

EN

***Case No COMP/M.6834 -
GOLDMAN SACHS /
TPG LUNDY /
BROOKGATE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/03/2013

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.6834 – Goldman Sachs / TPG Lundy / Brookgate
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

- (1) On 13 February 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the undertakings Goldman Sachs Group Inc. ("**Goldman Sachs**", the United States) 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 over Brookgate Limited ("**Brookgate**", the United Kingdom) 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.

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 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

- (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.
- (4) **Brookgate** is active in the property development and investment in the United Kingdom.

II. THE OPERATION AND CONCENTRATION

- (5) Lloyds Banking Group ("**LBG**") currently owns 87.98% of Brookgate's shares and is currently controlling it.
- (6) A special purpose vehicle, Lundy L.P., will be indirectly jointly controlled by Goldman Sachs, via [...], and TPG, via TPG Lundy. Lundy L.P. will wholly own Remich I [...]. Remich I will hold [...] the equity interests in Brookgate [...].
- (7) Remich I [...] will acquire LBG's shares in Brookgate's capital. According to the article 6 of the "Investment Agreement", no decision listed in Schedule 7 of the said agreement can be taken without the prior consent of the shareholder who holds more than 50% of the shares. Among the decisions listed in the schedule are: the adoption of the annual business plan, major investments and the appointment or the removal of any director of any Group company. According to the Consolidated Jurisdictional Notice ("JN"), having veto rights over such issues confers control³.
- (8) Following the completion of the Transaction, Goldman Sachs and TPG will together own 87.98% of the shares of Brookgate. Therefore, they will have veto rights over the approval of the annual business plan, the appointment of the senior management as well as the features of the major investments. They will thus exert indirect joint control over Brookgate.
- (9) The Transaction consequently constitutes a concentration within the meaning of Article 3(1) (b) of the EC Merger Regulation.

III. UNION DIMENSION

- (10) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million⁴. 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.
- (11) The Transaction therefore has an Union dimension.

IV. RELEVANT MARKET

- (12) Brookgate is active in property development and investment in the United Kingdom.
- (13) Goldman Sachs and TPG Lundy are active in a range of financial sectors worldwide.

³ See paragraphs 65 et seq. of the JN.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p.1).

1. RELEVANT PRODUCT MARKETS

A. Real estate development

- (14) According to the Commission's previous decisions the market for real estate services can be divided between (i) real estate development, (ii) real estate rental, (iii) real estate management and (iv) real estate property⁵.
- (15) Real estate development can be defined as the purchase of land with a view to constructing a building and selling it as a speculative investment, as well as the renovation of buildings.
- (16) The Commission also considered, but without taking any firm view, that the market for real estate development could be further segmented according to the use made of the building: residential or commercial⁶. As to commercial purposes, the Commission envisaged a sub-segmentation along the final destination of the building: offices, industrial properties or retail⁷. Eventually, the Commission left the question open.
- (17) For the purpose of this decision, the precise 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. 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 services⁸. 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 finance⁹, securities lending¹⁰, Initial Public Offering advisory services and equity and debt underwriting¹¹. The Commission has also examined the supply of asset management and portfolio management services to pension funds, institutions, international organizations and private investors¹². The Commission also pointed out that the asset management has excluded provision of portfolio management services to

⁵ COMP/M.2825 - *Fortis/Bernheim Conofi*, 09/07/2002; COMP/M.6020 - *Groupo ACS/Hochtief*, 14/01/2011.

⁶ COMP/M.2825.

⁷ *Ibid.*

⁸ 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.

⁹ COMP/M.2577 - *GE Capital/Heller*, 23.10.2001, recital 15.

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

¹¹ COMP/M.2158 - *Credit Suisse Group/Donaldson, Luftkin & Jenrette*, 9.10.2000, recital 7.

¹² 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.

individuals (so-called private banking)¹³. The product market definition was left open in all these cases.

- (20) For the purpose of this decision, the precise 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. Real estate development

- (21) The Commission has considered in the past that the market for real estate development as well as its segments could be national, regional or local in scope but ultimately it left the question open.
- (22) For the purpose of this decision, the precise geographic market definition can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market, under any alternative geographic market definition.

B. Financial markets

- (23) 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 definition¹⁴.
- (24) For the purpose of this decision, the precise 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.

V. COMPETITIVE ASSESSMENT

- (25) Neither Goldman Sachs nor the TPG Group, nor any of their controlled portfolio companies, are active in the same market as Brookgate or in vertically related markets. The Transaction will therefore not result in any horizontal overlaps or vertical relationships between the activities of Brookgate and those of Goldman Sachs or the TPG group, or any of their controlled portfolio companies.
- (26) 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 in any event be less than 15%, according to the Notifying parties.
- (27) 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.

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

¹⁴ 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.

- (28) 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 Brookgate 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.
- (29) Therefore, the Transaction will not have any significant effect on competition. It is concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market.

VI. CONCLUSION

- (30) 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