

***Case No COMP/M.3762 -
APAX / TRAVELEX***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/06/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.06.2005

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3762 - Apax/Travelex
Notification of 11/05/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹

1. On 11/05/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Apax Europe V and Apax Europe VI ("Apax", Channel Islands), controlled by the Hirzell Trust, acquire control of the whole of Travelex Holdings Limited ("Travelex", United Kingdom) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. Apax is active in the private equity and investment funds management. Apax is the ultimate parent company of Global Refund, a leading VAT refund service provider active worldwide.
4. Travelex is active in international payment services, retail and wholesale foreign exchange (e.g. travel money) and provision of outsourcing services to banks and other financial institutions.

II. THE OPERATION

5. Apax and Travelex's sellers have entered into a sale and purchase agreement on 25/02/2005 pursuant to which Apax, through acquisition vehicle companies, will be entitled to acquire up to [...] of Travelex shares. Travelex is currently owned by Mr. Lloyd Dorfman (42.5%) and by various 3i Group plc group companies (32.6%). The remaining shares are held by two further individuals (3.6%) and two trusts (21.2%). Following the transaction, Mr. Dorfman will hold [...] of Travelex's shares, 3i Group [...], the two individuals [...] and the two trusts [...].
6. Pursuant to the shareholders agreement subscribed by Apax and Travelex shareholders, Travelex will be jointly controlled by Apax and Mr. Dorfman given that [...]. Given that Mr. Dorfman is an individual who does not carry out any economic activities other than in Travelex he is not considered an undertaking concerned under the ECMR.

III. CONCENTRATION

7. The operation concerns the acquisition by Apax of control over Travelex. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². Each of Apax and Travelex has a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

9. The only link in activities between Apax portfolio companies and Travelex regards Global Refund, a leading VAT refund services provider. In addition to providing refund services to end customers via its own outlets, Global Refund uses agents at particular locations (e.g. airports). In some instances, Global Refund uses Travelex as VAT refund agent provider.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

A) Market definitions

VAT Refund Services

10. VAT refund services are defined by the parties as a retail financial service which allows individuals to reclaim VAT paid on foreign purchases. There are two main options to claim VAT: either at any point of exit from the country (“POE” option) or at a VAT refund outlet or one of its agents’ outlets in the city centre (“downtown” option). The POE option is most used and involves the individual getting the paper “cheque” issued by the retailer to be stamped by the customs at the POE. Then the cheque can be (i) traded for cash at a VAT refund outlet/agent situated at the POE; or (ii) posted to the VAT refund service provider which will pay the sum onto the customer’s credit card or send a bankers’ cheque (“mailback”). As regards the downtown option, the customer takes the cheque to an outlet where an imprint is taken of his credit card and subsequently, he obtains the refund in cash. If the customer does not get the cheque stamped at the POE and returns it to the VAT refund service provided, the credit card can be debited with the refund amount. In both cases the service provider retains a commission and claims the VAT back from the relevant retailer. In case the service provider has used an agent, the agent will get a fee (being part of the commission). The general rule is that retailers do not pay any fee to the VAT refund service provider for the services provided.³
11. Additionally, the parties submit that there are two alternative methods of reclaiming VAT which compete with the above-mentioned methods: (i) “self-reclaim” where the individual simply sends the official customs form stamped by the customs office directly to the relevant tax authority, or to the retailer where the purchase was made; or (ii) “in-house” through some large retailers which operate their own VAT refund operations. The Commission investigation has indicated that customers are not allowed in all EU countries to send the form directly to the tax authority. However, it has also showed that the in-house option is indeed an alternative although most of the retailers prefer to outsource this activity.
12. The parties state that VAT refund services are national in scope, in particular due to the different national VAT tax levels and regimes, the crystallisation/cancellation of VAT tax liability at the national frontier and national language requirements. The Commission investigation has supported this definition.
13. However, for the purposes of the current case it is not necessary to conclude on the definition of the market since irrespective of the market definition no competition concern arises (see further below).

VAT refund agency services

14. The provision of VAT refund agency services is an operation which consists in determining whether the cheque appears to be real or a forgery, checking that it has been filled out correctly, paying the refund to the customer and sending the cheque back to the VAT refund service provider which then transfers the relevant commission to the agent.

³ Exceptions may exist and could involve e.g. the payment of a small administration fee.

15. The parties have submitted that the provision of VAT refund agency services cannot be considered an “economic market” and therefore, it cannot be established a vertical link between Apax and Travelex services. The parties mainly argue that there is no functioning “market” for this service; the service is always ancillary to existing business; ad hoc arrangements are made depending on the location in question; there is no price competition and no evidence of switching or arbitrage between actual or potential agency service providers; and there is no element of marketing or seeking customers. The parties additionally submit that acting as a VAT refund agent is merely an administrative, back-office service which requires very little in terms of infrastructure of specialist knowledge. The only two main prerequisites are (i) tourists visiting the location and (ii) availability of cash. Therefore, the parties consider that Travelex not only competes with bureaux de change and banks, but also with e.g. department stores, duty free shops and other retailers.
16. The parties have submitted that, in case there is a market for VAT refund agency services, the scope of the market is limited to a specific location (e.g. city or airport).
17. The market test has however shown that VAT refund agency services can be considered a market. Potential agents are in competition with each other, especially for the provision of these services at airports where competitive tenders are organised every 3 to 5 years. The market test has further shown that potential agents (mainly bureaux de change) compete for concessions to provide foreign exchange services, including VAT refund agency services.
18. As regards the geographic market definition, replies to the market investigation mostly support the parties’ views given that the agency agreement is limited to a specific location.
19. In the present case, the exact product and geographic market definition can be left open since the proposed transaction will not raise any competition concerns.

B) Assessment

20. Global Refund provides VAT refund services and Travelex provides agency services (for Global Refund or other providers) in the following EEA countries: Belgium, Czech Republic, Finland, France, Germany, Italy, Luxembourg and United Kingdom. In most of these countries, Global Refund uses Travelex as well as other agents such as American Express, retailers (e.g. Galeries Lafayette, Kaufhof) duty free shops and/or other bureau de change. Travelex acts as an agent for Global Refund in all of these countries except in France where Travelex provides agency services only for other VAT refund service providers.
21. As regards the VAT refund services market, Global Refund is the leading service provider worldwide. Based on the parties’ estimates, Global Refund has very high market shares (ranging from [above 55%]) in the countries mentioned above except in France, where it has a market share between [30-50%]. As a consequence of its leading position, Global Refund is Travelex’s main client as regards agency services. The parties have provided information on the volume and value of Travelex sales of agency services derived from Global Refund and from other VAT refund service providers. In 2004, in the countries mentioned in para. 20, Global Refund represented [50-100%] of the value and [60-100%] of the volume of Travelex’s sales in the market for VAT refunds agency services (except in Belgium where Travelex started operating in 2005). The second client is Premier ([5-35%] of the value and [0-20%] of the volume).

22. Travelex provides agency services in a number of airports in the EEA. In most of these airports, it competes with other agent service providers.⁴ In those locations where Travelex provides agency services and Global Refund is active, the information submitted shows that exceptionally, Travelex is *de iure* or *de facto* the only agency service provider at London Gatwick and Heathrow Airports, Brussels Airport and Frankfurt Hahn Airport⁵. At Venice Airport, another company, Eurochange, has been authorised to provide foreign exchange (“FOREX”) services and VAT refund agency services as an ancillary activity to the main FOREX business but so far it has not started providing this service. At Luxembourg Airport, Travelex is withdrawing operations in 2005, therefore it will not be further analysed in this decision.
23. As regards airports, it should also be noted that through the EEA, VAT refund operators also use non-FOREX outlets such as duty free shops and banks as agents.
24. As regards city centres, Travelex is present in Rome, Florence, Venice, Brussels, Antwerp and Paris. It will shortly start operations at Munich and Cologne. At all of these locations there is a range of banks, bureau de changes and other companies providing agency services and therefore allow Global Refund’s competitors to switch from Travelex to other agents in case Travelex were to terminate the agency service contracts.

Risk of foreclosure

25. It has been argued by Global Refund’s competitors that the control that Apax will exert over Global Refund and Travelex post-transaction may lead to Apax ensuring that Global Refund’s competitors do not have access to Travelex agency services by e.g. terminating the agency service contracts. In principle, this issue only arises at airport locations given the wide range of VAT agency service providers at city centres.
26. At the airports, the VAT refund arrangements are based on concessions granted by airports allowing the companies to provide FOREX services which include provisions also permitting it to provide agency services. Therefore, VAT refund agency services are always ancillary to FOREX services⁶. These concessions are limited in time (3 to 5 years). As way of example, at Paris Airport the FOREX concession has been recently granted to American Express, being the incumbent Travelex; at Frankfurt Airport the FOREX concession has been granted to International Currency Exchange, being the incumbent Travelex.

⁴ At Prague Airport, Acron Airport PRG and Cash Point Airport act as Global Refund’s agents. At Helsinki Airport, duty free stores and department stores act also as Global Refund’s agents. Travelex is also present at Beauvais Airport, Toulouse Airport, Bologna Airport and Naples Airport. However, Travelex does not act for Global Refund at these airports. Additionally, Travelex is present at Frankfurt Airport but does not act for Global Refund and it is withdrawing its agency services imminently.

⁵ Travelex will be also *de facto* the only agent at Dortmund Airport once it starts operations. Travelex has signed an agreement with Global Refund to offer VAT refund services but has not been approached by any other VAT refund provider.

⁶ The only exception is at London Heathrow Airport where Travelex has a separate agreement permitting it to perform the agency services activity separately.

27. The market investigation and the parties' submissions have shown that the foreclosure concern is not an issue at London Gatwick and Heathrow Airports. At these locations Travelex is the only company authorised by the BAA airport authorities to provide refund agency services. However, the concession is highly regulated by the BAA airport authorities. Travelex is subject to specific contractual non-discrimination and non-exclusivity obligations. Therefore, Travelex is expressly obliged to treat all VAT refund operators equally and to have non-exclusive arrangements with any VAT refund operator. In particular, Travelex must (i) treat all VAT refund operators equally and be able to demonstrate impartiality when requested by Heathrow Airport Limited/Gatwick Airport Limited; (ii) provide clear audit trails for all transactions with all VAT refund operators and allow Heathrow Airport Limited/Gatwick Airport Limited and the respective VAT refund operators access to such audit records that relate to their business; and (iii) have no exclusive arrangement with any VAT refund operator. Additionally, Travelex is subject to strict price controls by the BAA airport authority.
28. The only two other airports where Travelex is currently *de facto* the only VAT refund agent and Global Refund is present, are Brussels and Frankfurt Hahn. However, data submitted by the parties shows that at these airports there is a low amount of transactions handled by Travelex in 2004 ([...] forms at Brussels, [...] forms at Frankfurt Hahn) which represented a turnover in commissions of \leq EUR [...]. In any event, Travelex is subject to controls in its contract with the airport authorities, covering non-discrimination in both cases.
29. As regards the issue of Global Refund discriminating agents in favour of Travelex, Travelex only represents [0-10%] of Global Refund's VAT refund service transactions. The rest of the transactions are dealt either directly via Global Refund's own outlets or via other agents. Furthermore, it is in Global Refund's interest not to discriminate any particular agency provider because it is likely that at the same time or in the future (e.g. in case this particular company is elected as the agency provider by an airport authority following a tender) wish to work with that agency provider at another location. Additionally, for commercial reasons, VAT refund operators always seek to have the widest possible network of outlets/agencies which facilitate the VAT reclaim.

Increase of agency fees

30. Global Refund's competitors have also pointed out the fact that post-transaction, Travelex could increase refund prices to such an extent that VAT refund service providers would be priced out of the market. Such an increase would not affect Apax given that the increase of agency fees would be an intra-group operation.
31. However, at most locations there is a wide range of potential agents that could act for Global Refund's competitors in case Travelex would decide to increase its agency fees. Further, at most airports (including those where Travelex is *de iure* or *de facto* the only agent) Travelex is constrained by price controls established by the airport authorities who act as supervisory bodies for the correct and smooth running of commercial operations.

Flow of confidential information

32. A final concern regarding the possibility that Travelex could pass on to Global Refund confidential information on competitors that Travelex may obtain when acting as an agent for these competitors. This information would include e.g. retailers' names, amount of commissions and volume of sales. However, confidentiality clauses are included in Travelex's agreements with VAT refund service providers which would prevent Travelex from leaking any business information that it has access to. Moreover, Travelex is in any event subject to Member States statutory and/or common law provisions governing breach of confidence. Additionally, Travelex returns all the cheques to the relevant VAT refund service provider and does not keep any copies or other record of these cheques.
33. A related issue concerns Travelex's arrangement with the UK HM Revenue & Customs ("HMRC") department for some locations at London Heathrow Airport under which Travelex acts on behalf of HMRC, examining and pre-certifying VAT refund service providers' forms⁷. However, under the provisions of the arrangement with HMRC, Travelex cannot and has not the right to record any information which may be revealed by its activities for HMRC.

Conclusion

34. On the basis of the above, it can be concluded that the present operation does not raise competition concerns. Figures show that Travelex main core activities are those related to FOREX and agency services represent a marginal activity⁸. Travelex total VAT refund agency turnover for 2004 in those EEA countries where it was present was below EUR [...] except in the UK where Travelex's turnover was EUR [...] million (but the UK can be considered as one of the main European gateways and where Travelex is the only authorised agent in the main London airports) and Italy, where in any event, the turnover was below EUR [...].
35. Further, if Travelex were to terminate its agency service agreement with Global Refund's competitors, these companies have still the following alternatives, depending on the specific location: (i) the use of mailback⁹ without the intermediation of an agent (e.g. in the UK a Global Refund's competitor does not use agents and handles the refund via mailback); (ii) opening own outlet at the airports; or (iii) use other non-FOREX companies as agents (e.g. duty free shops or department stores) as Global Refund and competitors do at a number of airports. Last, it is worth noting that Travelex will not be solely controlled by Apax. Mr. Dorfman will jointly control Travelex and he is expected to run Travelex as to maximize profits instead of granting

⁷ Following this arrangement, a Travelex employee at HMRC desk inspects the form to ensure that the VAT can be legitimately to the customer. Travelex then applies its own stamp to the various parts of the cheque, giving back one to the customer who can now get the VAT refund. The remaining two parts stay at HMRC desk and overnight HMRC applies its own official stamp before returning both to Travelex. Travelex then forwards the remaining two parts of the voucher to the VAT refund service provider.

⁸ Agency services accounted for less than [less than 5%] of Travelex overall turnover in 2003.

⁹ The mailback option involves the customers getting the form stamped by customs and the mailing it back to the VAT refund service provider or retailer who subsequently pays the amount of VAT onto the customers' credit card or sends a bank's cheque.

competitive advantages to Global Refund that could put at risk Travelex core FOREX operations.

VI. CONCLUSION

36. 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