

EN

***Case No COMP/M.6832 -  
GOLDMAN SACHS /  
TPG LUNDY /  
AINSCOUGH***

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: 14/03/2013

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## EUROPEAN COMMISSION

Brussels, 14.3.2013  
C(2013) 1636 final

PUBLIC VERSION

MERGER PROCEDURE

### To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.6832 – Goldman Sachs / TPG Lundy / Ainscough  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 13 February 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Goldman Sachs Group, Inc. ("**Goldman Sachs**", USA) and TPG LundyCo, L.P. ("**TPG Lundy**", Cayman Islands) acquire within the meaning of Article 3(1)(b) of the Merger Regulation indirect joint control of Bradley Hall Holdings Limited ("**Bradley Hall**", the United Kingdom), an English company acting as a holding company for Ainscough Crane Hire group ("**Ainscough**") by way of purchase of shares ("the Transaction"). Goldman Sachs and TPG Lundy are designated hereinafter as the "notifying parties".

#### **I. THE PARTIES**

2. **Goldman Sachs** is a global investment firm providing a wide range of services worldwide to a diversified client base that includes corporations, financial institutions, governments and high-net-worth individuals.
3. **TPG Lundy** is part of the TPG Group, a global private investment firm that manages a family of funds that invest in a variety of companies through acquisitions and corporate restructurings.

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<sup>1</sup> 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.

4. **Bradley Hall** acts as a holding company for **Ainscough** which is active in crane hire, contract lifting and ancillary services throughout the United Kingdom, as well as construction, maintenance, servicing, retro-fit and major component changes for wind turbines.

## II. THE OPERATION AND CONCENTRATION

5. Prior to the Transaction, Ainscough is currently 100% owned and controlled by Remich III, a wholly owned subsidiary of TPG Lundy, which is in turn wholly controlled by the TPG Group.
6. Through the Transaction, the notifying parties, through their common vehicle, Remich I, will acquire 100% of the equity of Remich III, and therefore, 100% of the voting rights in Ainscough. Each of the notifying parties holds 50% of the voting interests in Remich I and will jointly exercise control over Ainscough. In addition, according to the Shareholders' Agreement, Goldman Sachs and TPG Lundy have the ability to exert decisive influence over Ainscough<sup>2</sup>.
7. The notified operation consequently constitutes a concentration within the meaning of Article 3(1) (b) of the Merger Regulation.

## III. UNION DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>3</sup>. Two of the undertakings concerned, Goldman Sachs and TPG Lundy, have an EU-wide turnover in excess of EUR 250 million. . Neither Goldman Sachs nor TPG Lundy achieves more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has an Union dimension.

## IV. RELEVANT MARKET

9. Goldman Sachs and TPG are active in a range of financial sectors worldwide.
10. Ainscough offers services in relation to hiring crane and wind turbine sectors in the United Kingdom.

### 1. RELEVANT PRODUCT MARKETS

#### A. Hiring cranes

11. The Commission has not yet defined the market for hiring cranes.
12. The notifying parties suggest a market definition in line with the Office of Fair Trading (“OFT”) decision in the case *Completed Acquisition by Ainscough Crane Hire Limited of Nationwide Crane Hire Limited*<sup>4</sup>. In that case, the OFT examined a transaction involving Ainscough and defined a market for the “*provision of cranes for hire*”

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<sup>2</sup> Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, 2008 OJ C 95/1.

<sup>3</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

<sup>4</sup> OFT decision of 12 June 2007 available at:

[http://www.of.gov.uk/shared\\_of/mergers\\_ea02/361227/Ainscough.pdf;jsessionid=B02DC229254F684CB542692E6172BAE6](http://www.of.gov.uk/shared_of/mergers_ea02/361227/Ainscough.pdf;jsessionid=B02DC229254F684CB542692E6172BAE6)

regardless of whether the crane supplied is owned by the company supplying it". The OFT included in the same product market cranes of different sizes on the basis that each size could be substituted by a crane up to 100 tonnes larger<sup>5</sup>.

13. The notifying parties suggest the identification of a product market for hiring cranes, irrespective of whether the cranes are supplied by the market participant or sub-hired, and not limited to a single size of crane.
14. For the purpose of this decision, the exact product market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative product market definition.

#### B. Wind turbines

15. The Commission has dealt with the manufacturing of wind turbines in *GE/Enron Wind Turbine Business*<sup>6</sup>. In that case, the Commission (while leaving open the product market definition) noted that wind turbines could be distinguished from other forms of power generation since "*the production of wind turbines is based on technology and equipment that is different from those used for other power generation equipment*"<sup>7</sup>.
16. In line with this Commission Decision, the notifying parties suggest the identification of a product market for the manufacturing and sale of wind turbines including ancillary and related services (such as, for example, maintenance and servicing).
17. For the purpose of this decision, the exact product market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative product market definition.

#### C. Financial markets

18. Goldman Sachs and TPG Lundy's activities overlap internationally in the areas of investment banking, corporate finance, and the private equity segment of the corporate finance market or asset management services (although they typically invest in different assets).
19. The Commission has in the past identified separate product markets for (i) investment banking and (ii) financial markets services<sup>8</sup>. The Commission has also examined cases dealing with various private equity segments (in its widest sense, as equity investments in unquoted companies), the supply of funds comprising equity and debt finance<sup>9</sup>, securities lending<sup>10</sup>, Initial Public Offering advisory services and equity and debt underwriting<sup>11</sup>. The Commission has also examined the supply of asset management and portfolio management services to pension funds, institutions, international organizations

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<sup>5</sup> OFT Decision, recitals 8-13.

<sup>6</sup> COMP/M.2780 – *GE/Enron Wind Turbine Business*, 30.4.2002.

<sup>7</sup> COMP/M.2780 – *GE/Enron Wind Turbine Business*, 30.4.2002, recital 9.

<sup>8</sup> For instance, COMP/M.1910 – *Meritanordbanken/Unidanmark*, 10.4.2000, recital 7, COMP/M.2225 - *Fortis ASR*, 13.12.2000, recital 8, COMP M.3894 - *Unicredito/HVB*, 18.10.2005, recital 8, COMP/M.6168 – *RBI/EFG Eurobank/JV*, 29.6.2011, recital 11.

<sup>9</sup> COMP/M.2577 – *GE Capital/Heller*, 23.10.2001, recital 15.

<sup>10</sup> COMP/M.3511 – *Wiener Börse et al / Budapest Stock Exchange / Budapest CommodityExchange / KELER / JV*, 22.3.2005, recital 27.

<sup>11</sup> COMP/M.2158 – *Credit Suisse Group/Donaldson, Luftkin & Jenrette*, 9.10.2000, recital 7.

and private investors<sup>12</sup>. The Commission also pointed out that the asset management has excluded provision of portfolio management services to individuals (so-called private banking)<sup>13</sup>. The product market definition was left open in all these cases.

20. In any event, for the purpose of this decision, the exact product market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market, under any alternative product market definition.

## 2. RELEVANT GEOGRAPHIC MARKETS

### A. Hiring cranes

21. As stated in paragraph 11 above, the Commission has not yet defined the market for hiring cranes.<sup>14</sup>
22. For the purpose of this decision, the precise scope of the relevant geographic market can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market, under any alternative geographic market definition.

### B. Wind turbines

23. In *GE/Enron Wind Turbine Business*, the Commission suggested that the geographic market for the manufacturing of wind turbines could be global, since “*there are no national preferences, brands, regulatory or technical barriers that prevent competition across borders*”<sup>15</sup>.
24. For the purpose of this decision, the exact geographic market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market, under any alternative geographic market definition.

### C. Financial markets

25. As far as the geographic scope of these markets is concerned, the Commission considered an EEA-wide or global dimension, without concluding on the exact scope of the geographic definition<sup>16</sup>.
26. For the purpose of this decision, the exact geographic market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market, under any alternative geographic market definition.

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<sup>12</sup> Possibly also further segmented into retail and institutional segments and based on investment strategy into active and passive investment. COMP/M.5580 – *Blackrock/Barclays Global Investors UK Holdings*, 22.9.2009, recitals 8-10.

<sup>13</sup> COMP/M.5580 – *Blackrock/Barclays Global Investors UK Holdings*, 22.9.2009, recital 9.

<sup>14</sup> In the recent OFT decision relating to Ainscough, which is referred to by the notifying parties (see footnote 4 above), the OFT considered that the market was national.

<sup>15</sup> COMP/M.2780 – *GE/Enron Wind Turbine Business*, 30.4.2002, recital 11.

<sup>16</sup> For instance, COMP/M.2158 – *Credit Suisse Group/Donaldson, Luftkin & Jenrette*, 9.10.2000, recital 11, COMP/M.6168 – *RBI/EFG Eurobank/JV*, 29.6.2011, recital 17.

## V. COMPETITIVE ASSESSMENT

27. Neither Goldman Sachs nor the TPG Group, nor any of their controlled portfolio companies, are active in the same market as Ainscough or in vertically related markets. The Transaction will therefore not result in any horizontal overlaps or vertical relationships between the activities of Ainscough and those of Goldman Sachs or the TPG Group, or any of their controlled portfolio companies.
28. Similarly, there is no meaningful overlap between the TPG Group and Goldman Sachs' activities. In particular, the TPG Group is not active to a significant extent in Goldman Sachs' core business areas of investment banking and financial market services. In any event, to the extent that any of the TPG Group's activities could be said to overlap with those of Goldman Sachs in investment banking and financial market services, the combined shares would be less than 15%, according to the notifying parties.
29. With regard to private equity and asset management services, it is not clear to what extent the notifying parties could be considered to compete, since their activities typically involve different assets. In any event, to the extent that the activities of the notifying parties in private equity and asset management services could be said to overlap, the combined market shares on these fragmented market segments would be less than 15%, according to the notifying parties.
30. The Transaction will not create any incentive for the notifying parties to coordinate any future activities in which they may engage in the markets in which Ainscough is active or otherwise. In this regard, the Transaction is not a strategic investment and as such is not indicative of any broader cooperation. Accordingly, there is no risk that the Transaction would give rise to the coordination of competitive behaviour between independent undertakings within the meaning of Article 2(4) of the Merger Regulation.
31. Therefore, it is concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market.

## VI. CONCLUSION

32. 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*