing purposes in Germany. Both parents will remain active in the real estate sector as part of the banking activities of Deutsche Bank and Warburg.

## **II. CONCENTRATION AND COMMUNITY DIMENSION**

3. Deutsche Bank and HIH will each hold half of the total share capital and the voting rights in DLI, thus giving them joint control over the joint venture

## **III. COMMUNITY DIMENSION**

4. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>1</sup>, Deutsche Bank EUR 51,131 million and Warburg EUR 487 million. Each of them has Community-wide turnover in excess of EUR 250 million (Deutsche Bank EUR [...] million and Warburg 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, but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

## **IV. COMPETITIVE ASSESSMENT**

5. The concentration concerns the real estate sector. In previous decisions<sup>2</sup> the Commission identified two segments of this sector: properties for commercial and for residential use. The joint venture will be active in properties for commercial use.
6. With respect to the geographic market definition the Commission contemplated the possibility of markets on a local level, i.e. on the level of municipalities, in these decisions.
7. Like in the previous cases, it is not necessary to further delineate the relevant product markets because in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

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<sup>1</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). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

<sup>2</sup> Case No IV/M.1289 - Harbert Management/DB/Bankers Trust/SPP/Öhman; case No COMP/M.1637 - DB Investment/SPP/Öhman; COMP/M.1937 - Skandia Life/Diligentia (not yet published); case No COMP/M.1975 - Deutsche Bank/Eurobank/Lambda Development/JV; case No COMP/M.2025 - GE Capital/BTPS/MEPC (not yet published).

8. Even if the relevant market was to be limited to real estate for commercial purposes and as local in scope, the market share of Deutsche Bank and Warburg would not exceed 1% in any German municipality.
9. In light of these insignificant market shares a co-ordination of the competitive behaviour of the two parent companies is unlikely in spite of the fact that both will retain activities in the real estate sector in Germany.
10. In view of the market position of the parties to the concentration, it appears that the notified operation will have no impact on competition in the EEA. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

## **V. ANCILLARY RESTRAINTS**

11. The parties ask that the following matters be covered by this decision as restrictions ancillary to the concentration, on the grounds that they are directly related and necessary to it (Article 6(1)(b) Merger Regulation).
12. In paragraph 28.1 of the shareholders' agreement the parties have agreed that in its first year the joint venture sources certain services, such as product identification and local due diligence services, from HIH. Real estate companies typically either provide such services in-house or out-source them. This clause is necessary and related to the concentration as these services support the joint venture in the start-up period until it has developed its own know-how in this respect.
13. Paragraph 28.5 of the shareholders' agreement contains a prohibition for the parents to compete with the joint venture as far as real estate projects suitable for DLI are concerned. This non-compete clause is limited to the start-up phase of the joint venture in order to enable it to build up its portfolio. This clause is covered by this decision with reference to point V.A. of the Commission Notice<sup>3</sup>.

## **VI. CONCLUSION**

14. 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 (EEC) No 4064/89.

For the Commission,  
Mario Monti  
(Member of the Commission)

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<sup>3</sup> Commission Notice regarding restrictions ancillary to concentrations (90/C 203/05).