

*Case No COMP/M.2567 - NORDBANKEN / POSTGIROT*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERCER PROCEDURE**

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Article 6(1)b in conjunction with Art. 6(2)

Date: 13/10/2014



## EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 13.10.2014  
C(2014) 7535 final

PUBLIC VERSION

MERGER PROCEDURE

### **To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.2567 - NORDBANKEN/ POSTGIROT  
Commission decision pursuant to Article 6(1)(b) and Article 6(2) of  
Council Regulation No 139/2004<sup>1</sup> and Article 6(2) of Council Regulation  
(EEC) No 4064/89<sup>2</sup>**

- (1). By decision of 12 November 2001<sup>3</sup> adopted in application of Article 6(2) of Council Regulation (EEC) No 4064/89<sup>4</sup> (the "Clearance Decision"), the Commission declared the operation by which Nordbanken AB ("Nordbanken") acquired control of Postgirot Bank AB ("Postgirot") (the "Transaction") compatible with the common market and with the EEA Agreement, subject to full compliance with the commitments submitted by the notifying party and annexed to the Clearance Decision.

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<sup>1</sup> 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.

<sup>2</sup> OJ L395, 30.12.1989, p.1, as rectified, OJ 1990 L 257, p. 13.

<sup>3</sup> OJ C347, 08.12.2001, p. 5.

<sup>4</sup> OJ L395, 30.12.1989, p.1, as rectified, OJ 1990 L 257, p. 13.

## **1. THE PARTIES**

- (2). Nordbanken was a Swedish bank mainly active on retail and corporate banking, as well as on life insurance in Sweden. In December 2001, Nordbanken became part of Nordea Group, which was formed through successive mergers of banks based in various countries in the EEA, including in the Nordic, Baltic countries and Poland. Currently all operations have been conducted under the brand name "Nordea".
- (3). Postgirot was a wholly owned subsidiary of the State-owned company Posten AB, the Swedish post office. Postgirot operates a system which has been used to provide giro payment services in Sweden. Giro payment is a particular kind of credit transfer, which uses, instead of the payee's account number, a special bank or Postgirot number to identify the payee. Until 1994, Postgirot held a monopoly on State giro payments. Following the Transaction, Postgirot was integrated into Nordbanken, linking Postgirot numbers to Nordbanken accounts. Since 2005 Nordbanken provides giro payment services under the trademark "PlusGiro" to retail customers and corporate clients.
- (4). Bankgirocentralen BGC AB ("Bankgirot"), a wholly owned subsidiary of BGC Holding AB, is a central player for mediating retail payments between banks in Sweden. Through its payment system, Bankgirot offers Direct Debit services (Autogiro), Bankgirot receivables (Bankgirot Inbetalningar) and supplier payments (Leverantörsbetalningar). The Bankgirot system is a multilateral platform used by all banks which offer giro payment services to their retail clients in Sweden. In 2001, 97% of the shares of Bankgirot were owned by the four largest banks operating in Sweden. Nordbanken was one of the main shareholders with a stake of 27% and the right to appoint a member at the Board of Directors.
- (5). Privatgirot AB ("Privatgirot") provides payment and document processing services over the Internet for banks, private, and corporate customers. It processes giro services for seven Swedish banks. At the time of the Clearance Decision, Nordbanken had a stake of 22% in Privatgirot, together with Board representation.

## **2. THE CLEARANCE DECISION**

- (6). The Clearance Decision stated that the Transaction, as it had initially been notified to the Commission, would have impeded effective competition in Sweden regarding i) the market for distant payment system services; and, ii) the market for technical services related to payment systems.
- (7). At the time of the Transaction Postgirot was the largest provider of domestic distance payment services to both households and corporate customers. Moreover, there were structural links between Nordbanken and Bankgirot which was Postgirot's main competitor. More specifically, Nordbanken had a stake of 27% in Bankgirot and the right to appoint a member of the Board of Directors with access to confidential information related to Bankgirot's activities. The Commission concluded that by combining Postgirot customers' base with Nordbanken's existing service portfolio and with Nordbanken's shareholding in Bankgirot, the transaction was likely to result in the creation of a joint dominant position by Postgirot and Bankgirot on the market for the provision of distant payment system services in Sweden.

- (8). The Commission also found that the Transaction, as initially notified, would have led to the creation of a joint dominant position on the market for the provision of technical services related to payment systems. The Commission based its concern on the fact that Postgirot had a strong presence on this market whilst Nordbanken had a strong influence on Privatgirot (the main competitor to Postgirot on this market) through its shareholding of 22% in Privatgirot and representation on the Board and other governing bodies.

### **3. THE COMMITMENTS**

- (9). Nordbanken submitted commitments on 16 October 2001 which were made binding in the Clearance Decision (the "Commitments").
- (10). Regarding the market for distant payment services, Nordbanken offered (i) to reduce its shareholding in Bankgirot from 27% to 10%, (ii) to cease the exercise of any rights deriving from its participation in the shareholding structure of Bankgirot (iii) to stop having a representative in the Board of Directors of Bankgirot, (iv) to invite Nordbanken's and Postgirot's representatives in the Bankgirot working groups to resign, (v) to adopt measures preventing access by Nordbanken to Bankgirot's commercial information.
- (11). Regarding the market for technical services related to payment systems, Nordbanken offered to renounce to all voting rights attached to its shares in the capital of Privatgirot, and ultimately to withdraw as a party in its shareholding structure.
- (12). The Commitments were of unlimited duration and their implementation took place during the period 2002 – 2004. In particular, Nordbanken implemented the reduction to 10% of its shareholding in Bankgirot in 2004 by selling part of its shareholding to FöreningsSparbanken AB (currently Swedbank). A Monitoring Trustee was appointed to assist the Commission in the monitoring of the implementation of the commitments.

### **4. PROCEDURE**

- (13). On 21 March 2012, Nordbanken submitted to the Commission a request to waive the Commitments (the "Waiver Request"). Nordbanken's Waiver Request invokes recital 2.4 of the Commitments (the "Review clause"), which provides that Nordbanken has the right *"to seek to obtain from the Commission, upon request and showing good cause, a waiver from the obligation to comply with one or more of the commitments set out above."*
- (14). In order to verify whether the above conditions are met the Commission addressed several requests for information to Nordbanken. In its initial submission as well as in the subsequent submissions addressing the Commission's information requests, Nordbanken alleges that the factual circumstances that had justified the Commitments at the time the Clearance Decision was adopted have changed considerably on a permanent basis, thereby rendering unnecessary the Commitments currently in force.
- (15). The Monitoring Trustee submitted a report on Nordbanken's Waiver Request on 2 November 2012. The Commission conducted a market investigation during the second half of 2013 and the beginning of 2014. The Commission interviewed public

authorities and other third parties concerned, among which the Swedish Competition Authority, the Swedish Central Bank and the Swedish Bankers Association.

## **5. THE COMMISSION'S ASSESSMENT**

- (16). Just like Council Regulation (EC) No 139/2004<sup>5</sup>, Council Regulation (EEC) No 4064/89 gave the Commission power to adopt decisions relating to concentrations with a Community dimension, and, in particular, decisions declaring concentrations compatible with the common market. In accordance with the general principle of law that, generally, a body which has the power to adopt a particular legal measure also has the power to abrogate or amend it by adopting an *actus contrarius*, unless such power is expressly conferred upon another body, the Commission has, in principle, the power to waive the Commitments.<sup>6</sup>
- (17). As regards the conditions under which such a waiver may be granted, recital 2.4 of the Commitments provides that Nordbanken has the right "*to seek to obtain from the Commission, upon request and showing good cause, a waiver from the obligation to comply with one or more of the commitments ...*".
- (18). For the reasons set out in sections 5.1 and 5.2 below, the Commission considers that Nordbanken has shown good cause by demonstrating exceptional circumstances – that is, significant and permanent changes in market circumstances<sup>7</sup> - which justify a waiver of the Commitments in this case.
- (19). More specifically, the circumstances in both the markets for distant payment system services and for technical services related to payment systems have changed significantly on a permanent basis since the adoption of the Clearance Decision.
- (20). Moreover, third parties have been consulted and do not oppose the waiver of the Commitments. The market investigation militates in favour of the view that waiving the Commitments would not affect their effectiveness as they have fulfilled their role and they are no longer necessary. Finally, waiving the Commitments will not affect third parties' rights.

### **5.1. Commitment concerning Nordbanken's position in Bankgirot**

#### *5.1.1. Nordbanken's submission*

##### *Market evolution since the adoption of the Clearance Decision*

- (21). Nordbanken submits that since the integration of Postgirot's services into their own structure, the payment platform has become an intra-group payment-processing platform, which cannot be considered to be a general payment system in Sweden. Concretely, payments processed via this system are made from a payer to a payee both in possession of PlusGiro accounts (i.e. Nordbanken's giro accounts).

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<sup>5</sup> OJ L 24, 29.1.2004, p.1.

<sup>6</sup> Case T-251/00 *Lagardère SCA and Canal+ SA v Commission* EU:T:2004:353, paragraph 130.

<sup>7</sup> See also in this regard paragraph 73 and 74 of the Commission's Remedies Notice OJ C 267, 22.10.2008, p.1.

- (22). At the time of the Transaction, the Commission considered that the Postgirot and the Bankgirot payment systems were competing with each other as general distant payment systems due to the fact that both were generally accessible to all banks meeting the established access conditions.
- (23). Nowadays, Nordbanken does not offer any longer third party access to the PlusGiro (formerly Postgirot) platform. That platform is only used for payments made by Nordbanken customers to payees having as well a Nordbanken account. Whereas in the past other banks' users were able to route their payments using a Postgirot number thanks to bilateral agreements between Nordbanken and other banks, currently Nordbanken only maintains a single bilateral agreement of limited scope<sup>8</sup> and does not enter into any new bilateral agreements with other banks regarding access to its payment system. Currently, when payments of Nordbanken customers are addressed to non-Nordbanken customers they need to be routed through the Bankgirot platform which has become the universal platform where all banks in Sweden may process their giro payment orders. Therefore, the choice between the systems is only available to Nordbanken for a limited number of transactions.
- (24). Postgirot's factual evolution from a general payment system to an internal payment system has been reflected in Swedish legislation enacted in 2010, which does not consider PlusGiro (formerly Postgirot) as a general payment system any longer, contrary to Bankgirot, which is indeed mentioned as such.
- (25). Nordbanken further submits that, at the time of the Commission decision, the vast majority (more than [60-70]%) of the customers in Sweden used the giro system through a Postgirot account. Currently, only Nordbanken customers (that is, [30-40]% of the Swedish customers) can have and do have a PlusGiro (formerly, Postgirot) account allowing the use of the PlusGiro (formerly Postgirot) payment system. Nordbanken illustrates this affirmation with the data provided in the figures below, which shows a clear decreasing trend in the number of PlusGiro (figure 1) accounts as opposed to Bankgirot's accounts (figure 2).

[...]

Figure 1: Number of Postgirot/PlusGiro accounts (2002-2013) (Source: Nordbanken's submission)

[...]

Figure 2: Number of Bankgirot (2002-2013) (Source: Nordbanken's submission)

- (26). Market share data submitted by Nordbanken concerning incoming transactions in 2013 also reflect the above trends. Accordingly, PlusGiro (formerly Postgirot) has a [20-30]% share of incoming payments in terms of volume and [10-20]% in terms of value in 2013, whereas Bankgirot has the remaining share.
- (27). Nordbanken also emphasised the fact that competition in the market for payment services in Sweden has moved from competition between payments systems to competition between banks at the end-consumer level. Since the Transaction, PlusGiro (formerly Postgirot) has been transformed into Nordbanken's internal bank

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<sup>8</sup> The bilateral agreement between Nordbanken and [...] allows ca. [...] customers to route approx. [...] billion of Swedish crowns in payments yearly.

payment system that is used to provide giro payment services to Nordbanken's end customers and Bankgirot has become the general payment system in Sweden. Customers do not choose between the two payment systems, but between banks which offer the possibility of distance payments as an overall commercial package. There is no specific price pressure exercised by PlusGiro over Bankgirot. It must be noted that all banks participating in the Bankgirot system, including Nordbanken, pay the same fees for the service (subject to adjustments based on the volume of transactions).

- (28). Nordbanken submits that the competitive landscape has also changed significantly since the Clearance Decision. Payments via debit cards and credit cards have increased rapidly and new systems for paying with mobile have been released. All these developments have increased the competition in the market for distance payments services in Sweden and decreased the importance of both Bankgirot and PlusGiro.

#### *Regulatory changes*

- (29). Nordbanken emphasised that fundamental regulatory changes at European level have also had an effect on the payment industry in Sweden. The implementation of the Payment Service Directive in 2009 and 2010, which has provided the necessary legal platform for the Single Euro Payments Area (SEPA) pushes the Swedish banking sector, as in the whole EU, to a move from a country-based payment infrastructure with proprietary country solutions and regulations, towards a common EU infrastructure based on common ISO 20022 payment standards and common regulation.

#### *Future development of the Swedish payment system*

- (30). Bankgirot has recently initiated a long-term project, in collaboration with other banks, to develop a new payment infrastructure for the Nordic area in order to adapt for the introduction of SEPA standards. In this context, preventing Nordbanken from fully participating in Bankgirot's working groups and decision making bodies as a result of the commitments in force could hamper the development of the distance payment sector in Sweden, since Nordbanken's market position and technical capabilities need to be taken into account when developing a new infrastructure to successfully adapt to the new regulatory and competitive situation. In this regard, Nordbanken as well as the other Swedish banks will need to contribute to and adapt their own functionalities according to the future payment infrastructure in Sweden and in the EEA. Therefore, Nordbanken would need to participate on equal footing as the other banks in the working and management groups chaired by Bankgirot.

#### *5.1.2. Assessment*

- (31). First, the market investigation supports the Commission's view that the PlusGiro (formerly Postgirot) and the Bankgirot platforms are not any longer competing as general payment systems. Indeed, as Nordbanken claims, PlusGiro is currently an in-house payment system available only for payments of Nordbanken's customers addressed to other Nordbanken customers. Bankgirot is the only general giro payment system in Sweden. This is reflected since 2010 in the Swedish legislation.
- (32). Second, currently, competition does not any longer take place at payment system level but at bank customer level. Bankgirot is the only platform available to all banks

and the possibility of carrying out distance payments is integrated into the banks' commercial offer to end customers. Therefore, it could not be considered that the pricing power of Bankgirot is limited by the PlusGiro system, since end customers (except for a very limited proportion made of Nordbanken's customers as regards payments to Nordbanken accounts) could not switch from one system to the other in response to a price increase by choosing a PlusGiro transfer form instead of a Bankgirot transfer form.

- (33). Third, in the Clearance Decision the Commission noted that Postgirot's high market shares resulted from the fact that prior to 1994 it had a monopoly on all payments from and to government institutions. Most government institutions and companies in Sweden had Postgirot accounts through which they received payments for bills. Through its proprietary payment system, Postgirot was thus the only bank in Sweden that achieved high market shares in distance payments without matching market positions in other banking markets. This was due to the fact that, most of Postgirot's payments customers had their primary banking relationship with another bank.
- (34). At the time of the Clearance Decision, competitors had argued that the notified operation would provide Nordbanken with access to a large corporate customer base of Postgirot account holders that used Postgirot for their incoming payments but had their primary customer relationship with another bank because Postgirot offered only limited services.
- (35). In contrast, the market shares provided by Nordbanken for the period 2012-2013 illustrate that an important number of PlusGiro (formerly Postgirot) corporate customers switched to the Bankgirot platform (see Figure 1). Therefore, Nordbanken does not seem to have any specific advantage to attract customers by the fact that it operates the PlusGiro system.
- (36). These developments have been confirmed by the Swedish Competition Authority and the Swedish Central Bank during the market investigation.
- (37). The Monitoring Trustee's report also refers to the above described permanent changes to the market and finds no reasons to oppose Nordbanken's claims. In addition, the Monitoring Trustee highlights that the market for payment services has moved from traditional giro payments to more modern payment methods (including internet and phone payment services) exerting significant competitive price pressure on Bankgirot, whereas the competitive pressure from the PlusGiro/Postgirot system has considerably decreased.
- (38). Finally, Nordbanken's claim that preventing it from fully participating in Bankgirot's shareholding could hamper innovation in the distant payment market in Sweden was also supported by the market investigation. Indeed, Bankgirot emphasised in the context of the market investigation that the inability of Nordbanken to participate in the project aiming to prepare the Swedish banks for the changing requirements in the payment business due to the introduction of the Single Euro Payment Area ("SEPA") in the euro countries would be an obstacle to deliver and develop the future Swedish payment system in the most secure and efficient manner.
- (39). Therefore, on the basis of the above and the evidence available to it, the Commission considers that market conditions have changed significantly and on a permanent basis since the adoption of the Clearance Decision in 2001. In addition, the time-span between the Clearance Decision and Nordbanken's Waiver Request is significant and



neither the Monitoring Trustee nor the market investigation has pointed to any potential risk a waiver of the Commitments might lead to as regards third parties' acquired rights. It follows that the Commitments concerning Nordbanken's position in Bankgirot are no longer necessary.

## **5.2. Commitment regarding Nordbanken's position in Privatgirot**

### *5.2.1. Nordbanken's submission*

(40). Nordbanken submits that currently it no longer offers technical services related to payment systems to other banks. Therefore, Nordbanken cannot any longer be considered a competitor of Privatgirot on this market. Moreover, Privatgirot is no longer owned by competitors of Nordbanken. As a consequence of these two changes, Nordbanken considers the Commitments concerning the market for provision of technical services to banks as no longer necessary.

### *5.2.2. Assessment*

(41). Based on the evidence currently available to it, the Commission considers that the Commitments regarding the market for technical services related to payment systems are no longer justified.

(42). In particular, the Monitoring Trustee's report supports Nordbanken's arguments. Moreover, the market investigation has not revealed any issue as regards a possible waiver of Nordbanken's commitments towards Privatgirot.

## **6. CONCLUSION**

(43). For the above reasons, the Commission has decided to waive the Commitments made binding by the Commission in the Clearance Decision of November 2001. This decision is adopted in application of Article 6(1)(b) in conjunction with 6(2) of Council Regulation (EC) 139/2004 and Article 6(2) of Council Regulation (EEC) No 4064/1989 as well as recital 2.4 of the Commitments.

*For the Commission*

*(signed)*

*Joaquín ALMUNIA*

*Vice-President*