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***Case No COMP/M.6738 -
GOLDMAN SACHS /
KKR / QMH***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/12/2012

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Brussels, 19.12.2012
C(2012)9900

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.6738 – GOLDMAN SACHS/KKR/QMH
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 16 November 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Goldman Sachs Group, Inc ("Goldman Sachs", USA) and KKR & Co. L.P. ("KKR", USA) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking QMH Limited ("QMH", United Kingdom) by way of purchase of shares². (Goldman Sachs, KKR and QMH are designated hereinafter as the "notifying parties" or "parties to the proposed transaction".)
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 the EEA Agreement.

I. THE PARTIES

3. Goldman Sachs is a global investment banking, securities and investment management firm. Its activities are generally divided into four segments: (i) investment banking, (ii) institutional client services, (iii) investing and lending, and (iv) investment management.

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.

² Publication in the Official Journal of the European Union No C 365, 24.11.2012, p.5.

4. KKR is a global investment firm, which offers a broad range of alternative asset funds and other investment products to investors and provides capital markets solutions for the firm, its portfolio companies and other clients. KKR's affiliated private equity funds invest in companies in a variety of sectors. Each KKR-affiliated portfolio company has its own board of directors, which generally includes one or more KKR representatives, and is operated and financed independently from other KKR-affiliated portfolio companies.
5. QMH owns and operates 18 upscale and upper midscale chain hotels in the UK, 21 chain hotels in Germany and 19 chain hotels in the Netherlands.

II. THE OPERATION

6. QMH is currently indebted pursuant to a Mezzanine Loan Agreement with [affiliates of Goldman Sachs and KKR] and [another fund] ([another fund A]; together the "Mezzanine Lenders"). The proposed concentration concerns the acquisition by Goldman Sachs and KKR of shares corresponding to [the majority] of the overall shares in QMH. The operation consists of a debt restructuring whereby the buyers accept equity in lieu of their credit with some of QMH's current shareholders.
7. Before the transaction, [the majority] of QMH's shares are owned by Goldman Sachs, and [the minority] are owned by [another fund B], a Luxembourg based fund, which will retain its interest after the Transaction.
8. In view of the limited value of QMH, all shareholders ([except another fund B]) have undertaken to sell their shares, corresponding to [the majority] of the QMH shares, to the Mezzanine Lenders (Goldman Sachs, KKR and [another fund A]). Following the transaction, [this majority] of shares will be allocated as follows: [a significant part] to Goldman Sachs, [a significant part] to KKR and [a minority part] to [another fund A]. The remaining [minority part] in QMH's capital will be held by the previous shareholder [another fund B].
9. Pursuant to an amended Shareholders Agreement, Goldman Sachs and KKR will each designate [...] out of the [...] members composing the board of directors (the other [...] members will be designated by [another fund A] and [another fund B]). Board decisions will require a majority of directors, and the presence of both Goldman Sachs' and KKR's directors will be necessary to constitute a quorum, so that both Goldman Sachs and KKR will have a veto power over all board decisions. Neither [another fund A] nor [another fund B] will exercise any decisive influence over QMH.

III. CONCENTRATION

10. In light of the above, the proposed transaction thus concerns the acquisition by Goldman Sachs and KKR of joint control over QMH and constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Goldman Sachs: EUR 29 540 million; KKR: EUR [...] million; QMH: EUR [...] million). Each of them has a EU-wide turnover in excess of EUR 250 million (Goldman Sachs: EUR [...] million; KKR: EUR [...] million; QMH: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

V. COMPETITIVE ASSESSMENT

1. Market definition

12. The Parties' activities overlap in the hotel sector (between Goldman Sachs and QMH), as well as in a number of other financial activities sectors (between Goldman Sachs and KKR). QMH is active in the hotel accommodation sector. It operates 18 hotels in the United Kingdom, 20 hotels in Germany and 19 hotels in the Netherlands.
13. Goldman Sachs and KKR are internationally active in the areas of corporate finance, and the private equity segment of the corporate finance market or asset management services (even though they typically invest in different assets).

(i) Hotel accommodation

14. In its previous decisions concerning the hotel accommodation sector, the Commission has left open the exact product market definition. Previously, the Commission considered that the market could be segmented (i) by price / comfort level based on the grading or stars awarded to a particular hotel which indicates the standard and facilities the customer may expect, and (ii) by ownership, distinguishing between chain hotels and independent hotels³.
15. The Parties have submitted that there is an "all hotels" product market, comprising chain and independent hotels providing comparable standard and facilities. According to the Parties, hotels can be classified, according to industry standards, as falling into three broad categories: (i) luxury and upper upscale; (ii) upscale and upper midscale; (iii) midscale and economy⁴.
16. As far as the geographic scope of the market is concerned, in previous decisions, although the Commission has left the exact market definition of the hotel sector open, it has noted that the relevant geographic market may be both national and local⁵. The notifying parties agree with this view.
17. 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.
18. As far as vertically related markets are concerned, the Commission has previously considered that important inputs for hotels are food and drinks wholesaling and linen rental and laundry services⁶, while downstream activities include booking agents, third party booking websites or tour operators/travel agencies from which hotels derive

³ See cases n0 COMP/M.6058 - Bank of Scotland/Barclays Bank/Kew Green Hotels, §13; COMP/M.4816 - Blackstone/Hilton, §10; COMP/M.4624 - EQT/Scandic, §8; COMP/M.3858 - Lehman Brothers/SCG/Starwood/Le Méridien, §16.

⁴ According to the Parties, these three categories could be further expanded, as per industry standards, into six segments (for both independent and chain hotels): (i) luxury; (ii) upper-upscale; (iii) upscale; (iv) uppermidscale; (v) midscale; and (vi) economy. Categories (iii) and (iv) would correspond to a 3-4 star hotel rating; categories (ii) to (iv) would cover 4-star hotels, whereas categories (iii) to (vi) would cover 2-4 star hotels.

⁵ See cases No. COMP/M.6058 - Bank of Scotland/Barclays Bank/Kew Green Hotels, §15; COMP/M.4816 - Blackstone/Hilton, §15; COMP/M.3858 - Lehman Brothers/SCG/Starwood/Le Meridien §§18 and 19; Case IV/M. 1596 - Accor/Blackstone/Colony/Vivendi, §29; and COMP/M.2197 - Hilton/Accor/Forte/Travel Services JV, §28.

⁶ See case n° COMP/M.6058 - Bank of Scotland/Barclays Bank/Kew Green Hotels, §§37-38.

revenues. For the purposes of the present case, however, the exact market definition of upstream and downstream markets can be left open given the absence of any overlaps.

(ii) Other markets related to the activities of the parents

19. Goldman Sachs and KKR are both active internationally in the areas of corporate finance, and the private equity segment of the corporate finance market or asset management services (even though they typically invest in different assets). In the case at hand, it is however not necessary to conclude on the relevant product and geographic market definitions on any of those markets since, absent any significant overlaps between Goldman Sachs and KKR, no competition concerns arise irrespective of the market definition.

2. Assessment

20. None of the KKR-controlled portfolio companies are active in the hotel sector or in any downstream or upstream sector in the EEA. Goldman Sachs and QMH's activities in the hotel sector overlap on the United Kingdom, German and Dutch markets. QMH does not own or operate any independent hotels. However, there are no overlaps between the activities of Goldman Sachs and QMH in the same potential product and geographical market resulting in a combined market share of 15% or more⁷.

21. Furthermore, the transaction does not lead to any affected upstream or downstream market, as neither Goldman Sachs nor KKR are active in any market vertically related to QMH's activities.

22. For these reasons, the Commission concludes that the concentration will not lead to serious doubts as to the compatibility with the internal market in those markets.

23. Furthermore, spill-over effects in the meaning of Article 2(4) of the Merger Regulation as a result of the proposed transaction can be discarded.

24. Neither Goldman Sachs nor KKR have activities in a market which is up- or downstream from that of QMH or in neighbouring markets closely related to this market.

25. Indeed, the joint venture and the parent companies perform different types of activities. Goldman Sachs and KKR are both active in the areas of (i) corporate finance, (ii) the private equity segment of the corporate finance market and (iii) asset management, whereas QMH is active only in the hotels accommodation sector.

26. Furthermore the joint venture only represents a small part of the parents' portfolio and is the result of a debt restructuring operation (and not a strategic investment), so that coordination between independent undertakings that restricts competition within the meaning of Article 101(1) of the TFEU is highly unlikely.

⁷ On a national level, the Parties combined market shares are below 4% in the United Kingdom, Germany and the Netherlands. On a local level, the Parties' combined market shares are below 15% on all possible segments (all hotels, all chain hotels, 3-4 star hotels, 4 star hotels (when applicable) or 2-4 star hotels) in Amsterdam, Gatwick, Glasgow, Nottingham and Stratford-upon-Avon.

CONCLUSION

27. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission,
signed,
Joaquín ALMUNIA
Vice-President*