

***Case No COMP/M.5548 -
BARCLAYS/ RBS/
HILLARY***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/07/2009

***In electronic form on the EUR-Lex website under
document number 32009M5548***



Brussels, 06.07.2009

SG-Greffe(2009) D/4033/4034
C(2009) 5281

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5548 – Barclays/ RBS/ Hillary
Notification of 04.06.2009 pursuant to Article 4 of Council Regulation (EC)
No 139/2004¹**

1. On June 4th 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (hereafter "ECMR") by which Barclays Bank PLC ("Barclays", United Kingdom) and The Royal Bank of Scotland Group plc ("RBS", United Kingdom) acquire within the meaning of Article 3(1)(b) of the EC Merger Regulation ("ECMR") joint control of Hillary S.à.r.l ("Hillary", Luxembourg), which is the indirect owner of USP Hospitales, S.L.U. ("USP", Spain) by way of purchase of shares.

I. THE PARTIES AND THE TRANSACTION

2. Barclays is a global financial services provider engaged in retail and commercial banking, credit cards, investment banking, wealth management and investment management services.
3. RBS is the holding company of one of the world's largest banking and financial services groups, operating through two principal subsidiaries (The Royal Bank of Scotland and NatWest).
4. Hillary is a special purpose vehicle, owner of USP. USP has a number of subsidiaries through which its operational activities are carried out. USP, together with its subsidiaries and its controlling entities, including Hillary, are called the USP Group. The

¹ OJ L 24, 29.1.2004 p. 1.

USP Group is a private, integrated network of medical assistance services which includes hospitals, outpatient surgery clinics, diagnostic clinics and polyclinics, essentially in Spain.

5. The transaction consists in swapping certain debt owed by the USP Group to Barclays and RBS in exchange for a significant equity stake in Hillary. Following the transaction, Barclays and RBS will jointly control more than [...] % of the voting rights of Hillary ([...] % for Barclays and [...] % for RBS).
6. Barclays and RBS will enjoy veto rights over specified strategic decisions such as: i) appointment of senior management ii) approval or modification of the annual budget and the business plan and iii) investments. Therefore, RBS and Barclays will jointly control the USP Group.
7. The notified transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the ECMR.

II. COMMUNITY DIMENSION

8. The combined aggregate worldwide turnover of the undertakings concerned is more than EUR 5 billion (about EUR [...] for Barclays, EUR [...] for RBS, and [...] Euros for USP)² and the Community-wide turnover of at least two of the undertakings concerned is more than EUR 250 million (about EUR [...] for Barclays, EUR [...] for RBS, and [...] for USP). The undertakings concerned do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State³. The notified concentration has therefore a Community dimension within the meaning of Article 1(2) ECMR.

III. ASSESSMENT

Relevant markets

9. The USP Group is essentially active in the provision of hospital services in Spain.⁴ The provision of hospital services includes a full range of services such as hospitalization services, medical laboratory services, diagnostics, specialized medical tests, intensive care and emergencies. The Commission has previously indicated a possible distinction between private hospital services and publicly funded hospitals.⁵
10. As to the geographical scope, the Commission previously indicated that the market for private hospitals was no broader than national in scope, but left the precise geographic

² Turnover calculated in accordance with Article 5(1) of the ECMR and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

³ [...] achieves more than 2/3 of its turnover in the UK, and [...] achieves more than 2/3 of its turnover in Spain.

⁴ Out of a total turnover of [...] Euros, USP has a turnover of less than [...] Euros outside Spain, in Portugal. There is no affected market under any plausible market definition in Portugal, and no competition issue arises from the activity in Portugal.

⁵ See for instance Cases M. 4229 *APHL/L&R/Netcare General Healthcare Group*, (p.3, § 13) and M.4788 *Rozier/BHS*, (p. 3, § 9)

scope of this market open.⁶ The relevant geographic market widely defined would be national in scope or narrowly defined it would be provincial.

11. As the concentration does not raise any competitive issue under any alternative definition, the product market and the geographical scope of the market can be left open for the purpose of this decision.

Competitive assessment

12. RBS and Barclays are active in the banking sector whereas USP is active in hospital services market (narrowly defined: private hospital services).⁷ Therefore the transaction triggers no horizontal overlap between USP and Barclays and RBS' activities in Spain.
13. The transaction does not trigger any vertical effects either because none of the parent companies is active in any downstream or upstream market to the Spanish market for private hospital services, in which USP is active (in particular, none of the parent companies is active in the provision of medical insurance services).
14. Finally, the existence of any cooperative effect between RBS and Barclays can be discarded.
15. The parent companies do not have any activity in the same market as USP, or on downstream, upstream or neighbouring markets. Spill-over effects are therefore highly unlikely due to the very different types of activities that the target and the two mother companies will perform (i.e. these markets have no common characteristics in terms of technology, clients, suppliers or competitors...).
16. In addition, the turnover of USP, compared to the turnover of its parent companies, is very limited. In this context, any risk of coordination between RBS and Barclays as a result of this transaction can be dispelled.

IV. CONCLUSION

17. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission

(Signed)

Neelie KROES

Member of the Commission

⁶ See for instance, Cases M. 4229 *APHL/L&R/Netcare General Healthcare Group*, (p.8, § 38 and 39) and M.4788 *Rozier/BHS*, (p. 4, § 14 and 16)

⁷ The market share of the USP Group in the Spanish market of private hospital services (calculated in number of beds) is around [5-10]%. .