

***Case No COMP/M.5729 -  
BANK OF AMERICA/  
BARCLAYS BANK/ DSI  
INTERNATIONAL***

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: 25/02/2010

***In electronic form on the EUR-Lex website under  
document number 32010M5729***



EUROPEAN COMMISSION

Brussels, 25.02.2010

SG-Greffe(2010) D/2252/2253  
C(2010)1202

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5729 - BANK OF AMERICA/ BARCLAYS BANK/ DSI INTERNATIONAL**

**Notification of 22/01/2010 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>**

1. On 22/01/2010 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("EC Merger Regulation") by which Bank of America Corporation Inc ("BAC", USA) and Barclays Bank PLC ("Barclays", UK) acquire within the meaning of Article 3(1)(b) of the EC Merger Regulation joint control of DSI International Luxembourg S.a.r.l ("DSI", Luxembourg) 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 EC Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

**I. THE PARTIES**

3. BAC is a global financial services provider and serves, amongst others, individual consumers, small and middle market businesses and large corporations with a full range of banking services and investment products.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

4. Barclays is engaged in retail and commercial banking, credit cards, investment banking and wealth management on a worldwide basis.
5. DSI develops, manufactures and supplies individual components and integrated systems based on tensioning technology for a variety of applications in the construction and mining area.

## **II. THE OPERATION**

6. The proposed transaction is an indirect acquisition of joint control. BAC and Barclays will establish a newly incorporated parent company (“Newco”) holding 100% of the shares of DSI for the purposes of swapping part of their debt for equity in DSI. The shareholders of Newco will be BAC (c.45%), Barclays (c.45%); approximately 5% of the ordinary share capital in Newco will be held by the existing shareholders of DSI and the remaining 5% by DSI's management. BAC and Barclays will each have the right to appoint [...] members to the board of Newco. Whilst the board of Newco will make its decisions by way of a simple majority vote, certain specified strategic decisions, such as (i) appointment of senior management and (ii) approval or modification of the annual budget and the business plan, will require approval of at least one of each of the board members nominated by BAC and Barclays. Therefore, BAC and Barclays will each enjoy veto rights in respect of such matters. The quorum provisions concerning the Board meetings in Newco require the attendance of at least one BAC and one Barclays member. Accordingly, BAC and Barclays will jointly control Newco and thus DSI.
7. The proposed transaction constitutes therefore a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

## **III. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion (BAC: € 61.697 billion; Barclays: [...]; DSI: € 705.6 million in 2008), the Community-wide turnover of each undertaking concerned is more than € 250 million (BAC: [...]; Barclays: [...]; DSI: [...] in 2008) and at least BAC and DSI each do not achieve more than two-thirds of their Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

## **IV. COMPETITIVE ASSESSMENT**

### **1. Relevant markets**

9. According to the Parties, DSI Group’s activities are based on or related to tensioning technology and are internally divided into five business areas, i.e. (i) post-tensioning products, (ii) geotechnical tensioning products, (iii) concrete accessories, (iv) roof support systems for tunnelling applications and (v) roof support systems for mining

applications (always including related services). In its *CVC/DSI* decision the European Commission left open the market definition for the type of products supplied by DSI.<sup>2</sup>

10. In the downstream area of the construction industry, the Parties distinguish, pursuant to the Commission's decision practice, between two distinct product markets for building construction and infrastructure construction<sup>3</sup>.
11. Concerning the product markets where DSI is active, the Parties submit that their geographic scope should be considered as being at least EEA-wide. The Commission left open the geographic market delineation in the abovementioned case *CVC/DSI*<sup>4</sup>.
12. As regards potential downstream markets, the Commission has consistently assumed that the market for building construction is national in scope.<sup>5</sup> As main reasons, the Commission cited necessary proximity to the customer/construction site, knowledge of local conditions, language barriers, different regulations and transportation costs for the building materials.<sup>6</sup> Also with regard to the market for infrastructure construction, the Commission has generally shown a tendency towards the assumption of national markets,<sup>7</sup> relying on the same arguments as outlined above for the building construction market.
13. As the concentration does not raise serious doubts under any alternative definition, the product and geographic delineation of the relevant markets can be left open for the purpose of this decision.

## **2. Competitive assessment**

14. Both BAC and Barclays are active in the banking sector. Neither BAC nor Barclays produce any products or carry on any activities in the relevant horizontal markets in which DSI Group operates.

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<sup>2</sup> See Case IV/M.4850, *CVC/DSI*, Decision of 25 September 2007, paras. 7 to 9.

<sup>3</sup> *CVC/DSI*, para. 10. See as well Case COMP/M.3864, *FIMAG/Züblin*, Decision of October 14, 2005, para. 10; Case COMP/M.3754, *STRABAG/Dywidag*, Decision of June 23, 2005, para. 12; Case IV/M.1670, *GERIL/FCC Construction/ENGIL*, Decision of September 10, 1999, para. 18; Case IV/M.1157, *Skanska/Scancem*, Decision of November 11, 1998, para. 52; Case IV/M.874, *AMEC/Financière SPIE Batignolles/SPIE Batignolles*, Decision of February 6, 1997, para. 15; Case IV/M.873, *Bank Austria/Creditanstalt*, Decision of March 11, 1997, para. 74.

<sup>4</sup> *CVC/DSI*, para. 12.

<sup>5</sup> *CVC/DSI*, para. 13.

<sup>6</sup> Case IV/M.873, *Bank Austria/Creditanstalt*, Decision of March 11, 1997, paras. 84-86.

<sup>7</sup> *CVC/DSI*, para. 14; Case COMP/M.3864, *FIMAG/Züblin*, Decision of October 14, 2005, para. 13; Case COMP/M.3754, *STRABAG/Dywidag*, Decision of June 23, 2005, para. 15; Case IV/M.1670, *GERIL/FCC Construction/ENGIL*, Decision of September 10, 1999, para. 18; Case IV/M.1157, *Skanska/Scancem*, Decision of November 11, 1998, paras. 60-61 (hinting at a possible narrower market delineation for small-size projects); Case IV/M.874, *AMEC/Financière SPIE Batignolles/SPIE Batignolles*, Decision of February 6, 1997, para. 17 (left open in the end); Case IV/M.873, *Bank Austria/Creditanstalt*, Decision of March 11, 1997, para. 84.

15. Neither BAC nor Barclays are engaged in business activities in a product market which is upstream or downstream of the markets in which DSI is engaged within the EEA.<sup>8</sup> BAC has controlling interests in some companies which are active in the community building construction market in the United States (mostly residential property construction). However, BAC's construction interests in the US are minimal in comparison with the size of the construction market in that country (which has large specialised dedicated construction companies).
16. Furthermore, the existence of any spill-over effects between BAC and Barclays as a result of the proposed transaction can be discarded.
17. In effect, since none of the parents have activities in the same market as the joint venture or in a market which is upstream or downstream from that of the joint venture or in a neighbouring market closely related to this market, spill-over effects are not to be expected. Indeed, the joint venture and the two parent companies perform very different types of activities (i.e. these markets have no common characteristics in terms of technology, clients, suppliers or competitors). Furthermore the joint venture only constitutes a marginal part of the parents' portfolio, so coordination between independent undertakings that restricts competition within the meaning of Article 101(1) of the Treaty on the Functioning of the European Union is highly unlikely.

## V. CONCLUSION

18. 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)  
Joaquín ALMUNIA  
Vice-President of the Commission

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<sup>8</sup> See footnote 9 of the Form CO for BAC interests in construction activities in the US, which in any event would have no impact on competition in EEA markets.