

***Case No COMP/M.6841 - GOLDMAN SACHS /
TPG LUNDY / TULLOCH
HOMES GROUP LIMITED***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

Date: 22/04/2013

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M.6841 – GOLDMAN SACHS/ TPG LUNDY/ TULLOCH HOMES GROUP LIMITED
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

1. On 13 March 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 joint control of Tulloch Homes Group Limited ("Tulloch Homes", UK) by way of purchase of shares.²
2. Goldman Sachs and TPG Lundy are hereinafter referred to as "the Notifying Parties".

(1) THE PARTIES AND THE OPERATION

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

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 81, 20.03.2013, p. 13.

4. TPG Group is a global private investment firm that manages a family of funds that invest in a variety of companies through acquisitions and corporate restructurings. TPG Lundy is a newly formed investment vehicle with financing from the investors of the TPG Group.
5. Tulloch Homes develops and builds residential houses in the UK. It is only active in the UK. Tulloch Homes is currently controlled by the Lloyds Banking Group (“LBG”), a UK-based financial services group.
6. Following a Sale and Purchase agreement (“SPA”) signed on 13 August 2012, the Notifying Parties are acquiring from LBG a portfolio of debt, equity and/or hedging interests (collectively, the “Lundy Portfolio”), including 40% of the voting rights in Tulloch Homes.
7. The Notifying Parties will hold their interests in Tulloch Homes through Remich Holding I, S.à r.l. (“Remich I”). Remich I will be wholly owned by Lundy, L.P., (“JVCo”), in which each of TPG Lundy (and/or its affiliates) and Goldman Sachs (and/or its affiliates) will hold 50% of the voting interests. The general partner of the JVCo will be Lundy GenPar Ltd. (“GenPar”), in which each of TPG Lundy and Goldman Sachs will hold 50% of its share capital. GenPar will have the right to manage the affairs of JVCo.³ TPG Lundy and Goldman Sachs will jointly control GenPar (and therefore JVCo) and Remich I by means of a shareholders’ agreement and the constitutional documents of GenPar, JVCo and Remich I (the “Governance Documents”). The Governance Documents will give each of TPG Lundy and Goldman Sachs the right to nominate two directors or managers to the boards of GenPar and Remich I.⁴ The boards of GenPar and Remich I are therefore “deadlocked” and will require the approval of both TPG Lundy and Goldman Sachs nominees in order to make decisions or pass resolutions.
8. According to the Shareholders Agreement of 29 June 2012, signed between Tulloch Homes, managers and investors, and the Tulloch Homes’ Articles of Association of 29 June 2012, the 40% shareholding will give the Notifying Parties veto rights over important decisions, including the appointment and removal of any director and adoption of the budget and the business plan.⁵
9. In addition, the remaining shares in Tulloch Homes are currently held by the Tulloch Employee Benefit Trustee Limited (5%), the individual members of the management (41%) and the individual shareholders (14%). Those other shareholders do not have any veto rights over Tulloch Home's decisions with respect to any of its activities.⁶ Accordingly, they do not have joint control over Tulloch Homes.

³ Clause 2.1 of the Amended and Restated Agreement of Exempted Limited Partnership in respect of Lundy, L.P.

⁴ Clause 6.1 and 6.2 of the Shareholders’ Agreement in respect of Lundy GenPar, Ltd. as well as Clause 2.1 of the Lundy LP Agreement.

⁵ Clause 8.2 and Schedule 6 of the Shareholders Agreement; and Clause 8.1.5 of the Articles of Association.

⁶ Clause 8.2 and Part 6 of the Schedule of the Shareholders Agreement and Clause 8.1.5 of the Articles of Association.

10. Consequently, the proposed transaction will result in the acquisition by Goldman Sachs and TPG Lundy of joint control over Tulloch Homes.⁷
11. 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

12. The undertakings concerned have a combined aggregate world-wide turnover⁸ of more than EUR 5 000 million⁹ (Goldman Sachs: EUR 29 540 million; TPG Group: EUR [...] million; Tulloch Homes: EUR [...] million). The first two of them have an EU-wide turnover in excess of EUR 250 million (Goldman Sachs: 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

13. 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 Tulloch Homes. The Transaction will therefore not result in any horizontal overlaps between the activities of Tulloch Homes on the one hand and those of Goldman Sachs or the TPG Group, or any of their controlled portfolio companies, on the other hand.
14. There is a potential vertical relationship between Tulloch Homes, which develops and builds residential houses, and Grohe N.V.-S.A. ("Grohe"), a manufacturer and supplier of sanitary fittings and water technology products. Grohe is jointly controlled by the TPG Group and DLJ Merchant Banking Partners. However this relationship does not give rise to an affected market.
15. Furthermore, to the extent that the Notifying Parties' activities overlap in investment banking, financial market services, private equity, and asset management services, the Notifying Parties' shares do not give rise to affected markets.

A. Market definitions

(i) Markets for construction services and real estate services

16. In *ACS/HOCHTIEF*¹⁰ the Commission distinguished between markets for (a) construction services; and (b) real estate services.

⁷ In line with the Consolidated Jurisdictional Notice, paragraphs 65 and 69.

⁸ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

⁹ Based on Goldman Sachs' and Tulloch Homes 2010 turnover, and TPG Group's 2011 turnover. Furthermore, according to Goldman Sachs the company did not achieve more than two-thirds of its aggregate EU-wide turnover in 2011 in one Member State.

¹⁰ Case COMP/M.6020 – *ACS/HOCHTIEF*, Commission Decision of December 3, 2010.

17. Within construction services, the Commission considered distinguishing between (i) construction of residential buildings covering blocks of flats, other multi-household buildings and single household buildings, (ii) construction of non-residential buildings (such as, *e.g.*, industrial buildings, offices, shopping centres and hospitals) and (iii) construction of infrastructure/civil engineering (such as roads, bridges, railroads, sewage systems). The exact market definition was ultimately left open. The Notifying Parties submit that, for the purpose of analysing the transaction, the relevant product market may be defined as the market for construction of residential buildings.
18. In *ACS/HOCHTIEF*,¹¹ the Commission noted previous decisions indicating that the geographic market for construction services was national, but ultimately left the geographic market definition open. The Notifying Parties submit that the geographic market is national in scope.

(ii) Market(s) for sanitary products

19. The Commission has addressed the sanitary products business in a number of decisions.
20. In *BC Funds/Sanitec*, the Commission considered the possibility that there are separate product markets for sanitary taps and mixers, but left the exact market definition open.¹²
21. In *Sanitec/Sphinx*,¹³ the parties suggested there was a separate market for WC cisterns and flushing systems. However, the Commission left the precise market definition open. The Notifying Parties submit that the relevant market definition can be left open as no competitive concern arises under any reasonable market definition.
22. Regarding sanitary products, the Notifying Parties submit that the most appropriate definition of the relevant geographic market is larger than national, and most likely, EEA-wide. In addition, the Notifying Parties argue that there is an accelerated trend towards globalisation of the industry following the increasing convergence towards European sanitary standards and the global expansion of major US and European sanitary manufacturers.

(iii) Financial markets

23. 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).
24. In any event, the exact scope of the relevant market definitions can be left open in this case since the transaction does not raise serious doubts as to its compatibility with the internal market under any reasonable alternative market definition.

¹¹ Case COMP/M.6020 – *ACS/HOCHTIEF*, Commission Decision of December 3, 2010.

¹² Case COMP/M.2397 - *BC Funds/Sanitec*, Commission decision of June 6, 2001 (paragraphs 7-8).

¹³ Case IV/M.1578 - *Sanitec/Sphinx*, Commission decision of December 1, 1999.

(4) COMPETITIVE ASSESSMENT

25. None of the companies controlled by Goldman Sachs or the TPG Group is active in the same markets as Tulloch Homes. The proposed transaction will therefore not result in any horizontal overlaps between the activities of Tulloch Homes and those of Goldman Sachs or the TPG Group, or any of their controlled portfolio companies.
26. In relation to the potential vertical relationship between the activities of Tulloch Homes and those of Grohe the Notifying Parties submit that the relevant market is highly fragmented. Tulloch Homes' main competitors in the UK include Taylor Wimpey, Barratt, Stewart Milne, Scotia, Robertson and Miller. Tulloch Homes estimates that its market share in the construction of residential buildings in the UK does not exceed 5%.
27. The Notifying Parties also submit that Grohe's market share in the EEA for the supply of sanitary products is well below 25%. Even if hypothetically narrower markets are considered (i.e., the markets for the supply of sanitary taps and mixers, and WC cisterns and flushing systems), the Notifying Parties submit that Grohe's market share in any of these markets is below 25% in the EEA.¹⁴ This vertical relationship does not, therefore, give rise to an affected market.
28. Additionally, Goldman Sachs and TPG Lundy are active in a range of financial sectors worldwide. The Notifying Parties submit that their shares would be less than 15% in any potential market segment, thus not giving rise to any affected markets.
29. The Commission also 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. The activities of Tulloch Homes appear unrelated to the activities of either the Notifying Parties or the activities of their portfolio companies, except for the activities of Grohe, as mentioned in paragraphs 14, 26 and 27. Furthermore, the proposed transaction represents only a small part of the Notifying Parties' portfolio. The Commission therefore considers 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.

¹⁴ Further, the Notifying Parties submit that the relevant markets are highly fragmented and that Grohe's main competitors include Masco Corporation, Ideal Standard International and Hansa Metallwerke AG.

(5) 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*