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Case No COMP/M.5495 - UNICREDIT/ BANCA IMI/ EUROTLX SIM JV

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.11.2009

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

Subject: **Case No COMP/M.5495 - UNICREDIT/ BANCA IMI/ EUROTLX SIM JV**
Notification of 16 October 2009 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 16 October 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Unicredit S.p.A ("UniCredit", Italy) and Banca IMI S.p.A. ("Banca IMI", Italy) intend to transform the existing joint venture TLX S.p.A. ("TLX") into a full-function joint venture, EuroTLX Società di Intermediazione S.p.A. ("EuroTLX SIM"), within the meaning of Article 3(4) of the Council Regulation.

I. THE PARTIES AND THE OPERATION

2. **UniCredit** is an international financial institution with registered office in Rome and listed on the Milan Stock Exchange. It offers a wide range of banking and financial services in several European countries, including retail and corporate banking services as well as investment banking and asset management.

3. **Banca IMI**, a company of the Intesa Sanpaolo Group, is an Italian investment bank that operates on domestic and international markets.

4. The operation under review consists in the creation of EuroTLX SIM as a for-profit commercial entity resulting from the transformation of the pre-existing joint venture

[1] OJ L 24, 29.1.2004 p. 1.

TLX into a full function joint venture, which will operate as an investment firm in charge of the management of a trading platform named EuroTLX.

II. CONCENTRATION

5. The share capital of TLX is currently held for 50% by UniCredit and for 50% by Banca IMI, who jointly control the joint venture. This shareholding and control structure will continue to apply following the transaction. TLX currently manages two platforms for the trading of financial instruments named TLX and EuroTLX,

6. Once created, EuroTLX SIM will have sufficient resources to operate independently on the market, applying a revenue based model for trading and other services, operate on a commercial basis vis-à-vis its parents, be open to all market operators which wish to become members and operate on a lasting basis.

7. The operation therefore constitutes a concentration in the sense of Article 3(4) of the Merger Regulation and paragraph 109 of the Consolidated Jurisdictional Notice.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[2] (UniCredit EUR 66,298 million, Banca IMI EUR 35,793 million). Each of them has a Community-wide turnover in excess of EUR 250 million (UniCredit, EUR […] million, Banca IMI EUR […] million), 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.

IV. RELEVANT MARKETS

9. As indicated, TLX currently manages two platforms for the trading of financial instruments: (i) a "regulated market" named TLX, and; (ii) a "Multilateral Trading Facility" ("MTF") named Euro TLX, both of which notions are defined in Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ("MiFID"). Upon completion TLX will change its name to EuroTLX SIM and will manage exclusively the MTF named Euro TLX.

10. UniCredit and Banca IMI, the parent companies of TLX, provide trading services in financial instruments as well as post-trading services. Such activities are vertically related to those of the joint venture.

11. Therefore, the assessment of the operation needs to be carried out in respect of the activity of TLX, broadly speaking the management of a platform for the trading of financial instruments, as well as in respect of the vertically related trading and post-trading services.

2 Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

IV.1. Multilateral platforms for the trading of financial instruments between qualified counterparties

Relevant product market

Regulatory framework and views of the Parties

12. Upon completion of the operation, EuroTLX will operate exclusively in secondary inter-dealer (B2B) trading as an MTF retail platform focusing on government, corporate and "branded" bonds, that is debt instruments issued by commercial financial institutions. It currently has market share essentially in Italian securities but also trades non-Italian instruments and has the ambition to expand its range of offerings.

13. The relevant economic activity raised by this case takes place after the admission of issued financial instruments to secondary trading by the platform concerned[3]. In this phase the various providers of market infrastructure allow trading to take place on third party account between qualified purchasers and sellers ("members"), according to the set of rules which they have defined.

14. The Parties in the notification defended a wide market definition, consisting of all companies which organize and manage venues where financial instruments are traded and explicitly covering both regulated markets and MTFs. They acknowledged the possibility of segmenting the market between platforms which trade equities and those which trade bonds.

15. The Parties also put forward an alternative, wider market definition which would encompass also bilateral trading via so-called "systematic internalisers"[4] and "over the counter trading" ("OTC"), concepts equally defined under MiFID. In such instances, investment firms enter into every trade on their own account and not as a riskless counterparty interposed between the buyer and the seller. Transactions carried out on an OTC basis are normally ad-hoc, irregular and carried out with wholesale counterparties as part of a business relationship which is itself characterised by dealings above standard market size[5].

16. Under MiFID, both "regulated markets" and "MTFs" are multilateral systems bringing together or facilitating the bringing together of multiple third-party buying and selling interests in financial instruments in the system according to non discretionary rules. Regulated markets are, however, subject to a wider array of rules and management requirements and, therefore higher costs, than MTFs. In addition, MTFs can be operated by both investment firms and market operators (concepts defined by MiFID), whereas regulated markets can only be operated by market operators.

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[3] Secondary trading takes place after the initial issuance of securities and consists in investors purchasing financial instruments from other investors who already hold these instruments and wish to sell them.

[4] MiFID., article 4

[5] ibid., recital 53

17. According to recital 6 of MiFID, *"definitions of regulated market and MTF should be introduced and closely aligned with each other to reflect the fact that they represent the same organised trading functionality. The definitions should exclude bilateral systems where an investment firm enters into every trade on own account and not as a riskless counterparty interposed between the buyer and seller."*

18. Finally, as indicated by the Parties, trading venues may have an interest in limiting access to some typologies of investors. These restrictions can be explicit (e.g. by indicating the kind of operator admitted) and/or implicit (e.g. by imposing a minimum volume for transaction). On this basis, trading platforms could be further segmented into retail platforms or venues where small size orders placed by investment firms operating for retail clients are admitted (which should not be confused with the bilateral systems open to retail investors themselves) and wholesale platforms which are only accessible to financial institutions placing large size orders. According to the Parties the average retail trading size in bonds is usually lower than € 50,000 whereas at wholesale level the average size of the orders is more than € 1 million. Under Italian legislation, wholesale markets are those venues where the operators are trading on own account or on the account of third parties admitted to the same venue. The minimum tradable size is €500 000. MTS is currently the most important wholesale market for multilateral rule-based trading in Italian and foreign bonds. TLX and EuroTLX, as well as Borsa Italiana's MOT system are retail markets for bonds.

Results of the market investigation

19. The Commission has not previously decided on the relevant market in a case involving stock exchanges or alternative trading platforms. However, in case M.3511[6], the market investigation favoured a division of the market between equities and bonds and further favoured the exclusion of bilateral trading from the definition of the relevant market. The market investigation in the present case confirmed the relevance of both of these distinctions.

20. Concerning the question of whether or not multilateral trading of bonds in regulated markets and in MTFs constitute one single segment, as the parties suggest, or two separate segments, most respondents to the market investigation confirmed that this distinction is not of primary importance and that therefore a single market comprising regulated markets and MTFs could in the circumstances of the present case be assumed.

21. In defining the market for the operation of trading platforms it should be borne in mind that, as the market investigation has shown, platforms only actually compete at any given time for order flow in those individual instruments which are admitted to trading on the platform in question. Since the demand to sell a particular instrument is specific to the instrument concerned (assuming it is already held and therefore excluding short-selling) and at least a part of the demand to buy is similarly specific, buyers and sellers can only meet on a platform actually offering trading in that instrument. On this basis, markets could be defined narrowly on the basis of individual instruments traded.

6 COMP M.3511 *Wiener Böerse et al./Budapest Stock Exchange/Budapest Commodity Exchange/Keler/JV*

22. However, for reasons of scope and scale individual platforms tend to offer services across a large range of similar instruments. From a supply perspective, as indicated in the notification, the obstacle to offer trading in instruments not currently traded but which share many characteristics with those that are may be very low. The more dissimilar the instruments are, however, the greater this obstacle becomes. For this reason platforms tend to offer trading in a cluster of instruments which share similar properties such as, in this instance, bonds issued by Italian institutions. Supply side considerations may therefore be taken to imply markets broader than the specific instruments actually traded, the precise limits of which nonetheless need to be ascertained on a case-by-case basis.

23. The market investigation in the present case confirmed, however, that the nature of the instruments traded was not the sole criterion relevant to the market definition, since in the case of government bonds some platforms such as MTS are specialized in trading very large sizes on a wholesale basis between entities which also participate in the primary market, whereas TLX trades retail size trades which are on average over 100 times smaller. Respondents to the market investigation confirmed that MTS and TLX should be seen as not competing with each other but rather operating in separate relevant markets.

24. On this basis, three segments could be identified within which the activity of TLX is presently concentrated, namely multilateral trading platforms (comprising both regulated markets and MTFs) for (i) Italian government bonds traded in retail size; (ii) Italian corporate bonds and (iii) Italian branded debt.

25. The market investigation indicated that competition needed to be assessed based on the actual range of instruments traded and therefore the competitive interaction between different trading platforms competing for trading in the same instrument. On the supply side, account needed to be taken of the ease with which a platform could offer trading in new instruments but also of the probability that it would capture sufficient liquidity in that instrument for price formation to be efficient and therefore for traders to have an incentive to use the platform for the instrument in question.

26. Supply side considerations would broaden the relevant product market in particular where many of the entities potentially wanting to trade the new instrument were already members of the platform wishing to offer such trading. Where a significant segment of demand was not already present on the platform, the incentive to offer new instruments in isolation was likely to be small.

27. Since TLX and its competitors typically offer trading services in a similar set of instruments, supply side considerations can be held in this case indeed to result in wider markets than would result from consideration of the demand side alone. In particular, TLX offers trading services in retail-size demand for Italian government securities, in Italian corporate debt and in Italian branded debt. On all of these segments it also competes with MOT and Hi-MTF, these being the only entities cited by respondents to the market investigation as being in actual competition with TLX.

28. On this basis, a single overall market could be identified for multilateral trading platform services in Italian debt securities, comprising retail-sized trade in government securities and all trade in corporate and branded debt securities, to the exclusion therefore of wholesale trade in Italian government debt. The view of the Parties that the relevant market might comprise a wider set of platforms, including

those which do not currently offer trading in the same range of instruments as TLX, found no support in the market investigation and therefore can be excluded.

29. The precise market definition can, however, be left open as the transaction does not raise serious doubts as to its compatibility with the Common Market even on the basis of the narrowest possible market segments.

30. Although TLX is active also on other market segments namely in the trading of non-Italian debt securities, affected markets in such segments do not arise due to its market share which is […].

Geographic market

31. As regards the geographic scope of the relevant market, the Parties note the existence of national regulatory authorities, precedents established by the Italian competition authority before the entry into force of MiFID and the fact that domestic members of trading venues still generate more volume in such infrastructures than foreign members as factors that could lead to the conclusion that competition in the management of platforms for the trade of financial instruments takes place, at least as regards Italy and with the possible exception of wholesale trading in Italian government bonds, mainly at a national scale.

32. However, on the other side, the Parties consider that EuroTLX has all the legal and regulatory requisites to become European in scope. It is already the case that investment firms from other member States are members of TLX and make use of it for trading. In particular large trading firms consider the main European trading venues as interchangeable in respect of the instruments which can be traded on them. Likewise Italian firms may accede to foreign trading venues for trading both foreign and Italian instruments. In addition, trading firms frequently offer their services on a delocalized basis so that clients from all over Europe have no technological obstacles to access any trading platform they may wish to use.

33. The results of the market investigation show that retail-sized fixed income trading in Italian debt securities is mostly carried out by domestic trading members on domestic platforms, although there are no legal or technical barriers limiting cross border competition but only the barrier that results from the fact that liquidity and retail demand for Italian bonds is mainly located in Italy. Thus, in practice, trade of Italian bonds outside Italy is limited – although, according to some market participants, it may be increasing and it would appear that entities located abroad who wish to trade Italian debt instruments in general do not in general have access to economically equivalent alternative ways of doing so in other jurisdictions but are constrained to make use of the same platforms offering such trading as do Italian investment firms, namely TLX, MOT and Hi-MTF.

34. In this sense, therefore, retail-sized multilateral trading services in Italian bonds may be provided in a market which is notionally wider in scope than Italy (as there are no other national markets outside of Italy for the same service but with differing conditions of competition) even if in practice the essential part of demand is national.

35. There is, however, no need to conclude on the relevant geographic market in this case, as the proposed transaction does not result in serious doubts as to its compatibility with the common market on the basis of any of the possible product market segmentations

outlined above, whether at national, EU/EEA or indeed worldwide level. In addition, as regards platforms for the trading of Italian bonds for which the demand is presently mainly located in Italy, the geographic scope of this activity is neutral to the competitive assessment as the joint venture's position and that of its main competitors would be essentially the same at national, EU/EEA and worldwide level.

IV.2. Trading services

Product market

36. In case M.3511, trading services were defined as intermediary activities consisting of the services the banks and other investment service providers offer to their customers with regard to trading in securities. The parties submitted that despite the difference in respect of the legal form of the transaction, trading in securities on customers' account and trading in securities on own account are the same activity. Furthermore they submitted that intermediary services with regard to trading on a regulated trading platform and OTC are interchangeable. The market definition was left open.

37. Both UniCredit and Intesa Sanpaolo carry out trading activities in equities and bonds on their own and their customers' account. However only the provision of trading services on customers' account is an activity upstream to EuroTLX SIM's activity, particularly as regards retail or small ticket size trading in bonds.

38. The assessment will therefore focus on this narrower segment, leaving open the question of whether wider markets can be defined.

Geographic market

39. In case M.3511 the geographic market definition was left open. In the case at hand, although the parties admit that under a conservative approach the market for the provision of trading services could be still considered national in scope, they favour an European-wide market definition based on the cross border nature of this economic activity as well as on the fact that the services provided by trading firms are accessible by clients from all over Europe. In fact both Unicredit and Intesa Sanpolo offer their services through internet to clients resident in different countries.

40. It can nonetheless be noted that the relevant upstream market relates to trading in Italian bonds, the essential part of the demand for which is, in practice, and as already noted, national in scope, and not to trading more generally, that is including services provided in respect of instruments which are not, or only minimally, traded or potentially tradable on TLX. It would therefore seem inconsistent to determine a wider geographic market for these upstream services than exists for the services provided by TLX itself.

41. In the present case, however, the market definition can again be left open as the operation does not raise serious doubts as to its compatibility with the common market, regardless of the geographic scope of the upstream market in question.

IV.3 Post-trading services

Product market

42. According to the Parties, the post-trading sector encompasses the different functions that intervene between the stage of agreeing to a trade, at which moment the parties to it are legally obligated to consummate the trade, and the moment at which the securities and cash accounts of the buyer and seller are debited or credited respectively.

43. More precisely, as indicated in the notification, the post-trading process is usually split into the following phases:

   - Trade matching

   Trade matching is the activity consisting in assessing the consistency of the terms of trade of the buyer with those of the seller, thus preventing unintentional errors. Trades executed on electronic order books are typically pre-matched by the same trading system and then automatically forwarded to the Securities Settlement System ("SSS"), with the exception of OTC trading which may require "manual" checks.

   - Clearing and settlement

   Clearing can be defined as the process of calculating the mutual obligations for the exchange of securities and cash, whereas settlement refers to the final transfer of securities from the seller to the buyer and of funds from the buyer to the seller.

   Although in certain instances trading platforms make use of the services of a central counterparty for clearing, this is not the case on TLX. Nonetheless the Parties may intervene as clearing members on behalf of entities which trade in their own name but have elected to have recourse to a third party for the purposes of clearing.

   Positions in registered securities are normally ultimately settled at a Central Securities Depositary (CSD). Nonetheless, members of a trading platform can also elect to have their positions settled by an agent which holds their securities account and conducts operations in the CSD only on an omnibus (i.e. net) basis.

   - Custody services

   Custody services comprise a number of services performed in relation to outstanding positions in securities on an ongoing basis rather than in relation to specific transactions, including such items as payment of dividends and coupons, stock splits, rights issues, voting (for equity securities with voting rights) and so on.

44. In the case at hand, the vertically related services are provided exclusively on an agency basis by the Parties acting as a general clearing agent, settlement agency, and/or custodian. In case 38.096 under Article 82, the Commission distinguished agency (or "secondary") settlement from so-called primary settlement which is carried out in the

CSD[7]. In precedents under the Merger Regulation the market definition has been left open.

45. The Unicredit Group […] with the sole exception of its subsidiary […].

46. Once again it needs to be observed that the vertically related activities in clearing, settlement and custody relate in principle only to the instruments traded on TLX and that similar arguments as to market definition apply as already considered in respect of trading services, with markets definable at the level of single instruments from the demand perspective, but wider on the basis of supply-side considerations.

47. The parties refer to the different activities included in the post-trading process as a single economic segment and do not discuss possible segmentations. Although this approach appears questionable, the market definition in this case can be left open as serious doubts as to the compatibility of the operation with the common market do not arise, regardless of the precise market definition adopted.

Geographic market

48. The parties propose a national market definition for the relevant post-trading services in this case on the basis that in order to carry out their activity, custodians and clearing members which act as agents for clearing and settlement have to become members of the national Central Securities Depository(ies) and, where relevant, also of the relevant Central Counterparties.

49. On the other side, however, they note that MiFID has liberalised the market for post-trading services allowing investment firms, market operators operating in MTFs and regulated markets to have access to clearing and settlement systems of other Member States. They also note that even non-EEA market operators do not face economic/regulatory barriers when trying to enter national post-trading markets.

50. In the Commission's view, analogous arguments apply as to the geographic scope of the market as already discussed above insofar as demand for these services in respect of the specific types of security at issue may presently be primarily national in scope, but market participants based in third countries are likely to require access to the same providers as do participants based in Italy.

51. In case M.3511 the market definition was left open. In this case the market definition can similarly be left open, as the proposed operation does not raise serious doubts as to its compatibility with the common market, regardless of the geographic scope of the market considered.

VI. COMPETITIVE ASSESSMENT

Horizontal overlaps – multilateral platforms for trading in financial instruments

52. Unicredit and Intesa Sanpaolo Group are active in the management of multilateral platforms for the trade of financial instruments only through TLX.

[7] See Judgment of the Court of First Instance of 9 September 2009 in case T-301/04, *Clearstream Banking AG and Clearstream International SA v. Commission*

53. The table below illustrates, according to the Parties, TLX's current position and that of its main competitors as regards trading in Italian bonds on retail multilateral trading venues in 2008, both in terms of volumes traded and in terms of number of deals.

TLX and its competitors' market shares – bonds segment (transactions taking place only on trading venues, excluding wholesale government bond trading)				
	2008			
Competitor	**number of deals**	**Market share**	**Turn-over (€ bln)**	**Market shares**
TLX	[…]	[40-50]%	[…]	[30-40]%
Borsa Italiana (MOT)	[…]	[50-60]%	[…]	[60-70]%
Hi-Mtf	[…]	[0-5]%	[…]	[0-5]%
Total Market	**5,464,808**	**100%**	**260**	**100%**

Source: notification, Commission calculations

54. As regards possible separate relevant markets for multilateral trading services in retail sized government bonds, corporate bonds and "branded" bonds, the market investigation has suggested market shares for TLX in the region of 35-50%.

55. There is no horizontal overlap or potential overlap between the Parents and the joint venture, and therefore no horizontal concerns arise.

56. The market data show a strengthening in the relative position of TLX vis-à-vis Borsa Italiana which is market leader on most segments. The market investigation confirmed this tendency but also that the operation was unlikely to lead to any impediment to competition.

57. According to the results of the market investigation, the effect on competition of the proposed operation can be considered, if anything, beneficial rather than detrimental.

58. In view of the above, it can be excluded that serious doubts arise as regards the compatibility of the operation with the common market in the field of management of multilateral platforms for trading Italian-issued debt securities in retail size.

Vertical effects

59. The market shares of the parent companies of Euro TLX SIM in the vertically related markets of trading in bonds on third party account in retail venues are illustrated in the tables below.

UNICREDIT AND INTESA SAN PAOLO MARKET SHARES MARKET FOR TRADING ITALIAN BONDS -2008 (TRADING ON THIRD PARTY ACCOUNT) (TRANSACTIONS THAT TAKE PLACE ON RETAIL TRADING VENUES)		
	Volume (bln €)	Market shares
Unicredit	[…]	[10-20]%
Intesa Sanpaolo	[…]	[20-30]%
Unicredit + Intesa Sanpaolo	[…]	[40-50]%
Total market	260	100%

60. From these figures it appears that the Parties have a combined share of around [40-50]% in the overall relevant upstream market and a downstream share of around [20-40]% depending on how it is measured (number or value of trades).

61. The market investigation looked closely at the question of whether, as a result of the operation, there was any risk that the Parties would be able to leverage these market shares in either the upstream or downstream market in order to significantly reinforce their position in the other market resulting in a significant impediment to effective competition in that market. This risk was considered, however, by the vast majority of respondents to be negligible.

62. In addition to the relatively limited market shares and attendant probability that such a strategy would not be profitable, it was also confirmed, as suggested by the Parties, that the requirements of best execution to which they were subject under MiFID in addition to their commitment to "dynamic best execution" would require them to choose the execution venue best suited to the needs of each individual client, regardless of whether this was TLX or a competitor. It would therefore not be possible for them systematically to direct order flow to TLX if the conditions of trading offered at any given moment were not optimal for the needs of the client. Indeed, as business following the operation would be conducted at an arms-length basis and TLX would be remunerated by the parent companies on a […], its competitive advantage in respect of the order flow generated by its parents would arguably be weakened rather than strengthened as a result of the operation.

63. Similarly, wider access to TLX as an alternative to, in particular, Borsa Italiana would allow investment firms competing with the parents access to more competitive terms of

trade than prior to the operation, suggesting that also competition in the upstream market would be strengthened rather than weakened.

64. As indicated, in the post-trading field the activities of TLX's parent companies do not overlap as only […].

65. On this basis it can be excluded that possible vertical concerns would lead to serious doubts as to the compatibility of the operation with the common market.

VII. CONCLUSION

66. 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 (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission