

***Case No COMP/M.4478 -  
KKR / GOLDMAN  
SACHS / KION***

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: 20/12/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.12.2006  
SG-Greffe(2006) D/208280

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.4478 – KKR / GOLDMAN SACHS / KION  
Notification of 17/11/2006 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>  
Publication in the Official Journal of the European Union No. C289 on  
28/11/2006, page 19**

1. On 17/11/2006 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Kohlberg Kravis Roberts & Co. L.P. (“KKR”, USA) and The Goldman Sachs Group Inc (“Goldman Sachs”, USA) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the Kion Group (“Kion”, Germany) 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 Council Regulation (EEC) No 139/2004 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

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<sup>1</sup> OJL 24, 29.1.2004 p. 1.

## **I. THE PARTIES**

3. KKR is a private equity firm with investments in a range of different businesses. KKR operates as an investment firm, not as a conglomerate or a holding company. Accordingly, each company in its portfolio is independently managed and financed. Each has its own board of directors, which generally includes KKR representatives.
4. Goldman Sachs' activities are generally divided into three segments: (i) investment banking, (ii) trading and principal investment, and (iii) asset management and securities services.
5. Kion comprises the entire material handling business of Linde AG. With headquarters in Wiesbaden, Germany, Kion is active in the manufacturing and sale of forklift trucks, warehouse equipment and related components as well as the provision of related services on a worldwide basis. Kion is structured along the three main brands Linde, STILL and OM.

## **II. CONCENTRATION**

6. As a result of the planned transaction KKR and Goldman Sachs will each hold 50% of the voting rights in LuxCo which will in turn indirectly hold all shares and voting rights in Kion. KKR and Goldman Sachs will thus both be in a position to determine the strategic commercial behaviour of Kion, and thereby acquire joint control of Kion within the meaning of the Merger Regulation.

## **III COMMUNITY DIMENSION**

7. The combined aggregate worldwide turnover of the undertakings concerned is more than €5 billion. The aggregate Community-wide turnover of each of the undertakings concerned is more than € 250 million. Neither of the Parties achieved more than two-thirds of its Community-wide turnover in one and the same Member State. The operation therefore has a Community dimension.

## **IV ASSESSMENT**

### **A Relevant markets**

8. Kion is active in the manufacturing and sale of counterbalanced forklift trucks ("CFT") and warehouse equipment ("WE").
9. CFT are person-operated material handling vehicles equipped with a fork or a ram for loading and transporting cargo, as well as a mast for moving cargo vertically. There is a variety of models differing in weight bearing capacity and type of engine, but all of them share common distinctive characteristics - (they can carry goods in both horizontal and vertical directions, and have a maximum lift height in the range of four to six meters) - and manufacturers of forklift trucks generally produce the entire range of such trucks.
10. Two main groups of WE can be distinguished: (i) electric motor narrow aisle trucks, i.e. larger powered trucks on which the driver stands or sits and which are used for intensive order picking and/or pallet handling with lift heights of up to thirteen meters, and (ii) electric motor hand trucks, i.e. small and electric powered WE which the

operator pushes or drives while standing, used for all types of goods handling with lift heights up to five metres. The products are complementary from a demand-side viewpoint and when a customer is establishing a new warehouse, generally the entire range of WE or at least an essential part of it, is required. All types of WE are share common distinctive characteristics – they are typically electric, are used within a warehouse or other indoor applications such as retail stores, and their lift capacity ranges from one to three tonnes. Further, from the supply point of view, most of the larger WE suppliers produce nearly the entire product range of WE, usually at one and the same production site.

11. Regarding both CFT and WE, the conditions of competition are essentially homogeneous throughout the EEA. There are no significant barriers to entry in the different Member States from the legal, economic or geographic point of view. Transport costs within Europe are around 2 to 3 % of the product value and usually manufacturers deliver their products throughout Europe. Large customers generally carry out multi-national negotiations with a number of suppliers for the central procurement for their operations in several European countries. Practically all suppliers have European-wide price lists, which has led to homogeneity of prices in Europe.

12. In view of these factors, and also in view of previous decisions in the material handling sector<sup>2</sup>, the Commission concludes that CFT and WE constitute distinct product markets, and that the relevant geographic markets for these products are at least EEA-wide.

## **B Assessment**

13. In 2005 Kion's share of the EEA markets for CFT and WE were [30-40]% and [30-40]% respectively. Main competitors include Toyota ([10-20]% of CFT, [15-25]% of WE), Jungheinrich ([5-15]% of CFT, [30-40]% of WE), and Nacco ([5-15]% of CFT, [0-10]% of WE). Neither KKR nor Goldman Sachs have any investments in businesses that overlap with Kion horizontally.
14. However, some of the portfolio companies controlled by KKR and Goldman Sachs purchase CFT or WE produced by Kion or a competitor, or supply limited amounts of products which are used, or could potentially be used, for the manufacturing of CFT and WE. The concentration therefore involves a vertical link.

### *a) Input (supplier) foreclosure*

15. Kion has a very large customer base with approx. [400,000-600,000] customers worldwide in numerous industries, including logistics, supermarkets, construction, engineering, etc, and demand is very fragmented. Where portfolio companies of KKR or Goldman Sachs are actual or potential customers of Kion, such customer relationships are insignificant, and none of these companies are among Kion's top five customers. <sup>3</sup>

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<sup>2</sup> Decisions in Cases COMP/M.2844-Linde/Komatsu/Komatsu forklift, COMP/M.2398-Linde/Jungheinrich/JV, COMP/M.1950-Toyota Automatic Loom works/BT Industries and COMP/M. 256-Linde/Fiat.

<sup>3</sup> The top 5 customers of CFT of Kion in 2005 were [...] The top 5 customers of WE of Kion in 2005 were [...].

16. In view of this, the merged entity would not be able to foreclose competitors of those of their portfolio companies who purchase CFT or WE from Kion, since these portfolio companies absorb only a tiny fraction of Kion's total output, and Kion would of necessity continue to sell to their competitors. Moreover, there are a number of alternative suppliers to Kion for both CFT and WE (see above). Again, Kion would have no incentive to foreclose such competitors, for whom purchases of CFT and WE represent only a small proportion of their total economic input.

b) *Output (customer) foreclosure*

17. Similar characteristics apply to supply relationships between portfolio companies controlled by KKR and Goldman Sachs, and Kion. Indeed, the parties have identified only one such company which is fully controlled by the parties, [...] which sells *de minimis* quantities of [...] to a Kion CFT subsidiary. The supplied products only account for a minimal part of the production costs of Kion, and less than [ $<1$ ] % of [...] turnover. These relationships are so minor that any foreclosure effects can be excluded; even if post-merger Kion were to source all its [...] requirements from [...] the latter's competitors would have no shortage of customers in all industrial sectors to whom they can sell their [...] products

c) *Conclusion*

18. In view of the above, the creation of foreclosure effects such as to significantly impede upstream or downstream competition can be excluded. The Commission has received no complaints concerning the potential competitive impact of the proposed transaction from any company involved in any of the relevant markets.

**V CONCLUSION**

19. 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 139/2004.

For the Commission  
signed  
Neelie KROES  
Member of the Commission