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Case No COMP/M.6838 - GOLDMAN SACHS/ TPG LUNDY/ MAVISBANK

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 12/03/2013

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EUROPEAN COMMISSION

Brussels, 12.03.2013

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

**Subject: Case No COMP/M.6838 - Goldman Sachs/ TPG Lundy/Mavisbank
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004**[1]

1. On 5 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 The Goldman Sachs Group, Inc. ("Goldman Sachs", USA) and TPG LundyCo, L.P. ("TPG Lundy", Cayman Islands), ultimately controlled by the TPG Group (USA), acquire within the meaning of Article 3(1)(b) of the Merger Regulation,

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.

joint control of Mavisbank Limited ("Mavisbank", UK), from Lloyds Banking Group, ("LBG", UK) by way of purchase of shares[2].

2. Goldman Sachs and TPG Lundy are designated hereinafter as the "Notifying Parties" and Goldman Sachs, TPG Lundy and Mavisbank together as the "Parties".

(1) THE PARTIES AND THE OPERATION

3. Goldman Sachs provides financial services as a global investment banking, securities and investment management firm.

4. 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.

5. Mavisbank provides pan-European print management services, including secure communication solutions, packaging, reprographics and marketing solutions.

6. The proposed transaction takes place in the context of the Notifying Parties' acquisition of the so-called Lundy Portfolio, which is a portfolio of depth, equity and/or hedging interests owned by the LBG. LBG acquired its equity interests in Mavisbank as a result of the restructuring of debt issued by LBG or its predecessors.

7. Through the Transaction, the Notifying Parties will acquire 49.29% of the voting rights in Mavisbank. According to an Investment Agreement entered into between the Notifying Parties and the other Mavisbank shareholders, the 49.29% of voting rights will give the Notifying Parties veto rights over important decisions including, inter alia, the appointment/removal of any director and any changes to the business plan. Accordingly, Goldman Sachs and TPG Lundy will exercise joint control over Mavisbank[3] The remaining shares in Mavisbank, i.e., 50.71%, are split between individual members of the Management, Dalradian European CLO I B.V., Dalradian European CLO II B.V. and Merrill Lynch International Bank Limited. None of these shareholders will have any veto rights over Mavisbank's decisions with respect to any of its activities.

8. The Notifying Parties' equity interests in Mavisbank will be held by a vehicle company in which each of TPG Lundy and Goldman Sachs hold 50% of the voting interests. Via this vehicle TPG Lundy and Goldman Sachs will jointly control Mavisbank.

9. In view of the above, the notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

(2) EU DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] (Goldman Sachs Group EUR 29 540 million, TPG Group EUR […]

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[2] Publication in the Official Journal of the European Union No C 041, 13.02.2013, p.12

[3] In line with the Consolidated Jurisdictional Notice, paragraphs 65 and 69.

[4] Based on Goldman Sachs' 2010 turnover, and TPG Group's and Mavisbank's 2011 turnover. Despite the unavailability of a detailed breakdown of Goldman Sachs' 2011 turnover data, the Notifying Parties confirmed that in 2011 Goldman Sachs' EU turnover exceeded EUR 250 million.

million, Mavisbank EUR […] million). The first two of them has an EU-wide turnover in excess of EUR 250 million (Goldman Sachs Group EUR […] million, TPG Group 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.

(3) RELEVANT MARKETS

11. The Notifying Parties submit that the proposed operation is a purely financial investment transaction and that neither Goldman Sachs nor the TPG Group, nor any of their controlled portfolio companies, are active in the same markets as Mavisbank or in vertically related markets.

12. Mavisbank provides pan-European print management services (including secure communication solutions), packaging and reprographics and promotional items and marketing solutions.

13. As regards print management services, the Notifying Parties submit that the relevant market could be defined as the market for print management and production, including related services (such as but not limited to mailing solutions, production of secure documents like labels, business forms, cheques and polling cards). The Notifying Parties submit that the relevant geographic market is global in scope.

14. As regards packaging and reprographic services, the Commission has found in the past that packaging comprises those items "*sold to customers such as brand owners and manufacturers who use the material to package products which are ultimately sold to end consumers*". In previous cases,[5] the Commission considered a sub-segmentation of flexible packaging products according to the end-use, various categories of food and types of packaging, but the question was ultimately left open.

15. The Notifying Parties believe that it would be artificial to segment the market by end-use products when customers can choose between various flexible packaging substitutes and suppliers have the machines and expertise to switch production between various types of packaging for various end-use applications.

16. On the geographic scope of the markets, the Notifying Parties suggest to consider an at least EEA wide market. The Commission has defined an EEA-wide market in previous decisions.[6]

17. As regards promotional items and marketing services, in previous cases, the Commission considered that marketing communications services (including advertising; public relations; branding, identity and design; consumer relationship management) belong to a single market, since all these services represent different methods for a business to communicate with a group of people, be they consumers/customers, the

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[5] COMP/M.3049 Alcan/FlexPac, Commission decision of 23.01.2003, paragraphs 11-14; COMP/M.2441-Amcor/Danisco/Ahlstrom of 11.06.2001 paragraphs 8-13; COMP/M.2840 Danapak/Teich/JV of 30.08.2002 paragraphs. 10-18.

[6] COMP/M.3049 Alcan/FlexPac, Commission decision of 23.01.2003, paragraph 15; COMP/M.2441-Amcor/Danisco/Ahlstrom of 11.06.2001 paragraph 17; COMP/M.2840 Danapak/Teich/JV of 30.08.2002, paragraph 19.

press, industry, other companies, or the government. Whether these communication services should be further subdivided by type of media was left open.[7] In previous decisions the Commission considered the relevant market to be national in scope.

18. Goldman Sachs and TPG Lundy's <u>activities in the financial markets</u> overlap internationally in the areas of investment banking, corporate finance, and the private equity segment of the corporate finance market or asset management services.

19. In any event, the exact definition of the relevant product and geographic markets can be left open since the proposed transaction does not give rise to any competition concerns under any conceivable market definitions.

(4) COMPETITIVE ASSESSMENT

20. None of the companies controlled by Goldman Sachs or the TPG Group is active in the same markets as Mavisbank or in vertically-related markets. The proposed transaction will therefore not result in any horizontal overlaps or vertical relationships between the activities of Mavisbank and those of Goldman Sachs or the TPG Group, or any of their controlled portfolio companies.

21. The Commission assessed whether the proposed transaction will give rise to any risk of spill-over effects within the meaning of Article 2(4) of the Merger Regulation between the activities of each of the Notifying Parties and/or their respective portfolio companies.

22. 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.

23. With regard to private equity and asset management services, the Notifying Parties state that their activities typically involve different assets. Equally here, to the extent that their activities could be said to overlap, the combined market shares would also be less than 15%, according to the Notifying Parties.

24. Finally, the activities of Mavisbank appear unrelated to investment banking and financial market services activities carried out by the Notifying Parties, as well as to the activities carried out by their portfolio companies. Moreover, Mavisbank will only represent a small part of the Notifying Parties' portfolio. The Commission's analysis leads to the result that the proposed transaction is highly unlikely to give rise to any anti-competitive spill-over effects within the meaning of Article 2(4) of the Merger Regulation.

(5) CONCLUSION

25. 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