EUROPEAN COMMISSION
DG Competition

Case M.11111 – UBS / CREDIT SUISSE

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 7(3)
Date: 04/04/2023

EUROPEAN COMMISSION

Brussels, 4.4.2023
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

UBS Group AG
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Credit Suisse Group AG
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Subject: **Case M.11111 – UBS / CREDIT SUISSE**
Commission decision pursuant to Article 7 (3) of Council Regulation No. 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]
Request of derogation

Dear Sir or Madam,

(1) We refer to your application for a derogation from the suspension obligation provided for in Article 7(1) of Council Regulation (EC) No 139/2004 (the 'Merger Regulation') with regard to the merger of UBS Group AG ("UBS", Switzerland) and Credit Suisse Group AG ("Credit Suisse", Switzerland) (the "Transaction" or the "Proposed Transaction") submitted pursuant to Article 7(3) of the Merger Regulation on 3 April 2023. UBS and Credit Suisse are together referred to 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 OJ L 1, 3.1.1994, p.3 (the 'EEA Agreement').

1. THE PARTIES AND THE TRANSACTION

(2) **UBS** is a multinational investment bank and financial services company founded and headquartered in Switzerland, and active globally. UBS' businesses comprise wealth management, asset management, investment banking services, and retail and corporate banking.

(3) **Credit Suisse** is a multinational investment bank and financial services company founded and headquartered in Switzerland, and active globally. Credit Suisse's businesses comprise wealth management, asset management, investment banking services, and retail and corporate banking.

(4) Following Credit Suisse's recent financial difficulties (see Section 4.2), UBS intends to acquire the entire business of Credit Suisse by way of merger. Specifically, pursuant to the Merger Agreement dated 19 March 2023, UBS and Credit Suisse shall merge by way of absorption, with UBS being the surviving legal entity. The Transaction therefore constitutes a merger of two previously independent undertakings within the meaning of Article 3(1)(a) of the Merger Regulation.

2. EU DIMENSION

(5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (UBS: EUR […] million and Credit Suisse: EUR […] million). Each of them has an EU-wide turnover in excess of EUR 250 million (UBS: EUR […] million and Credit Suisse: EUR […] million), and they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Proposed Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

3. THE APPLICATION FOR DEROGATION

(6) The Parties submit that Credit Suisse's financial situation deteriorated following the collapse of three US banks at the beginning of March 2023, which put a spotlight on Credit Suisse's financial difficulties. Credit Suisse closed the 2022 financial year with a loss of over EUR 7 billion, and its market valuation decreased rapidly in the days leading up to the signature of the Merger Agreement with UBS. Moreover, the Swiss National Bank had to take liquidity support measures to avert an even further deterioration of Credit Suisse's financial situation.

(7) The stand-still obligation provided for in Article 7(1) of the Merger Regulation would prevent UBS from taking appropriate measures to stabilise the financial situation of Credit Suisse and would therefore seriously affect the economic stability and/or viability of Credit Suisse.

(8) In order to implement the measures necessary to ensure the financial stability of Credit Suisse before the adoption of the final decision of the Commission under the Merger Regulation ("interim period") the Parties request that the Commission grant a derogation from the standstill obligation provided for in Article 7(1). The measures would be limited to what is necessary to restore Credit Suisse's viability and/or stability and would not lead to the operational integration of Credit Suisse and UBS. Such measures include the following measures:

(9) First, in order to mitigate the significant financial risk from the Transaction, UBS considers that it needs to be in a position to **scrutinise Credit Suisse's risk position**. UBS proposes to appoint one or more experts to Credit Suisse's risk function to **monitor compliance with the interim covenants in the merger agreement**. These experts […]. The role of the appointed experts would be to monitor Credit Suisse's compliance with the interim covenants in the merger agreement[3], […][4].

(10) Second, as part of a three-year strategy and transformation plan announced by Credit Suisse in October 2022, a **Non-Core Unit** (NCU) was established at Credit Suisse and **tasked with helping to accelerate the running down of Credit Suisse's non-strategic, low return positions**, with a view to releasing capital. […].

(11) [Explanation of measures necessary to restore Credit Suisse's viability and/or stability].

(12) [Explanation of measures necessary to restore Credit Suisse's viability and/or stability].

(13) [Explanation of measures necessary to restore Credit Suisse's viability and/or stability].

(14) Third, UBS considers that it needs to proactively and urgently contact Credit Suisse's customers and provide them with the reassurances they need to stay with the bank. If this is not possible, this would, according to UBS, result in further, unsustainable losses for Credit Suisse. […].

(15) Fourth, according to the Parties, the acute uncertainty for Credit Suisse employees pending closing of the Transaction has led key talent at Credit Suisse to look for alternative employers at an alarming pace. Given the importance of talent to the future commercial success of Credit Suisse, significant job losses will have a material impact on the value of Credit Suisse. As is the case with key clients, UBS therefore considers that […].

(16) As with client retention, given the uncertainty currently faced by Credit Suisse employees, and the rate at which they are already leaving for new employers, such discussions need to take place as soon as possible and UBS needs as much flexibility as possible to take steps to be able to reassure those Credit Suisse staff it wishes to retain.

(17) Additionally, given the issues faced by Credit Suisse with regard to employee retention, UBS employees may need to be seconded to Credit Suisse, where requested by Credit Suisse, to urgently fill positions. Secondees would be removed from their UBS role for the term of the secondment plus a cooling-off period if for any reason the Transaction has not yet closed when they return from their secondment. As the employee retention situation at Credit Suisse is very fluid, it is unclear at this stage for which positions Credit Suisse may need to request UBS to

[3] Section 6 of the Merger Agreement dated 19 March 2023 sets out a number of interim covenants relating to matters including: public and active support for the transaction; conduct of business; employee consultation, third party claims; integration and tax.

[4] […].

provide secondees. However, in light of the potential departure of a material number of employees, it is critical to have the flexibility to send UBS secondees to Credit Suisse at short notice in order to preserve Credit Suisse's business.

(18) The Parties further commit to submit their formal notification of the concentration within six weeks of this Decision.

(19) Lastly, the Parties commit not to operationally integrate Credit Suisse into UBS until the Commission has taken a final decision on the Transaction.

(20) The Parties consider that the benefits flowing from the derogation outweigh any potential adverse effects that it may have on any third party.

4. THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE EU MERGER REGULATION

(21) Pursuant to Article 7(1) of the Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the common market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on reasoned request, grant a derogation from the obligation imposed in Article 7(1).

(22) Article 7(3) of the Merger Regulation provides that, in deciding on the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.

(23) Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where suspension provided for in the Merger regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party.

4.1. The operation falls under the suspension obligation pursuant to Article 7(1) of the Merger Regulation

(24) The Proposed Transaction constitutes a concentration within the meaning of Article 3 of the Merger Regulation and has an EU dimension according to Article 1 thereof. Hence the operation falls under the suspension obligation laid down in Article 7(1) of the Merger Regulation.

4.2. The effects of the suspension on the undertakings concerned and third Parties

(25) The Commission notes that Credit Suisse is in serious financial distress.

(26) In particular, Credit Suisse's financial situation deteriorated following the collapse of three US banks at the beginning of March 2023, which put a spotlight on Credit Suisse's financial difficulties. Credit Suisse closed the 2022 financial year with a loss of over EUR 7 billion, and over the last year, its share value decreased by two thirds. Pressure increased significantly as its largest investor Saudi National Bank on 15 March 2023 announced that it could not buy more shares in Credit Suisse and that therefore it would not further support it in mitigating its financial

difficulties.[5] As a result, Credit Suisse's share price came under even more pressure (decreasing by 30%) and deposit outflows from Credit Suisse were reported to have reached EUR 10 billion a day.[6]

(27) On 15 March 2023, the Swiss National Bank initially granted Credit Suisse a CHF 50 billion liquidity facility as a preventative measure. However, this did not prevent depositors from continuing to request withdrawals and the entirety of that facility was used in a matter of days to meet outflows. Following these developments and discussions with the Swiss Financial Market Supervisory Authority ("FINMA") and the Swiss National Bank, UBS agreed the Proposed Transaction. As part of the Transaction, the Swiss National bank has agreed to offer a CHF 100 billion liquidity support and provide a loss guarantee of up to CHF 9 billion.

(28) In view of Credit Suisse's financial situation, a derogation was granted by FINMA on 19 March 2023 in relation to the review of the Proposed Transaction under applicable merger control rules in Switzerland. Among FINMA's key considerations was that Credit Suisse is no longer able to obtain sufficient refinancing in the market and is therefore at risk of becoming insolvent.

(29) The Parties explain that the suspension obligation imposed by Article 7(1) would therefore seriously threaten the viability of Credit Suisse and the ability of UBS to maintain the competitiveness of the combined entity. It would also lead to a strong ripple effect within the European and global banking sector. Specifically, a delay in implementing the Proposed Transaction will result in the following:

(a) Serious harm to investors in Credit Suisse, its shareholders, and customers

(30) Absent the derogation, there will be uncertainty about whether the Transaction will complete, which risks affecting adversely customers' and investors' confidence in the strength of Credit Suisse. This in turn means that the outflow of deposits will continue (and is expected to increase exponentially), threatening the solvency of Credit Suisse. In addition, market capitalization of Credit Suisse will most likely decrease further in particular due to the rapid and increased deposit withdrawals and the overall uncertainty in the market around Credit Suisse's likelihood of timely integration into UBS. This will in turn clearly adversely impact Credit Suisse's shareholders and customers who have deposits, loans, and investment accounts with Credit Suisse.

(b) Inability to safeguard Credit Suisse's competitiveness

(31) Immediate implementation of measures such as the ones outlined in Section 3 is necessary to allow UBS (as a private market operator) to manage the significant

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5 Bloomberg TV, 15 March 2023, *"Saudi National Bank Chairman on Fed, SVB, Credit Suisse."* For subsequent reporting see e.g. Financial Times article, 15 March 2023, *"Now even its cornerstone investor is kicking Credit Suisse"*, available at: https://www.ft.com/content/e4602e40-463d-4408-8d1d-e682b86d1859

6 See e.g. Reuters article, 15 March 2023, *"Credit Suisse stock slump triggers close monitoring by regulators"*, available at: https://www reuters.com/business/finance/credit-suisse-shares-drop-fresh-record-low-cds-widen-2023-03-15/ and Financial Times article 18 March 2023, *"Switzerland prepares emergency measures to deliver UBS takeover of Credit Suisse"*, available at: https://www ft.com/content/5746165a-3a0c-42c7-9a2e-cb7cf5f33f46

financial and operational risks that arise in Credit Suisse's businesses and continue to operate Credit Suisse to the benefit of its customers. The further the delay in the implementation of the measures, the more UBS could be required to downsize Credit Suisse's business, accept losses on specific lines of business, and accept increasing costs and liabilities which will be passed on to UBS' shareholders. This would cause irreparable damage to Credit Suisse's business, and would ultimately render the Proposed Transaction unfeasible to implement without damaging UBS' own business (i.e. the combined entity), its shareholder and customers.

(c) Serious risk of systemic harm to the banking sector

(32) Immediate implementation of measures such as the ones outlined in Section 3 is necessary to avoid a very serious risk of systemic harm to the European and global banking sector. Credit Suisse has been designated as a 'globally systemic bank' (G-SIB) by the Financial Stability Board. G-SIBs are banks considered "too big to fail" and to play an indispensable role in the stability and security of the global financial system, so an exit of a G-SIB from the market carries the risk of serious damage to the Swiss, European and global financial sectors.

(33) The ripple effects of Credit Suisse's current situation have already materialised and are expected to increase progressively. Following the announcement of the Saudi National Bank (the largest shareholder in Credit Suisse) that it would not be able to make further investments in Credit Suisse, it was reported that this had contributed to a decrease in Credit Suisse's share price by 30% which has in turn likely contributed to a decrease in market capitalization of Société Générale (by 12%), BNP Paribas (by 10%), Deutsche Bank (by 8%), and Barclays (by 8%). On 20 March 2023, the first trading day following the announcement of the Proposed Transaction, prices in banks' shares fell by 4-14%. This demonstrates a strong ripple effect that Credit Suisse's market position can cause, which is expected to be significantly more extensive absent the derogation.

(34) Finally, according to the Parties, no other viable alternative to the Proposed Transaction would achieve the same effect to stabilise Credit Suisse and prevent further damage to the Swiss and global economy and financial system.

(35) According to the information provided by the Parties, which appears plausible *a priori*, Credit Suisse is in serious financial distress and the risks stated above appear credible in this context.

(36) The Commission therefore considers that the suspension obligation imposed by Article 7(1) of the Merger Regulation could lead to serious harm to Credit Suisse, its customers and creditors, as well as to financial stability.

4.3. The threat to competition posed by the concentration

(37) Both Parties to the Transaction are active in the provision of banking and other financial services globally. The Parties' activities overlap mainly in the provision of asset management, wealth management and investment banking.[7]

[7] Depending on the geographic product market definition, the Parties' activities may also give rise to overlaps in the following areas: financial markets services, corporate banking, corporate loans, corporate deposits, and payment cards services. However, the Parties submit that these are "non-core"

(a) Asset management

(38) Asset management concerns the provision of investment advice and/or the implementation of this advice with delegated powers from the client. According to the data submitted by the Parties, the Parties' combined market share in asset management would be below 5% regardless of the exact product or geographic market definition.[8] Specifically, according to the Parties' best estimates, the Parties' combined market share in asset management is [0-5]% globally, [0-5]% in the EEA, and [0-5]% in a geographic market including the EEA, UK and Switzerland. The Parties estimate their combined market share in individual EEA countries where their activities overlap to be [0-5]% at most.

(39) In addition, several large global companies are active in the provision of asset management. For example, the Parties estimate that there are at least 12 other players active globally with a market share larger or comparable to that of the combined entity.[9] Of these, at least 6 have larger EEA-wide asset management activities than that of the combined entity, including BlackRock, Fidelity, Allianz, Amundi, DWS and BNP.[10]

(b) Wealth management

(40) Wealth management includes the provision of portfolio management services to individuals. According to the data submitted by the Parties, the Parties' combined market share in wealth management would be as follows: [5-10]% globally, [0-5]% in the EEA, and [5-10]% in a geographic market including the EEA, UK and Switzerland. The Parties' estimate that their combined market share in individual EEA countries where their activities overlap is [0-5]% at most, with the exception of Luxembourg where the Parties estimate their combined market share to be below [20-30]%.[11] The market share increment brought about by Credit Suisse would, according to the Parties' estimates, be limited to [0-5]% globally, [0-5]% in the EEA, and [0-5]% in a geographic market including the EEA, UK and Switzerland.

(41) In addition, there is a large number of large global banks active in this area, as well as external asset managers, and private banks. These include at least 2 competitors with a market share larger than that of the combined entity globally, that is Morgan Stanley and Bank of America.

(c) Investment banking

(42) Investment banking concerns the provision of services such as advice on the financial aspects of mergers and acquisitions, initial public offerings, and other

activities for the Parties and therefore the Parties' combined market share is expected to be lower than their combined markets share in asset management, wealth management and investment banking.

8 The Parties market shares estimates in asset management are based on assets under managements.

9 These include BlackRock ([5-10]% global market share), Vanguard ([5-10]%), Fidelity ([0-5]%), State Street Global Advisors ([0-5]%), JP Morgan ([0-5]%), Capital Group, BNY Melon, Allianz, Amundi, Invesco, Legal & General, Franklin Templeton (all [0-5]%).

10 Their estimated market shares in the EEA are as follows: BlackRock [0-5]%, Fidelity [0-5]%, Allianz [0-5]%, Amundi [5-10]%, DWS [0-5]% and BNP [0-5]%. In a geographic market including the EEA, UK and Switzerland, at least BlackRock (with a market share estimated at [0-5]%) and Amundi ([5-10]%) have asset management activities larger or comparable to that of the combined entity.

11 The Parties market shares estimates in wealth management are based on assets under management.

financial operations. According to the data submitted by the Parties, the Parties' combined market share in investment banking would be below 10% regardless of the exact product or geographic market definition.[12] Specifically, according to the Parties' best estimates, the Parties' combined market share in investment banking is [0-5]% globally, [5-10]% in the EEA, and [5-10]% in a geographic market including EEA, UK and Switzerland. The Parties' combined market share in individual EEA countries where the Parties' activities overlap is estimated to be at most [5-10]%, with the exception of Poland where the Parties estimate their combined market share to be below [10-20]%.

(43) In addition, several large global companies are active in the provision of investment banking. For example, the Parties estimate that there are at least 6 other players active globally with a market share larger or comparable to that of the combined entity.[13] Of these, at least 5 have larger EEA-wide asset management activities than that of the combined entity, including JP Morgan, Goldman Sachs, Morgan Stanley, Citi Bank, and Barclays.[14]

(44) In conclusion, on the basis of the information provided by the Parties, the likelihood that the horizontal overlaps in the provision of asset management, wealth management and investment banking would give rise to competition concerns appears low.

(45) Finally, the Parties have not identified any vertically affected markets that the Transaction would give rise to.

(46) Therefore, on the basis of the information provided by the Parties, it appears *prima facie* that the Transaction is not likely to pose a threat to competition within the EEA.

4.4. Balance of interests

(47) Based on the above it appears that whilst the suspension obligation could seriously affect Credit Suisse, its customers and the stability of the global financial system, the threat to competition caused by the operation appears low, and it does not appear that granting the derogation would have adverse effects on one or more of the Parties or on any third party. Therefore, the Commission finds that a derogation can be granted in accordance with the application and to the extent specified below.

5. TERMS AND CONDITIONS

(48) According to Article 7(3), 4th sentence, of the Merger Regulation, a derogation from the suspension obligation laid down by Article 7(1) thereof may be made subject to conditions and obligations in order to ensure effective competition.

(49) On 3 April 2023 the Parties committed that they would adopt only those measures necessary to restore Credit Suisse's stability and/or viability. Furthermore, UBS

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12 The Parties market shares estimates in investment banking are based on turnover.

13 These include JP Morgan ([10-20]% global market share), Goldman Sachs ([10-20]%), Bank of America ([5-10]%), Morgan Stanley ([5-10]%), Citi Bank ([5-10]%), and Barclays ([5-10]%).

14 Their estimated market shares in the EEA are as follows: JP Morgan [10-20]%, Goldman Sachs [10-20]%, Morgan Stanley [5-10]%, Citi Bank [5-10]% and Barclays [5-10]%. All of these are also comparable or larger than the Combined Entity if the geographic market is to include the EEA, UK and Switzerland.

commits that the proposed measures will not lead to the operational integration of Credit Suisse within UBS before the Commission has taken a final decision on the transaction.

(50) Based on the preceding considerations, the Commission has decided to grant a derogation from the suspension obligation as regards the proposed concentration subject to the following conditions:

(a) UBS and Credit Suisse shall submit a complete notification of the Transaction to the Commission without delay, and in any event no later than six weeks from the adoption of the Article 7(3) decision in order to allow the assessment of the compatibility of the proposed concentration with the internal market and the EEA agreement

(b) Until the Commission has adopted its decision on the compatibility of the Transaction, this derogation would allow UBS to take only such actions which are necessary to restore Credit Suisse’s viability and/or stability including such actions as described in Section 3 of this Decision.

(c) The derogation is made subject to the condition that the Parties will ensure that Credit Suisse's business not operationally integrated with UBS until the Commission has taken a final decision on the Transaction.

6. CONCLUSION

(51) The Commission considers that the reasons given by the Parties for derogation from the suspension obligations meet the requirements set out in Article 7(3) of the Merger Regulation.

(52) Based on the above considerations and in accordance with Article 7(3) of the Merger Regulation and Article 57 of the EEA Agreement, UBS and Credit Suisse are granted a derogation from the obligations imposed by Article 7(1) of the Merger Regulation in accordance with the foregoing terms and conditions until the acquisition has been declared compatible with the common market and the EEA Agreement by means of a decision pursuant to Article 6(1)b or 8(2) or a presumption pursuant to Article 10(6).

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President