

***Case No COMP/M.2227 -  
GOLDMAN SACHS /  
MESSER GRIESHEIM***

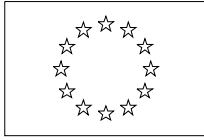
Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 20/03/2001

*Also available in the CELEX database  
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **20/03/2001**

SG (2001) D/**286929**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.2227 – Goldman Sachs / Messer Griesheim  
Notification of 19 February 2001 pursuant to Article 4 of Council  
Regulation (EEC) No 4064/89<sup>1</sup>**

1. On 19 February 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“the Merger Regulation”) by which the U.S. undertaking The Goldman Sachs Group, Inc. (“Goldman Sachs”) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of the German undertaking Messer Griesheim GmbH (“MGG”) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

## **I. THE PARTIES**

3. Goldman Sachs is principally active in investment banking, trading and principal investment, and asset management in securities services.
4. MGG is active in the production and distribution of industrial gases and speciality gases. The company is presently controlled by Hoechst AG (“Hoechst”), a subsidiary of Aventis SA (“Aventis”), which owns 66 2/3 % of MGG’s shares, the remaining 33 1/3 % being held by Messer Industrie GmbH (“MIG”), a holding company owned by members of the Messer family.

## **II. THE OPERATION**

5. The operation will be implemented in several steps and ultimately result in the indirect transfer of the whole of the share capital in MGG to a newly set up holding company, “Investor NewCo”, in which Goldman Sachs and Allianz Capital Partners GmbH (“ACP”) each will have a 31.85 % stake, whereas MIG will acquire 36 1/3 % of the shares of Investor NewCo. ACP is a holding company belonging to the German Allianz insurance group

## **III. CONCENTRATION**

6. Although Goldman Sachs will only have a minority shareholding in Investor NewCo, the agreements on which the operation is based contain provisions that result in Goldman Sachs exercising sole control in Investor NewCo and, consequently, MGG. [...].
7. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than €5 billion (Goldman Sachs [...], MGG [...])<sup>2</sup>. Each of Goldman Sachs and MGG have a Community-wide turnover in excess of EUR 250 million (Goldman Sachs [...], MGG [...]), but 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.

## **V. COMPETITIVE ASSESSMENT**

9. Goldman Sachs and MGG are not engaged in business activities in the same product market or in a market upstream or downstream of a product market in which the other undertaking concerned is engaged. Therefore, the acquisition of sole control in MGG by Goldman Sachs does not give rise to any possible competition concern.

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<sup>2</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 € on a one-for-one basis.

## VI. ANCILLARY RESTRAINTS

10. The Business Combination Agreement underlying the operation provides for
  - an obligation for Aventis/Hoechst not to compete with MGG for a period of three years following the closing date within the territorial scope of MGG's present business (Article 12.2);
  - an obligation for the parties of the agreement to keep certain information in connection with the agreement confidential (Article 12.12 lit. [a]).
11. The non compete clause is directly related and necessary to the implementation of the concentration, since it ensures that the full value of the interest in MGG can be taken over by Goldman Sachs. It is therefore also covered by the present decision.
12. With regard to the confidentiality clause, however, the parties have not provided any element allowing to judge whether this clause limits the parties' freedom of action in the market and whether it is directly related and necessary to the implementation of the concentration.<sup>3</sup> The Commission is therefore not in a position to give its view on this clause.

## VII. CONCLUSION

13. 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 and Article 57 of the EEA Agreement.

For the Commission  
**(Signed)**  
Mario MONTI  
Member of the Commission

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<sup>3</sup> Commission Notice regarding restrictions ancillary to concentrations (OJ C372, 9.12.1997, p 5), paragraph 3.