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***Case No COMP/M.7203 - UNIBAIL-RODAMCO/ CPPIB/
CENTRO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/05/2014

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EUROPEAN COMMISSION

Brussels, 6.5.2014
C(2014) 3078 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 M.7203- UNIBAIL-RODAMCO/ CPPIB/ CENTRO
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

- (1) On 26 March 2014, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Unibail-Rodamco SE ("Unibail-Rodamco", France) and the Canadian Pension Plan Investment Board ("CPPIB", Canada) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of CentrO Holdings (UK) Ltd ("CentrO Holdings", the United Kingdom) by way of purchase of shares (the "Transaction").²
- (2) Unibail-Rodamco, CPPIB and CentrO Holdings are designated hereinafter as the "Parties".

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 98, 03.04.2014, p. 9.

1. THE PARTIES

- (3) Unibail-Rodamco is a commercial property company, specialised in shopping centres in Europe, in offices and convention and exhibition centres in Paris.
- (4) CPPIB is an institutional investor which invests in public equities, private equities, real estate, infrastructure and fixed income investments.
- (5) CentrO Holdings is a special purpose vehicle that owns 94.98% of the share capital in CentrO,³ a shopping and leisure centre located in Oberhausen, in North Rhine-Westphalia, Germany. CentrO Holdings also indirectly owns 94.98% of the share capital in SL Oberhausen Beteiligungs GmbH (hereinafter "SLOB"),⁴ which in turn owns 11,140 m² of the premises at CentrO, dedicated to the Sinn Leffers brand.
- (6) CentrO Holdings is currently jointly controlled by SPH 2011 Limited, a British company owned by [*a shareholder*] (with 47.6% of the share capital and 50% of the voting rights) and CPPIB (with 52.4% of the share capital and 50% of the voting rights).

2. THE CONCENTRATION

- (7) On 13 February 2014, Unibail-Rodamco's fully owned subsidiary Belindam B.V. ("Belindam", the Netherlands), on the one hand, and SPH 2011 Limited and [*a shareholder*] on the other hand, executed the share purchase agreement whereby Unibail-Rodamco will acquire: (i) 47.6% of the share capital and 50% of the voting rights in CentrO Holdings from SPH 2011 Limited and; (ii) further to an interdependent transaction, 5.02% of the share capital in SLOB from [*a shareholder*].
- (8) As a result of the Transaction, Unibail-Rodamco and CPPIB will each have veto rights concerning strategic decisions of CentrO Holding.
- (9) [*The terms of the joint venture deed detailing each shareholder's rights and the voting rules within CentrO Holdings*]⁵⁶⁷⁸.
- (10) [*The terms of the joint venture deed detailing the approval mechanism of the shareholders reserved matters*]⁹ .

³ The remaining stake of 5.02% is held by the [*shareholder*] through trusts and individual holdings (hereinafter "[*a shareholder*]", the United Kingdom).

⁴ The remaining stake of 5.02% is held by [*a shareholder*].

⁵ On 13 February 2014, Belindam, CPPIB (via its subsidiary CPPIB US RE-3) and CentrO Holdings initialled a deed outlining the terms of the joint-venture agreement to be entered into upon completion of the Transaction.

⁶ Article 7.3 of the joint-venture deed.

⁷ [*Details of the joint-venture deed*].

⁸ Article 9.2 of the joint-venture deed.

⁹ See Schedule 7 of the joint-venture deed.

- (11) The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (12) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million¹⁰ [Unibail-Rodamco: EUR [...] million in 2012; CPPIB: EUR [...] million in 2013]. Each of them has an EU-wide turnover in excess of EUR 250 million [Unibail-Rodamco: EUR [...] million in 2012; CPPIB: EUR [...] million in 2011] and they do not each achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. Therefore, the notified operation has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

4.1. Relevant product market

- (13) According to previous Commission decisions, the market for real estate services can be segmented into: (i) real estate development; (ii) real estate rental; (iii) real estate management; and (iv) real estate property.¹¹
- (14) The Commission also considered, but ultimately left open, whether the market for real estate services could be further segmented according to the use made of the real estate assets (residential or commercial property).¹² As regards the commercial use of real estate, the Commission also considered, but ultimately left open, a sub-segmentation based on the final destination of the assets (office properties, industrial properties and retail properties).¹³
- (15) In *ECE / Metro / MEC JV*,¹⁴ while ultimately leaving the precise market definition open, the Commission examined the following sub-segmentations for the markets for rental of retail real estate and management of retail real estate: (i) retail centres (including shopping centres and retail parks) of at least 8 000 or 10 000 m²; and (ii) shopping centres of at least 8 000 or 10 000 m². With regard to the market for rental of retail real estate, the Commission considered that it would not be appropriate to delineate the rental of retail space in shopping centres from the rental of other retail space, in particular because retailers take account of all available retail space when considering opening a new shop without focusing primarily on shopping centres.¹⁵

¹⁰ Turnover calculated in accordance with Article 5 of the Merger Regulation.

¹¹ See Cases M.2825 - *Fortis AG SA / Bernheim-Comofi SA*, decision of 9 July 2002, recital 7; M.6020 – *ACS / Hochtief*, decision of 14 January 2011, recitals 12-13; and M.6834 – *Goldman Sachs / TPG Lundy / Brookgate*, decision of 14 March 2013, recital 14.

¹² See Cases M.2825 - *Fortis AG SA / Bernheim-Comofi SA*, decision of 9 July 2002, recital 8; and M.3370 - *BNP Paribas / Atis Real International*, decision of 9 March 2004, recital 9.

¹³ See Case M.2863 – *Morgan Stanley / Olivetti / Telecom Italia / Tiglio*, decision of 30 August 2002, recital 19.

¹⁴ See Case M.6400 – *ECE / Metro / MEC JV*, decision of 26 October 2011, recitals 34 and 38.

¹⁵ See Case M.6400 – *ECE / Metro / MEC JV*, decision of 26 October 2011, recitals 35 and 36.

- (16) The Parties submit that the relevant product market is the market for the rental of retail real estate and that there are no grounds to further divide the market between high-street units, units in shopping centres and units in retail parks. From the demand-side perspective, national and international retail chains seek to establish sufficient coverage in a given territory by being implemented in all the locations boasting a high footfall.¹⁶ From the supplier-side perspective, aside from individual landlords, lessors of units in high-street and in shopping centres are the same: real estate companies, insurance companies, credit institutions and investment funds. These operators acquire retail units, indiscriminately in high-street, shopping centres or retail parks, which they then lease to tenants. Moreover, the legal regime governing retail leases is the same for the lease of units in high-street and in shopping centres.
- (17) For the purpose of the present case the precise product market definition can be left open since the Transaction does not raise competition concerns under any plausible product market definition.

4.2. *Relevant geographic market*

- (18) The Commission has previously considered, but ultimately left open, whether real estate markets can be regarded as national, regional or local.¹⁷
- (19) With regard specifically to the geographic scope of the market for rental of retail real estate, the Commission previously considered, but ultimately left open, whether that market has a national, regional or local dimension.¹⁸
- (20) Additionally, in *ECE / Metro / MEC JV*, the Commission, while leaving open the question of whether there is any scope for a regional market definition, nevertheless examined the market for rental of retail space in shopping centres of at least 8 000 or 10 000 m² within a 50 km radius around the relevant city in the region.¹⁹
- (21) The Parties consider the relevant geographic market to be national in scope, as both suppliers and tenants operate throughout Germany. Suppliers are mostly international and national real-estate companies, insurance companies and financial institutions, while tenants are generally international and national retailers who seek coverage across a given country.
- (22) For the purpose of the present case the precise geographic market definition can be left open since the Transaction does not raise competition concerns under any plausible geographic market definition.

¹⁶ “Footfall” means the number of people who enter a particular shop or shopping area in a given period of time.

¹⁷ See Cases M.2863 – *Morgan Stanley / Olivetti / Telecom Italia / Tiglio*, decision of 30 August 2002, recitals 21 and 22; M.3370 – *BNP Paribas / ARI*, decision of 9 March 2004, recitals 13 to 15; and M.6889 – *Sogecap / Cardif / Ensemble Immobilier Clichy-la-Garenne*, decision of 13 May 2013, recital 15.

¹⁸ See Cases M.2110 – *Deutsche Bank / SEI / JV*, decision of 25 September 2000, recital 9; and M.2825 – *Fortis AG SA / Bernheim-Comofi SA*, decision of 9 July 2002, recital 9.

¹⁹ See Case M.6400 – *ECE / Metro / MEC JV*, decision of 26 October 2011, recitals 44 and 77.

5. COMPETITIVE ASSESSMENT

5.1. *Activities of the Parties*

- (23) CPPIB owns only two retail assets in Germany, both located in North Rhine-Westphalia, namely the CentrO shopping centre in Oberhausen and Hürth Park in the city of Hürth, over 80 km away from Oberhausen.
- (24) In North Rhine-Westphalia, Unibail-Rodamco²⁰ owns and manages Ruhr Park shopping centre in Bochum and its subsidiary MFI AG manages two shopping centres on behalf of third party owners: Düsseldorf Arcaden in Düsseldorf and Köln Arcaden in Cologne.²¹

5.2. *The view of the Parties*

- (25) The Parties submit that the relevant market for rental of retail space in shopping centres is highly fragmented and characterised by strong competition. In particular, the merged entity will, post-Transaction, face competition from: (i) several strong market players including ECE Projectmanagement GmbH ("ECE"), Cório Deutschland GmbH ("Cório"), Bilfinger Real Estate GmbH ("Bilfinger"), ESTAma Gesellschaft and Koprian iQ GmbH; and (ii) lessors of other types of commercial properties, including high street retail units.
- (26) In addition, the Parties will be unable to impose any unfavourable conditions on tenants, in particular those that own international brands and thus have a significant negotiation power.
- (27) Furthermore, the Parties submit that while it is quite difficult to enter the market for rental of retail space in shopping centres by developing a new shopping centre, it is relatively easy to enter the market for rental of retail space in shopping centres by acquiring an asset, as demonstrated by the entry of Cório in 2010 through the acquisition of six shopping centres.

5.3. *Commission's assessment*

- (28) The only market on which the Parties' combined 2013 market share²² exceeded 20% is the narrowest segment of rental of retail space in shopping centres of at least

²⁰ Unibail-Rodamco (through MFI AG) is the only party to the Transaction active on the market for retail real estate management. As a consequence, that market is not an affected market.

²¹ While Düsseldorf is within the 50 km radius around Oberhausen, Cologne is over 70 km away from Oberhausen.

²² Within a 50km radius around Oberhausen, CPPIB does not own any retail real estate other than CentrO. However, in the narrowest segment of rental of retail space in shopping centres of at least 8 000 or 10 000 m² within a 50km radius around Oberhausen, the Parties assigned to CCPIB the market shares represented by each of its commercial assets on the market for rental of retail real estate in retail centres and in shopping centres, which is a conservative approach.

8 000 m² [20-30%] in 2013) and 10 000 m² [20-30%] in 2013)²³ within a 50 km radius of Oberhausen.²⁴

- (29) The competitive situation in the market for rental of retail space in shopping centres of at least 8 000 m² and 10 000 m² within a 50 km radius of Oberhausen is as follows: there are eleven other shopping centres, including three operated by ECE²⁵ and two operated by Cório²⁶.
- (30) For the reasons set out below, the Commission considers that the proposed Transaction does not raise serious doubts on this market.
- (31) First, the Parties will continue to be subject to competitive pressure exerted by other national and international competitors, which include the market leader ECE (with, on the basis of the surface (with a 2013 market share of approximately [30-40%]²⁷ as well as Cório, Bilfinger and ESTAma Gesellschaft.
- (32) Second, respondents to the market investigation indicated that even though tenants consider CentrO as an attractive location because of its mix of tenants and the combination between shops and entertainment areas, it is not a "must-have".²⁸ Potential tenants are not therefore willing to accept unfavourable conditions in order to be present in CentrO.
- (33) Third, the Parties will continue to be constrained by lessors of other types of commercial properties, including high street retail units. Respondents to the market investigation indicated that retailers consider all available retail space when opening a new shop without focusing primarily on shopping centres.²⁹ In this respect, the high street retail units in Oberhausen as well as in Duisburg and Essen (15 to 20 minutes driving distance from CentrO) have a central location and are easily accessible by public transportation.

²³ The Parties' estimates are based *inter alia* on MFI AG internal data and IfG - Shopping Centre Report 2011, EHI Retail Institute Shopping Centre Reports 2012 and 2013, web-sites of shopping centre operators.

²⁴ [Unibail-Rodamco's development and extension projects in the North Rhine-Westphalia region].

²⁵ These are Limbecker Platz and Allee Center in Essen and Rheinruhr Zentrum in Mülheim.

²⁶ These are Forum Duisburg and Königsgalerie, both in Duisburg.

²⁷ Form CO, paragraph 176.

²⁸ See the agreed non-confidential minutes of a teleconference call of 4 April 2014 with [a customer] paragraph 7 and agreed non-confidential minutes of a teleconference call of 7 April 2014 with [a customer], paragraph 3.

²⁹ See for instance the agreed non-confidential minutes of a teleconference call of 4 April 2014 with [a customer], paragraph 6; the agreed non-confidential minutes of a teleconference call of 7 April 2014 with [a customer], paragraph 5; the agreed non-confidential minutes of a teleconference call of 4 April 2014 with [a competitor], paragraph 5; the agreed non-confidential minutes of a teleconference call of 7 April 2014 with [a competitor], paragraph 7; and the agreed non-confidential minutes of a teleconference call of 7 April 2014 with [a competitor], paragraph 8.

- (34) Fourth, respondents to the market investigation indicated that large tenants³⁰ have the necessary countervailing power to defeat any strategy of the Parties consisting of imposing disadvantageous conditions on customers, such as the bundling of contracts combining a retail space in CentrO with a retail space in an unattractive location. For example, two respondents to the market investigation stated that "*anchor tenants have commercial power in the negotiation of contracts for the rental of retail space*"³¹ and "[...] *they are not willing to accept any unfavourable condition in order to be present in a particular shopping centre*".³² Likewise, [*a customer*] indicated that "*if CentrO proposed bundled contracts combining a retail space in CentrO with a retail space in an unattractive location, [a customer] would not accept it.*"³³
- (35) Finally, no respondents to the market investigation raised any substantial concern with regard to the proposed Transaction.

6. CONCLUSION

- (36) 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

³⁰ Large tenants are those having national or international brands in their portfolio with significant appeal to the customers, supported by their own marketing and advertising policies. This makes them attractive for shopping centres since they guarantee a stable turnover and a significant footfall.

³¹ See the agreed non-confidential minutes of a teleconference call of 7 April 2014 with [*a competitor*], paragraph 8.

³² See the agreed non-confidential minutes of a teleconference call of 4 April 2014 with [*a competitor*], paragraph 8; agreed non-confidential minutes of a teleconference call of 7 April 2014 with [*a competitor*], paragraph 8.

³³ See agreed non-confidential minutes of a teleconference call of 7 April 2014 with [*a customer*], paragraph 4.