



Determination No. M/05/055 of the Competition Authority, dated 30th September 2005, under Section 21 of the Competition Act, 2002

Notification No. M/05/055 – Proposed acquisition by Kohlberg Kravis Roberts & Co. L.P. of GMAC Commercial Holding Corp.

Introduction

1. On 1st September 2005, the Competition Authority, in accordance with Section 18(1) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposal whereby Kohlberg Kravis Roberts & Co. L.P. (“KKR”), Five Mile Capital Partners LLC (“FMCP”) and GS Capital Partners (“GSCP”) (collectively the “Investor Group”) would acquire 60% of the total issued share capital of GMAC Commercial Holding Corp (“GMACCH”) from General Motors Acceptance Corporation/GMAC Mortgage Group, Inc. (collectively, “GMAC”). By virtue of an agreement between the members of the Investor Group, KKR will effectively control the Investor Group and in turn will have decisive influence over GMACCH.

The Parties

2. As noted above, the proposed transaction involves the direct acquisition by the Investor Group of the shares of GMACCH. The Investor Group consists of the following three participants:

- a) **KKR**--KKR, the acquirer, headquartered in the United States, is in the business of equity investments, in management buy-outs for itself and its investors, either through controlling ownership of a company or through strategic minority positions. KKR’s worldwide turnover in 2004 was approximately USD \$[10 – 20] billion. Portfolio companies controlled by KKR derived approximately €[50-100] million in the State for the same year. Importantly, none of KKR’s portfolio companies compete with the business of GMACCH;
- b) **FMCP**--FMCP is an alternative investment management firm established in 2003 with equity capital under management of USD \$800 million; and
- c) **GSCP**--Established in 1991 by Goldman Sachs¹, GSCP is part of Goldman Sachs’ Principal Investment Area in the Merchant Banking Division. Goldman Sachs’ Principal Investment Area has formed 11 investment vehicles aggregating USD \$26 billion of capital to date. With USD \$8.5 billion in committed capital, GS Capital Partners V is the current primary investment vehicle for Goldman Sachs to make privately negotiated equity investments.

¹ Founded in 1869, Goldman Sachs is one of the oldest and largest investment banking firms. Goldman Sachs is also a global leader in private corporate equity and mezzanine investing.



3. GMACCH, the target, is a provider of financial services to the commercial real estate industry. It has offices throughout the United States and operations in Canada, France, Germany, Ireland, Japan, Mexico, Taiwan, and the United Kingdom.

4. In 2000, GMACCH created GMAC Commercial Mortgage Bank Europe plc ("GMAC Bank"), which was incorporated under Irish law and holds a banking licence issued by the Irish Financial Services Regulatory Authority. GMAC Bank focuses on the provision of finance and banking services in relation to the real estate in Europe, primarily in the United Kingdom, France, and Germany). Although it is headquartered in Ireland, GMAC Bank does not carry out a banking business in the State.

5. In 2004, GMACCH's worldwide turnover was approximately €1.2 billion. In the State, for the same year, its turnover was approximately €[50-100] million.

6. Currently, GMAC owns 100% of the total issued share capital of GMACCH. GMAC is a worldwide provider of diverse financial services, including automotive financing, commercial finance, insurance and mortgage products, and real estate services. GMAC operates on a global basis and is a wholly owned subsidiary of General Motors Corporation.

7. After the consummation of the proposed transaction, GMAC will own 40% of the total issued share capital of GMACCH.

Analysis

8. As noted above, KKR will effectively control the Investor Group pursuant to an agreement among KKR, FMCP, and GSCP. Consequently, for purposes of Section 16(2) of the Act, only KKR will exercise "control" over GMACCH once the proposed transaction is completed.

9. The parties note that no portfolio company controlled by KKR competes with GMACCH in the State or elsewhere, indicating that there is no competitive overlap between the business activities of KKR and GMACCH in the State. Therefore, the proposed transaction does not give rise to competition concerns.

Ancillary Restraint

10. The Authority notes that the agreement between the parties contains a non-competition provision, restricting the ability of GMAC to compete against GMACCH for the longer of either a) three years from the closing date of the transaction or b) one year after the period during which GMAC is represented on GMACCH's Board of Directors. The geographic scope of the non-competition provision would, *inter alia*, cover the State. Given the limited competitive significance of



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the transaction to the State, it is unlikely that the non-competition provision would result in a substantial lessening of competition in the State.

Determination

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition of GMAC Commercial Holding Corp. by Kohlberg Kravis Roberts & Co. L.P., Five Mile Capital Partners LLC and GS Capital Partners will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Edward Henneberry
Member of the Competition Authority