EN

Case No COMP/M.6842 - GOLDMAN SACHS/ TPG LUNDY/ VERNA GROUP

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6842 – GOLDMAN SACHS/ TPG LUNDY/ VERNA GROUP**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1. On 9 April 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation 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 Verna Group International Limited ("Verna Group", 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.

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.

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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 107, 13.04.2013, p. 20.

5. The Verna Group designs, manufactures and supplies human waste management solutions for the healthcare industry, and supplies medical trolley chairs to healthcare facilities.

6. Pursuant to a Sale and Purchase Agreement ("SPA") signed on 20 December 2012, the Notifying Parties, through Remich Holding I, S.à r.l. ("Remich I"), agreed to acquire 19% of the voting rights in the Verna Group from Cavendish Square Partners Limited Partnership ("Cavendish", UK). Pursuant to an Investment Agreement of 18 December 2009, among the Verna Group, investors and managers (the "Investment Agreement"), Cavendish enjoyed veto rights conferring decisive influence on the Verna Group, including the appointment and removal of any director, the appointment and removal of senior managers, and approval and changes to the annual budget or business plan.[3] By virtue of the SPA, the Notifying Parties will acquire the same veto rights.

7. As mentioned, the Notifying Parties will hold their interests in the Verna Group through Remich I, a company 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.[4] 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.[5] 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. Consequently, the proposed transaction will result in the acquisition by Goldman Sachs and TPG Lundy of joint control over the Verna Group.[6]

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

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[3] Article 5.1 (a)(i)(A), Article 5.1 (b), Schedule 7, Schedule 10(1) and Schedule 10(6) of the Investment Agreement. No other shareholders of the Verna Group holds veto rights under the Investment Agreement.

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

[5] 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.

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

(2) EU DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover[7] of more than EUR 5 000 million[8] (Goldman Sachs: EUR 29 540 million; TPG Group: EUR […] million; Verna Group: 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

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 the Verna Group or in vertically related markets. The transaction will therefore not result in any horizontal overlaps or vertical relationships between the activities of the Verna Group on the one hand and those of Goldman Sachs or the TPG Group, or any of their controlled portfolio companies, on the other hand.

12. 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 human waste management products for healthcare facilities

13. According to the Notifying Parties, human waste management involves the disposal of human waste, in particular in healthcare facilities. Human waste management products commonly include bowls, washbowls, urine bottles, bedpans, macerators, cleaning wipes and foams and cleaning indicators. The Notifying Parties are not aware of any decision of the European Commission considering the human waste management area/sector, but submit that the relevant product market can be defined as human waste management products for healthcare facilities including, *e.g.*, bowls, washbowls, urine bottles, bedpans, macerators, cleaning wipes and foams and cleaning indicators. All of these products are specifically designed and present a single-use solution for the disposal of human waste in healthcare facilities, with the aim of preventing infection.

14. As regards the relevant geographic market, the Notifying Parties submit that the geographic scope of the market for human waste management products for healthcare facilities may be defined as national, if not EEA-wide, in scope.

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[7] 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).

[8] Based on Goldman Sachs' 2010 turnover, TPG Group's 2011 turnover and Verna Group's 2012 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.

(ii) Mobile commode chairs

15. The Notifying Parties are not aware of any decision of the European Commission that would specifically address a separate market for medical commode chairs used in healthcare facilities. However, the UK Office of Fair Trading ("OFT") has recently also dealt with medical equipment. In that case, the OFT considered a product market for the supply of shower trolleys in the healthcare sector (i.e. mobile units used for showering immobile patients).[9] The Notifying Parties argue that shower trolleys provide a similar function as mobile commode chairs. In particular, they facilitate the movement of patients within healthcare facilities. The Notifying Parties therefore submit that it is appropriate to define a market for the supply of mobile commode chairs.

16. As regards the relevant geographic market, in *GE/Instrumentarium* the Commission has considered national markets for the medical equipment sector.[10] The OFT has likewise considered the geographic scope of the supply of medical equipment, including shower trolleys in healthcare facilities, to be national in scope.[11] In light of this, the Notifying Parties submit that the geographic market for the mobile commode chairs is national in scope.

(iii) Financial markets

17. 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).

18. 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.

(4) COMPETITIVE ASSESSMENT

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

20. 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.

21. 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,

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[9] OFT Decision of May 1, 2007, *Completed acquisition by Getinge AB of Huntleigh Technology plc.*

[10] Case COMP/M.3083 – *GE/Instrumentarium*.

[11] OFT Decision of May 1, 2007, *Completed acquisition by Getinge AB of Huntleigh Technology plc.*

between the activities of each of the Notifying Parties and/or their respective portfolio companies. The activities of Verna Group appear unrelated to the activities of either of the Notifying Parties or the activities of their portfolio companies. 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.

(5) CONCLUSION

22. 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