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***Case No COMP/M.6131
– ADVENT/ PRIORY***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 4(4)
Date: 21/02/2011



EUROPEAN COMMISSION

Brussels, 21.2.2011
SG-Greffe(2011)D/2472/2473
C(2011) 1176 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 4(4) DECISION

To the notifying party

To the UK Competition Authority

Subject: Case No COMP/M.6131 – ADVENT/ PRIORY

Reasoned submission pursuant to article 4(4) of Regulation No 139/2004¹ for referral of the case to the UK.

Date of filing: 20.01.2011

Legal deadline for response of Member States: 11.02.2011

Legal deadline for the Commission decision under Article 4(4): 24.02.2011

Dear Sirs,

I. INTRODUCTION

1. On 20.01.2011, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authority of the United Kingdom.
2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which presents all the characteristics of a distinct market.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

3. A copy of the Reasoned Submission was transmitted to all Member States on 20.01.2011, in accordance with Article 4(4), second subparagraphs, of the Merger Regulation.
4. By letter of 28.01.2011, the UK Office of Fair Trading as the competent authority of the United Kingdom informed the Commission that the UK agrees with the proposed referral.

II. THE PARTIES

5. Advent International private equity group ("Advent") is a private equity investor based in Boston, USA, which has holdings in various sectors and focuses on (i) the acquisition of equity stakes (both controlling and non-controlling) in companies and (ii) the management of investment funds. Advent is controlled by the Advent International Corporation ("AIC") which manages or advises a number of investment funds ("Advent Funds"). AIC is not controlled by any other person or persons.
6. Priory Investments Holdings Limited ("Priory") is a holding company which is registered in the Cayman Islands. Through its subsidiary undertakings, Priory is active throughout the United Kingdom in the provision of healthcare services for a range of mental health conditions and learning disabilities. The Royal Bank of Scotland Group Plc ("RBS") controls Priory [...].

III. THE OPERATION AND CONCENTRATION

7. On 17 January 2011, Crown Newco 3 plc ("AcquisitionCo"), a special purpose acquisition company controlled by Advent, and the institutional (RBS Group) and management sellers (the "Sellers") entered into a share purchase agreement ("SPA") pursuant to which the Sellers have agreed to sell the entire issued share capital of Priory Investments Holdings Limited to AcquisitionCo (the "transaction"). As a result of this proposed indirect acquisition through a series of intermediate acquisition vehicles, Advent will acquire sole control over Priory.

IV. EU DIMENSION

8. The aggregate worldwide turnover of the companies concerned exceeded EUR 5 billion in 2009 (Advent EUR [...], Priory EUR [...]). Advent generated a Union-wide turnover of EUR [...] in 2009 and Priory of EUR [...]. Only Priory generated more than two thirds of its turnover in one Member State, the UK. The notified operation therefore has a Community dimension within Article 1(2) of the Merger Regulation.

V. ASSESSMENT

A. Relevant product and geographic markets

9. The parties submit that their activities overlap only in a small number of local areas within the United Kingdom, where both Priory and Advent (through Craegmoor which Advent controls) operate. The parties submit that the relevant product markets comprise i) care home services for the elderly and ii) care home services for individuals with learning disabilities ("LD") or mental health disorders ("MHD").

10. The Commission² and the UK Office of Fair Trading (“OFT”)³ have previously considered the possibility of further sub-dividing this frame of reference into (i) residential care homes, and (ii) nursing care homes, with the possibility of (iii) care for the elderly mentally infirm (including dementia care) (“EMI”) being separate from nursing care homes. The Commission ultimately left the market definition open.
11. The Commission and OFT⁴ have previously considered the geographic market for the care home services for the elderly of being in a radius of 3-10 miles from a given location (i.e., a 10-mile radius for rural areas, a 5-mile radius for suburban areas, and a 3-mile radius for urban areas) or, alternatively, local authority boundaries. The Commission, after finding that the markets for care home services in the UK are local, left the precise delineation open.

B. Assessment

12. In the light of the foregoing, the Commission considers that the relevant geographic markets are likely to be at the widest national in scope. There is no overlap between the parties outside the United Kingdom, and there are no affected markets at the EEA, Community or EFTA level. The effects of the Transaction are therefore confined to distinct markets within a single Member State, the United Kingdom.
13. The conditions for an affected market in the sense of the Form RS⁵ are met as the companies involved are engaged in business activities in the same product market and the concentration will lead to a combined market share of at least 15% in some regional markets, reaching up to 21% depending on the delineation of the geographic market. As a consequence, the concentration may significantly affect competition at least in some of the relevant markets.
14. On the basis of the information provided in the Reasoned Submission, the proposed transaction does not give rise to any vertically affected markets.
15. In view of the foregoing, the preliminary assessment suggests that the principal effects of the proposed operation would be restricted to the United Kingdom. Further, the markets in question present all the characteristics of a distinct market.
16. Given that the likely focus of the competitive effects of the proposed transaction is confined to the United Kingdom, the UK Office of Fair Trading is best placed to examine the case.

² See Case No COMP/M.3669 *Blackstone (TBG CareCo)/NHP*.

³ See, e.g., Completed acquisition by Blackstone Group of NHP plc (OFT decision dated 5 April 2005); Completed acquisition by Southern Cross Healthcare Group Limited of Cannon Capital Ventures Limited (OFT decision dated 16 December 2005).

⁴ See Case No COMP/M.3669 *Blackstone (TBG CareCo)/NHP*. See, e.g., Completed acquisition by Blackstone Group of NHP plc (OFT decision dated 5 April 2005); Completed acquisition by Southern Cross Healthcare Group Limited of Cannon Capital Ventures Limited (OFT decision dated 16 December 2005).

⁵ Section 4 of Annex III of Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 134/2004 on the control of concentrations between undertakings, O J L 133, 30/04/2004, p. 1-39.

VI. REFERRAL

17. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations⁶ (point 17) indicates that, in seeking a referral under Article 4(4), “the merging parties are ... *required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*”, and that “*such indications may be no more than preliminary in nature...*”. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the concentration may significantly affect competition at least in some of the relevant markets and that the principal impact on competition of the concentration is liable to take place on distinct markets in the United Kingdom. Therefore, the requested referral would be consistent with point 20 of the notice.

VII. CONCLUSION

18. For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the Office of Fair Trading of the United Kingdom. This decision is adopted in application of Article 4(4) of the Merger Regulation..

For the Commission
(Signed)
Alexander ITALIANER
Director General

⁶ OJ C 56, 05.03.2005, p.2.