



# DETERMINATION OF MERGER NOTIFICATION M/21/001 – KOGUMA / AGILEDC

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## Section 21 of the Competition Act 2002

### Proposed establishment of a joint venture between Koguma DC Holding Private Limited and AgileDC Holdings Private Limited.

Dated 4 February 2021

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#### Introduction

1. On 4 January 2021, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of the proposed creation of a joint venture between Koguma DC Holding Private Limited (“Koguma”), a wholly-owned indirect subsidiary of The Goldman Sachs Group, Inc. (“Goldman Sachs”), and AgileDC Holdings Private Limited (“AgileDC”), a wholly-owned subsidiary of Digital Colony II [(Cayman AIV)], LP, which, in turn, is solely controlled by Colony Capital, Inc. (“Colony Capital”) [through its general partner, Digital Colony II (Cayman AIV) GP, LLC]. (the “Proposed Transaction”). The joint venture will operate principally through a jointly owned and controlled Singapore-based company, DC ADC MidCo-S1 Private Limited (the “JV Company”).

#### The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a shareholders agreement (the “SA”) between AgileDC, Koguma, and the JV Company (collectively, the “Parties”). The Parties entered into the SA on 4 January 2021 and provided a copy of it to the Commission as part of their notification of the Proposed Transaction.
3. Following completion of the Proposed Transaction, the JV Company will be engaged in the construction, ownership and operation of green field data centres<sup>1</sup> and the acquisition of data centre assets in Japan, through subsidiaries also based in Japan. Prior to completion of the Proposed Transaction, the undertaking which will become the JV Company is [currently under the sole control] of Colony Capital. Following completion of the Proposed Transaction, the JV Company will be jointly owned and controlled by Koguma and AgileDC.

#### The Undertakings Involved

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<sup>1</sup> A data centre is a physical facility that companies use to house their critical applications and data.





and CityWest Shopping Centre and Blanchardstown Shopping Centre in Co. Dublin.<sup>2</sup> Each of these three shopping centres also contains a small amount of rentable office space.<sup>3</sup>

8. For the financial year ending 31 December 2019, Goldman Sachs' worldwide turnover was approximately €32.65 billion. For the financial year ending 31 December 2018, Goldman Sachs' turnover in the State was approximately €[...].<sup>4</sup>

#### *Colony Capital*

9. Colony Capital is a publicly traded real estate and investment management firm. Colony Capital controls portfolio companies active in the provision of data centre colocation services in the United Kingdom, Belgium, France, Iceland, Sweden, Germany and the Netherlands.
10. Colony Capital is active in the property sector in the State, primarily in rentable office space, with a small proportion of retail and [...] property. Colony Capital has interests in a number of commercial and [...] properties in Dublin either directly or indirectly, or as part of a non-performing loan portfolio. Colony Capital owns a number of office buildings located in Co. Dublin including: Donnybrook House, Donnybrook; 23 Shelbourne Road, Ballsbridge; Carrisbrook House, Ballsbridge; and the Hive, Sandyford Business District.<sup>5</sup> Colony Capital also holds an interest in a [...] in Tolka, Dublin, as a result of its ownership of a non-performing loan portfolio.
11. Colony Capital is also active in the [...] sector in the State through [...].
12. For the financial year ending 31 December 2019, Colony Capital's worldwide turnover was approximately €[...], of which €[...] was generated in the State.

#### **Rationale for the Proposed Transaction**

13. The notifying parties state the following in the notification:

*“The Proposed Transaction is a financial investment by Goldman Sachs and Goldman Sachs does not anticipate any industrial synergies from the Proposed Transaction...Colony Capital invests internationally and in the digital infrastructure sector. The*

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<sup>2</sup> The acquisition of Blanchardstown Shopping Centre by Goldman Sachs was approved by the Commission on 30 November 2020. For more information see: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-20-033-goldman-sachs-blanchardstown-shopping-centre/>

<sup>3</sup> Each shopping centre currently rents the following office space to third parties: Bridgewater Shopping Centre/Brunel House ([...] square metres); CityWest Shopping Centre ([...] square metres); and Blanchardstown Shopping Centre ([...] square metres). Bridgewater Shopping Centre/Brunel house also contains [...] square metres of vacant office space.

<sup>4</sup> The most recent financial year for which a detailed country-by-country breakdown of turnover is available is 2018.

<sup>5</sup> Colony Capital previously owned a 75% stake in the Burlington Plaza office complex on Burlington Road, Co. Dublin and a 72% stake in the headquarters of Three Ireland on Sir John Rogerson's Quay, Co. Dublin. The acquisition of these properties by the Blackstone Group Inc. was approved by the Commission on 25 January 2021. For more information, please see: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-21-003-blackstone-burlington-plaza-and-the-three-building-whitaker-court/>



*Proposed Transaction is, accordingly, an attractive investment and well-suited to Colony Capital's investment strategy".*

### **Third Party Submissions**

14. No submission was received.

### **Competitive Assessment**

#### *Horizontal Overlap*

15. There is a horizontal overlap between the business activities of Goldman Sachs and Colony Capital in the State in relation to the supply of rentable commercial office property and the supply of rentable commercial retail property.

#### Market Definition

##### *Relevant Product Market*

16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant product markets since the Commission's assessment of the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is defined narrowly (e.g. separate product markets for each category of rentable commercial space, namely: (i) office space, and (ii) retail space) or more broadly (e.g., a single potential market encompassing the supply of all categories of rentable commercial space).
17. However, for the purposes of assessing the competitive impact of the Proposed Transaction, the Commission has followed the approach taken in its previous determination in *M/20/006 – Macquarie/Patrizia/Bishops Square*<sup>6</sup> and assessed the competitive impact of the Proposed Transaction by reference to the following two potential narrow product markets:
- i. the supply of rentable commercial retail property; and
  - ii. the supply of rentable commercial office property.

##### *Relevant Geographical Market*

18. Similarly, it is not necessary for the Commission to define precise relevant geographic markets in this instance as the Commission's assessment of the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant geographic market is defined narrowly (e.g., the Greater Dublin Area ("GDA")) or more broadly (e.g., the State). For the purposes of assessing the competitive impact of the Proposed Transaction, the Commission has followed the approach taken in its previous determination in *M/20/006 – Macquarie/Patrizia/Bishops Square*<sup>7</sup> and assessed the

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<sup>6</sup> See paragraph 20 of merger determination [M/20/006 – Macquarie/Patrizia/Bishops Square](#).

<sup>7</sup> See paragraph 22 merger determination [M/20/006 – Macquarie/Patrizia/Bishops Square](#).



competitive impact of the Proposed Transaction in a potential geographic market comprising the GDA.

#### *Conclusion on Market Definition*

19. For the purposes of its competitive analysis, the Commission has assessed the competitive impact of the Proposed Transaction in the potential market for the supply of: (i) rentable commercial retail property in the GDA; and (ii) rentable commercial office property in the GDA.

#### Competitive Analysis

20. Table 2 below lists estimated market shares of Goldman Sachs and Colony Capital in the supply of rentable commercial retail property in the GDA in 2018.

**Table 2: Estimated share of rentable commercial retail property in the GDA, 2018**

Supplier	Area (square foot)	Share (%)
Goldman Sachs	[...]	[5-10]%
Colony Capital	[...]	[0-5]%
Others	[...]	[90-95]%
<b>Total</b>	<b>18,706,029</b>	<b>100%</b>

*Source: The Commission, based on information provided by the notifying parties.*

21. As outlined above, there was approximately 18.7 million square foot of commercial retail property in the GDA in 2018.<sup>8</sup> Goldman Sachs currently owns approximately [...] square foot of rentable commercial retail property in the GDA, while Colony Capital currently owns approximately [...] square foot. Based on these figures, the estimated share of Goldman Sachs in the potential market for the supply of rentable commercial retail property in the GDA is approximately [5-10]%, while Colony Capital has an estimated share of approximately [0-5]%. This means that approximately [90-95]% of the total supply of rentable commercial retail property in the GDA is owned by entities other than Goldman Sachs and Colony Capital.
22. Similarly, Table 3 below shows estimated shares of Goldman Sachs and Colony Capital in the supply of rentable commercial office property in the GDA in 2018.

**Table 3: Estimated share of rentable commercial office property in the GDA, 2018**

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<sup>8</sup> This figure is an estimate provided by the notifying parties.



Supplier	Area (square foot)	Share (%)
Goldman Sachs	[...]	[0-5]%
Colony Capital	[...]	[0-5]%
Others	[...]	[95-100]%
<b>Total</b>	<b>42,200,000</b>	<b>100%</b>

Source: The Commission, based on information provided by the notifying parties.

23. As outlined above, there was approximately 42.2 million square foot of commercial office property in the GDA in 2018.<sup>9</sup> Goldman Sachs currently owns approximately [...] square foot of rentable commercial office property in the GDA, while Colony Capital currently owns approximately [...] square foot. Based on these figures, the estimated share of Goldman Sachs in the market for rentable commercial office property in the GDA is approximately [0-5]%, while Colony Capital has an estimated share of approximately [0-5]%.<sup>10</sup> This means that approximately [95-100]% of the total supply of rentable commercial office property in the GDA is owned by entities other than Goldman Sachs and Colony Capital.
24. Following completion of the Proposed Transaction, Goldman Sachs and Colony Capital will continue to face competition in the potential markets for: (i) the supply of rentable commercial retail property in the GDA; and (ii) the supply of rentable commercial office property in the GDA from competitors such as Irish Life Group Limited, IPUT Public Limited Company, Hibernia REIT Public Limited Company, and Kennedy Wilson Europe Limited.
25. In light of the above, the Commission considers that the Proposed Transaction raises no horizontal competition concerns in relation to: (i) the supply of rentable commercial retail property in the GDA; and (ii) the supply of rentable commercial office property in the GDA.
26. Furthermore, the JV Company will be an independent business active only, through Japanese-based subsidiaries, in the development and operation of green field data centres in Japan.<sup>11</sup> The JV Company will operate principally through a Singapore-based company, DC ADC MidCo-S1 Private Limited. The notifying parties state the following in the notification: *“the JV will pursue its own activities independently of its shareholders”*. The Commission therefore considers that there is no prospect that the Proposed Transaction could potentially result in the direct or indirect exchange of competitively

<sup>9</sup> This figure is an estimate provided by the notifying parties.

<sup>10</sup> Colony Capital's estimated share of the potential market for the supply of rentable commercial office property in the GDA includes Colony's 75% stake in the Burlington Plaza office complex on Burlington Road, Co. Dublin and 72% stake in the headquarters of Three Ireland on Sir John Rogerson's Quay, Co. Dublin. See footnote 4 above.

<sup>11</sup> The JV Company will have no business activities in the State following completion of the Proposed Transaction.



sensitive information between Goldman Sachs, Colony Capital and the JV Company that may result in an adverse effect on competition in the potential markets for the supply of: (i) rentable commercial retail property in the GDA; and (ii) rentable commercial office property in the GDA.

#### *Vertical Relationship*

27. The notifying parties state in the notification that there is no vertical relationship between Goldman Sachs, Colony Capital and the JV Company. The Commission has not identified any vertical relationship between the Parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

#### **Conclusion**

28. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

#### **Ancillary Restraints**

29. No ancillary restraints were notified.



## **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed creation of a joint venture between Koguma DC Holding Private Limited, a wholly-owned indirect subsidiary of The Goldman Sachs Group, Inc., and AgileDC Holdings Private Limited, a wholly-owned subsidiary of Digital Colony II [(Cayman AIV)], LP, which, in turn, is solely controlled by Colony Capital, Inc. [through its general partner, Digital Colony II (Cayman AIV) GP, LLC.] will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the transaction may be put into effect.

For the Competition and Consumer Protection Commission

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**