

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

Only the English text is available and authentic.

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

Article 6(2) NON-OPPOSITION
Date: 08/11/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.11.2001
SG (2001) D/292080

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6.2 DECISION

To notifying party

Dear Madam/Sir,

Subject: Case No COMP/M.2567 - Nordbanken/Postgirot

Notification of 24/9/2001 pursuant to Article 4 of Council Regulation No 4064/89

I. THE PARTIES AND THE OPERATION

1. On 24 September 2001, the Commission received a notification of a proposed concentration whereby the Swedish undertaking Nordbanken AB ("Nordbanken") acquires control of the whole of the Swedish undertaking Postgirot Bank AB ("Postgirot") by way of purchase of shares.
2. **Nordbanken** is a Swedish bank, active on the Swedish retail and corporate banking market and the Swedish market for life insurance. It is part of the Nordea Group, which was formed through successive cross-border mergers of banks based in various countries including the Nordic countries (N, S, SF, DK), the Baltic region and Poland.
3. **Postgirot** is a wholly owned subsidiary of state-owned Posten AB, the Swedish Post Office. It owns and operates an in-house payment system, which it uses to supply distance payment services to retail and corporate customers. Until 1994, Postgirot held a monopoly on state payments. Postgirot also provides giro-related technical services to other banks. Having been awarded a banking licence in 1994, Postgirot provides certain banking services to household and corporate customers, including deposits, lending, international payments, trade finance and card services.

II. CONCENTRATION

4. The transaction whereby Nordbanken intends to acquire sole control of the whole of Postgirot, is a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

5. The combined aggregate worldwide turnover of the undertakings concerned exceeds € 5,000 million (Nordbanken € 16,296 million, Postgirot € 623 million). The aggregate Community wide turnover of each party exceeds € 250 million (Nordbanken € 15,569 million, Postgirot € 623 million). Postgirot achieves all of its Community-wide turnover in Sweden, but Nordbanken does not achieve more than two-thirds of its turnover in one and the same Member State. The operation has therefore a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant Product Markets

6. The notifying party, Nordbanken, identifies the following affected product markets, distinguishing between household (“retail”) and corporate customers.
 - Deposits
 - Lending (corporates only)
 - Card issuing
 - Card acquiring (corporates only)
 - Documentary credits
 - International payments
 - Domestic distance payments (offered to household and corporate end customers)
 - Technical services (offered to banks for the provision of payment order processing)
7. The parties make no distinction between the various vertical stages involved in the provision of domestic distance payment services to end customers, although an upstream market for the provision of payment systems services to banks exists and the operation leads to significant overlap in this area.
8. The Commission’s market investigation has come to the following conclusions:

Deposits

9. The parties make no distinction between different types of deposits, such as transaction accounts (short term), savings accounts (primarily used by households, medium and long term) and time deposits. The market investigation has confirmed that there is a high degree of supply-side substitutability and possibly some demand-side substitutability between the various types of deposits. In addition, the distinction between the segments is blurred because some competitors, particularly niche banks, offer “all in one” accounts that combine characteristics of transaction accounts, savings accounts and time deposits.

10. With regard to a distinction according to customer segments most respondents to the market investigation recognised the need to distinguish between household, SME and large corporate customers. There are differences on the demand side since corporate deposits (such as for example corporate transaction accounts) are used for different purposes than household deposits. Corporate clients do usually not save money on bank accounts but use transaction accounts for various purposes such as payments, short-term deposits and financing. Furthermore, corporate transaction accounts in general have a higher interest rate than those for households but it is lower than that on household savings accounts. Finally, in contrast to household deposits, corporate deposits are normally linked to additional services tailored to the need of the company concerned. SME customers' requirements with regard to deposits differ not only from those of households but also from those of large corporates in that the latter normally have more customised accounts while SME deposits are more standardised. Large corporates often keep substantial amounts of money in their current accounts, which are linked to various services such as for example group treasury handling, netting and forecasting. Large corporates finally have at their disposal a larger number of investment (savings) products and therefore also a larger choice of substitute suppliers to their main bank since they often operate on a European or global money market and their customer relationship is not normally linked to a branch office.
11. Finally, it has to be noted that there is a more limited number of suppliers for SME accounts than for household deposits. Most second tier players, such as Skandia and Länsförsäkringar, are barely present in deposits for corporates and niche players like IKANO have no corporate customers at all.
12. However, it is not necessary, for the purposes of this decision, to determine whether a distinction between, on the one hand, different types of deposits and, on the other hand, SMEs and large corporate customers has to be made because the notified operation does not lead to serious doubts under any of these product market definitions.

Lending

13. Nordbanken includes in its product market definition all loans excluding mortgage loans, leasing, factoring and similar asset-backed lending facilities. Loans to household and corporate customers are considered separately, but no further distinction is made between SMEs and larger corporate customers.
14. As far as the distinction between different types of lending products is concerned, Nordbanken's market definition is in line with the Commission's market investigation in this case and with the preliminary findings in M.2380 SEB/ Föreningsparbanken. However, the market investigation in both cases found that deposits held by households, SMEs and large corporate customers, respectively, constitute separate relevant product markets. For the purposes of this decision the exact market definition can be left open because no competition concerns arise in this market under any of these product market definitions.

Card Issuing

15. The parties submit that the issuing of payment cards to household customers on the one hand and to corporate customers on the other hand belongs to separate relevant product markets. Although the parties appear to exclude selective cards (e.g. store cards, cards issued by petrol stations etc.), they consider that no further distinction should be made between different card types, such as debit cards, online cards, credit cards, international cards versus national cards etc. Also, no distinction is made between SMEs and larger corporate customers.
16. By contrast, the market investigation in this case and the preliminary investigation in M.2380 SEB/ Föreningssparbanken concluded that, in addition to the distinction between selective and general cards, international payment cards and national cards belong to separate relevant product markets. In addition, the market investigation in both cases found that cards issued to households, SMEs and large corporate customers, respectively, constitute separate relevant product markets. For the purposes of this decision, the exact market definition can be left open because the notified operation does not lead to serious doubts whichever possible product market definition is chosen.

Card Acquiring

17. The parties submit the relevant product market comprises the acquisition of all types of payment cards to merchants without distinction between different card types. Also, no distinction is made between SMEs and larger corporate customers.
18. The market investigation in this case and the preliminary investigation in M.2380 SEB/ Föreningssparbanken indicated that at least the acquiring of payments made with cards carrying the Visa and EuroCard/MasterCard brands may constitute a separate relevant product market. However, for the purpose of this decision, the exact market definition can be left open because the notified operation does not lead to serious doubts whichever possible product market definition is chosen.

Documentary Credits

19. The parties consider that there exists one single relevant product market for documentary credits, comprising letters of credit, collection and guarantees supplied to corporate customers.
20. Whether letters of credit, collection and guarantees should be considered as one single or separate product markets and whether a distinction should be made between SMEs and larger corporate customers can be left open because the notified operation does not lead to serious doubts whichever possible product market definition is chosen.

International Payments

21. The parties make no distinction between international payment services supplied to SMEs and larger corporate customers. Whether or not such a distinction is necessary can be left open because the notified operation does not lead to serious doubts under either market definition.

Domestic Distance Payments

22. The Commission has in the Nederlandse Vereniging van Banken¹ decision defined “distance payments” as payment services “designed for situations in which the [payer] and [payee] are not in direct contact with each other”. In this case the Commission only analysed the provision of giro services, however it was indicated that in addition to giro services a number of other types of payment services could be considered as distance payments (such as over-the-counter services, direct debits etc.).
23. Nordbanken argues that no distinction should be made between different types of distance payment services offered to end customers. First, the different services (whilst different in nature) are used for the same purpose, i.e. to effect distance payments. Second, the services may be offered together, e.g. Nordbanken’s Solo service includes access to both Internet and telephone banking. Third, in Nordbanken’s view, the different payment methods are used interchangeably by the end users, depending on the circumstances. The user employs the distance payment service most appropriate under the circumstances. This is also shown by the fact that different methods are and can be used for the same type of payments. Finally, Nordbanken argues that different types of distance payment services compete with each other. Given significant differences in the supply and demand of services to households and corporate domestic distance payments, Nordbanken argues that the market should, however, be further segmented into a market for corporate and a market for household domestic distance payments.
24. As far as the downstream provision of domestic distance payment services to end customers is concerned, Nordbanken’s view on the relevant market for distance payments is in line with the preliminary findings of the investigation in the FSB/SEB case and with the market investigation in the present case. The possible distinction between SMEs and large corporate customers can be left open as it does not materially affect the assessment of this market. In addition, the market investigation has found that a separate relevant product market exists upstream. This market comprises the services provided by payment systems.

Upstream Market: Services Provided by Payment Systems

25. Domestic distance payments in Sweden can be sent via four basic routes/systems; Postgirot, Bankgirot, Dataclearingen and via a bank’s internal system.
26. Postgirot is the only bank in Sweden that has its own internal giro system mainly because state authorities were under an obligation until 1994 to use Postgirot for their in- and outgoing payments. On the basis of its system, Postgirot enables its household and corporate customers to make direct transfers and payments between Postgirot accounts using so-called Postgiro numbers as an identifier. Since February 2001 Postgirot is also a member of Bankgirot. As a result Postgirot account holders may attribute a Bankgiro number to their Postgirot account and payments may be made directly from a Postgirot account to a Bankgiro number. Postgirot does not offer direct access to its systems to other banks. However, via bilateral arrangements, customers of [...] can send to Postgirot payment orders to accounts in Postgirot. Similar arrangements are also made with Privatgirot. In addition, Postgirot has bilateral agreements with a number of smaller Swedish banks whereby those banks may offer

¹ OJ [1999] L 271/28, para. 32.

their customers the possibility of using a Postgirot account for their payments. Given the set-up of Postgirot, Nordbanken argues that Postgirot is not active as a provider of “access services”.

27. Bankgirot is the only “multilateral” domestic payment system that is set up to offer banks the possibility to route payment orders between different banks. Bankgirot provides an interface for all member banks to transfer payments between their respective customer accounts. The banks act as resellers of the services provided by Bankgirot to their end-customers. These services are normally branded under a specific name (e.g. Nordbanken Solo) for household customers, whereas banks use the Bankgirot brand for services to corporate customers. Like Postgirot, a giro number (not an account number) is given to the customer, and this is used to identify the destination account. The giro number is specific to the undertaking in question and the bank account number is not transparent to the payer. The Bankgirot number instead acts as a pointer to an account in a bank connected to Bankgirot. Bankgirot is owned by eight Swedish banks, of which the four largest banks FSB, Nordbanken, Svenska Handelsbanken and SEB own [...] (Nordbanken 27%). In contrast to Postgirot, the system is run on a non-profit basis.
28. Dataclearingen is a system administered by the Swedish bankers association. The system is used for certain types of transactions and mainly “direct account transfers”, where payments are effected directly by a bilateral transaction between banks without passing via Bankgirot.
29. Nordbanken acknowledge that payment systems could be considered as upstream to the distance payment market. However, the parties argue that all four potential routes for domestic payments, including a bank’s internal system, belong to one single product market because they are all used to transfer payments between a payer and a payee. Nordbanken argues further that the proposed transaction does not give rise to any vertically affected market because Postgirot does, in Nordbanken’s view, not offer direct access to its system.
30. The Commission’s market investigation does not support this broad product market definition. Firstly, internal account transfers can only be used in those instances where payer and payee happen to have accounts in one and the same bank. Hence, even for the largest Swedish banks, internal account transfers are no substitute for Postgirot, Bankgirot and Dataclearingen for the majority of payment operations. Secondly, the majority of both customers and competitors covered by the market investigation have stated that the scope of payment information that can be transmitted via Dataclearingen is more limited than in Postgirot and Bankgirot. In particular, only limited information can be attached to the transferred amount, which makes the services unsuitable, inter alia, for the payment of bills. In addition, the payer needs to know the beneficiary’s bank name and account number, whereas in Postgirot and Bankgirot, the payee is identified through an anonymous giro number. Hence, it appears that Dataclearingen does not constitute a direct substitute to the two giro services. A bank that had only access to Dataclearingen would be clearly hampered in its ability to compete with providers of giro services, which in turn would enable a hypothetical monopolist to impose a small but significant non-transitory increase in prices (SSNIP) on these services.
31. By contrast, most third parties consider that Postgirot and Bankgirot offer materially the same service to the end customer. The nature and scope of information that can be

transmitted by the two systems is very similar. Although Postgirot is technically an internal account transfer service (whereas Bankgirot acts as an interface between its member banks' internal accounts), the fact that more than 90% of Swedish corporates have an account in Postgirot enables it to provide essentially the same services as Bankgirot for the majority of transactions in Sweden.

32. The Swedish Competition Authority in a previous case come to the same conclusion, i.e. that Postgirot and Bankgirot are substitutable systems as regards domestic distance payments in Sweden and that other systems, such as Dataclearing, do not constitute direct substitutes. The Authority also indicated that there could be a separate upstream inter-bank market to domestic distance payments.
33. Bankgirot is an open access system for all banks in Sweden that fulfil certain basic requirements. It does not provide services directly to the end customer. By contrast, Postgirot is vertically integrated, both operating a payment system and supplying payment services to the end consumer. It negotiates third-party access to its services at the interbank level on a bilateral basis. However, despite the different levels of vertical integration and organisation structure, the pricing power of each of the two systems is limited by the other because most end customers can switch from one system to the other in response to a price increase by choosing a Postgirot transfer form instead of a Bankgirot form when making a payment, and vice versa.
34. Hence, the supply of giro payment systems services, such as those provided by Postgirot and Bankgirot, constitutes a relevant product market. Whether Dataclearing represents a product market of its own or forms part of another wider product market does not need to be investigated at this stage because the transaction does not materially affect the functioning of this putative market.²

Upstream Technical Services

35. Nordbanken defines as technical services payment-related back office services provided to banks incorporating steps in the payment chain which involve processing of payments excluding the actual payment handling. The provision of such services could in Nordbanken's view be considered as vertically related to the provision of domestic distance payments.
36. Postgirot provides technical back office services directly to its own end customers and also as a supplier to [...]. Postgirot is thus directly active on this market. Nordbanken is not directly active in the provision of such services but it has a [...] shareholding in Privatgirot AB ("Privatgirot"). Privatgirot is owned by seven Swedish banks of which the four largest banks own [...]. Privatgirot is specialised in the provision of technical services to banks. Given that Nordbanken is not directly active on this hypothetical market, Nordbanken treats this market as a vertically affected market.

² Dataclearing is operated by the Swedish Bankers Association and the disappearance of Postgirot as an independent member will not materially affect its control structure.

B. Relevant Geographic Market

37. Nordbanken argues that the relevant geographic market for all affected markets is national (i.e. Sweden) with the possible exception of services to large corporate customers. This is in line with previous Commission decisions and with the preliminary findings in the FSB/SEB case. Whether the relevant geographic market for the supply of the above banking services to large corporate customers is national or wider than national can be left open, because even under a narrow (national) market definition, the operation does not lead to serious doubts in this market.

C. Assessment

Services Provided to End Customers (ex Domestic Distance Payments)

38. As far as services to end customers in the household and SME markets are concerned, the various product markets defined in Section A. above are linked extensively due to the fact that they are all distributed through the same branch offices, telephone and Internet banking facilities. Banks have significant sunk investment tied to their respective branch networks creating (medium-term) fixed costs through rents, capital costs and salaries as well as exit costs in case of a branch closure. These networks represent a major cost element, which gives incentives to (cross-)sell as many different products as possible through the branches. The same applies to internet facilities and call centres to the extent that they generate fixed costs. By contrast, barriers-to-entry at the product generation level are comparatively low for services such as deposits, loans and credit card issuing. As a result, market power for these services at the national level arises mainly at the distribution level (access to a customer base) rather than the product generation level. The assessment, therefore, has to take account of competitors' market position within each individual product market as well as their position across the product range.³

39. By contrast, large corporate customers are primarily served via the banks' central or regional offices. These customers' choice of potential suppliers tends to be significantly larger than in the household and SME segment because international banks with a Swedish country office or country desk compete for large corporate customers (with the exception of services that rely on national technical infrastructures, such as the payment services assessed further below).

40. In the affected end consumer markets, the following market shares arise (parties' figures). Except for the domestic payments market, the operation does not significantly alter the prevailing structure of these markets. I.e. the number and relative size of the major players is not changed significantly and the acquisition of Postgirot would not seem to remove a particularly aggressive fringe player. Before and after the operation, the four leading banks, Nordbanken/ Postgirot, Svenska Handelsbanken (SHB), FöreningsSparbanken (FSB) and Svenska Enskilda Banken (SEB), account for 80 to 90% of most banking markets in Sweden, with fringe players such as Danske Bank,

³ Accordingly, the main banks in Sweden appear to take an integrated, cross-product approach in marketing retail banking products, and their management accounting assesses profitability primarily on a per-customer rather than per-product basis.

Skandiabanken, Länsförsäkringar and Ikea's Ikanobanken holding the remaining market shares. The transaction's impact is stronger in the corporate market than in the household market, where Postgirot only has a marginal presence. While Nordbanken's acquisition of Postgirot will lead to a further slight increase of concentration in the Swedish banking market, the transaction may potentially lessen any commonality of interest that may exist between the four leading banks, mainly through its impact on the payments market assessed further below.

2000, by value	Nord-banken	Post-girot	Total	SHB	FSB*)	SEB
Household deposits	[15-25]	[0-10]	[20-30]	[15-20]	[25-30]	[10-15]
Corporate deposits	[10-20]	[0-10]	[20-30]	[30-35]	[10-15]	[20-25]
Corporate lending	[10-20]	[0-10]	[15-25]	[30-35]	[15-20]	[15-20]
Household card issuing	[20-30]	[0-10]	[15-25]	[10-15]	[35-40]	[20-25]
Corporate card issuing	[10-20]	[0-10]	[15-25]	[0-5]	[10-15]	[45-50]
Card acquiring	[10-20]	[0-10]	[20-30]	[15-20]	[40-45]	[15-20]
Letters of credit	[10-20]	[0-10]	[20-30]	[20-25]	[0-5]	[30-35]
Collection (inkasso)	[20-30]	[0-10]	[15-25]	[30-35]	[5-10]	[25-30]
Guarantees	[25-35]	[0-10]	[20-30]	[30-35]	[5-10]	[30-35]
Corporate international payments	[20-30]	[5-15]	[25-35]	[20-25]	[40-45]	[10-15]
Household international payments	[15-25]	[5-15]	[30-40]	[20-25]	[20-25]	[20-25]

*) excluding Savings Banks linked to FSB

41. The competitive assessment does not change materially whether or not a distinction between SMEs and large corporate customers is made. None of the narrower product market definitions discussed in Section A. would affect the outcome of the assessment.
42. In the international payments markets, the transaction leads to a significant addition of market shares, particularly in the households segment. According to the Commission's market investigation, the Nordbanken/ Postgirot's share of the household market may be significantly higher than the [25-35%] stated by the parties. However, this market share would in isolation not appear to confer significant market power to the merged entity because the technical infrastructure (primarily SWIFT) used to effect international payments provides for equal access for all members. Since all major banks in Sweden are connected to SWIFT, the operation does not affect their ability and incentives to compete with a merged Nordbanken/ Postgirot. In addition, the household international distance payments market is very small compared to the corporate segment, accounting for less than 1% of the total market by value and approx. 10% by volume. As a result, the barriers-to-entry to the household segment are likely to be low for banks with activities in corporate payments and distribution capabilities.

Domestic Distance Payments

43. In the domestic distance payments market, the following market shares arise, according to the parties:

2000 Distance Payments	Nord-banken	Post-girot	Total	SHB	FSB*)	SEB
Households:						
value outgoing	[10-20]	[0-10]	[15-25]	[10-15]	[40-45]	[10-15]
volume outgoing	[15-25]	[5-15]	[20-30]	[10-15]	[35-40]	[10-15]
value incoming	[20-30]	[0-10]	[25-35]			
volume incoming	[20-30]	[0-10]	[25-35]			

Corporate:						
value outgoing	[10-20]	[20-30]	[30-40]	[20-25]	[15-20]	[20-25]
volume outgoing	[5-15]	[15-25]	[20-30]	[15-20]	[15-20]	[15-20]
value incoming	[5-15]	[30-40]	[40-50]			
volume incoming	[5-15]	[65-75]	[75-85]			

*) excluding Savings Banks linked to FSB

44. In households and corporate distance payments, the relative market shares of Nordbanken, Handelsbanken, FSB and SEB broadly reflect these banks' overall market shares in retail and corporate banking. However, Postgirot, despite its niche role in most other banking markets, is a leading supplier of (outgoing) distance payment services and it handles by far the largest amount of incoming payments, both by value and volume. The high market shares result from the fact that Postgirot prior to 1994 had a monopoly on all payments from and to government institutions. Most government institutions and companies in Sweden continue to have Postgirot accounts through which they receive payments for bills. (Postgirot and Bankgirot are particularly used for paying bills, whereas salary payments are often made via Dataclearing.) Through its proprietary payment system, Postgirot is thus the only bank in Sweden that achieves high market shares in distance payments without matching market positions in other banking markets. That is, most of Postgirot's payments customers have their primary banking relationship with another bank.
45. Payment services to households tend to be supplied within a broader customer relationship, which is in particular anchored in the current account relationship. There is, thus, likely to be significant interaction between market shares in other retail banking markets and payments.
46. Nordbanken argues that competition between banks for customers of distance payment services takes place on the side of the payer and that the competitive assessment should thus relate to outgoing payments rather than incoming. However, incoming payments also generate income through the interest earned on funds in transfer. The impact of the notified operation in the domestic distance payments market therefore has to be assessed both on the basis of outgoing and incoming market shares.
47. A bank's ability to compete in the distance payments market depends, apart from the necessary in-house technical infrastructure, primarily on access at competitive conditions to an upstream payment system that acts as an interface to other banks' in-house systems. Provided this upstream systems access exists, all of the major Swedish banks, at the very least Handelsbanken, FSB and SEB, would appear to have a sufficiently large customer base, particularly in current accounts, to act as viable competitors in this market.
48. Competitors have argued that the notified operation will provide Nordbanken with access to a large corporate customer base of Postgirot account holders that use Postgirot for their incoming payments but have hitherto had their primary customer relationship with another bank because Postgirot has offered only limited services. These customers, competitors argue, will in the future be likely to transfer their main banking relationship to the merged bank. However, the remaining three major banks' have strong market positions across a wide range of banking services. Provided their continued access to the upstream payment systems, it is unlikely that Handelsbanken, FSB and SEB will be unable to respond to a competitive challenge from Nordbanken/ Postgirot.

49. Hence, market power in the domestic distance payments market arises primarily at the distribution (access to the customer) level and at the level of the upstream payment systems. At the distribution level, the operation will somewhat change the relative market positions of the four leading players, without leading to any dominance concerns. The analysis does not change if a distinction between SMEs and large corporates is made because the market investigation has found that Postgirot’s market share is higher for large corporates, who have significant buyer power, than for SMEs. The payment systems market will be assessed in the following.

Services Provided by Payment Systems

50. There exist today two competing giro systems that can provide giro payment services in Sweden, Postgirot and Bankgirot. In terms of total annual transaction value, Bankgirot is more than [40-50%] larger than Postgirot by outgoing payments and approx. [30-40%] by incoming payments, according to figures provided by the parties. Measured by number of transactions, Bankgirot handles more outgoing transactions than Postgirot, but by incoming transaction volume Postgirot is the larger of the two systems, reflecting its significant position in “many to few”-type transactions (e.g. consumers paying their bills to a large company).

51. Whereas Postgirot is a proprietary system, Bankgirot is owned by a number of banks who hold the following shares:

Shareholder	Holding (%)
SEB	[...]
Nordbanken	[...]
Handelsbanken/ Stadshypotek	[...]
FöreningsSparbanken	[...]
Danske Bank	[...]
Skandiabanken	[...]
JP bank	[...]
Länsförsäkringar Bank	[...]

52. The prevailing shareholder structure gives any two of SEB, Nordbanken and Handelsbanken a joint majority of Bankgirots capital. In addition, shareholdings of 10% and above confer certain minority rights, including representation on the Board of Directors. The Board currently consist of six directors, one each nominated by the four major banks, one from Danske Bank and one representative of the smaller banks. Bankgirot’s statutes provide for equal access to its payment system for all members and to non-members fulfilling certain formal requirements. However, its pricing structure includes volume-based rebates, which a priori favours its larger shareholders. The structure of the rebate scheme can and has in the past been modified by the shareholders. The value of a Bankgirot shareholding as a financial investment has been low in the past five years as the company is not publicly quoted and has made only nominal profits.

53. Through the notified operation, Nordbanken would gain full control of Postgirot, in addition to the strong influence in Bankgirot conferred by its 27% shareholding and representation in Bankgirot’s governing bodies. The shareholding in Bankgirot enables Nordbanken, inter alia, to be represented on the Board of Directors, to veto the issuance of new shares or securities, the reduction of share capital, amendment of the articles of association as well as any merger plans. Through its Board representation and participation in committee meetings, Nordbanken would, in addition, have access to

confidential business information of its competitor. It would thus exert significant influence on strategic decisions by both competing giro systems.

54. The 27% shareholding also gives Nordbanken a joint-majority of capital together with either SEB or Handelsbanken. Third parties noted that there is significant commonality of interest between the four large banks vis a vis smaller competitors, which would increase Nordbanken's chances of mustering support from either SEB or Handelsbanken for strategic decisions in its competitor Bankgirot. A large number of both customers and competitors have raised concerns that Bankgirot's ability and incentives to act as an effective and independent competitor to Postgirot on the market for payment systems services would, as a result, be significantly impeded by the proposed transaction.
55. Given the prevailing already concentrated market structure with only two suppliers and the significant commonality of interest between the major banks (e.g. with regards to volume discounts), there is a serious risk that the structural link between Postgirot and Bankgirot resulting from the operation would enable the two payment systems to co-ordinate their pricing structure and conditions. The operation, hence, creates serious doubts with regards to the creation of a jointly-dominant position by Postgirot and Bankgirot on the market for payment systems services in Sweden.

Technical Services

56. The main competitors in this market (apart from insourcing of services, which may be an option for the larger banks) are Postgirot and Privatgirot. Postgirot's market shares is approx. [55-65%] (parties' data), with Privatgirot accounting for most of the remainder. Privatgirot is a particularly important supplier for smaller banks who have insufficient scale to perform these activities in-house. The ownership structure and functioning of Privatgirot is similar to Bankgirot:

Shareholder	 Holding (%)
SEB	[...]
Nordbanken	[...]
Handelsbanken/ Stadshypotek	[...]
FöreningsSparbanken	[...]
Danske Bank	[...]
JP Bank	[...]
Länsförsäkringar Bank	[...]

57. As in the payment systems market, the operation would lead to Nordbanken having a strong influence on the main competitor to Postgirot through its shareholding and representation on the Board and other governing bodies of Privatgirot, creating a serious risk that a jointly-dominant position is created.

V. MODIFICATION TO THE ORIGINAL CONCENTRATION

58. In order to remove the competition concerns raised by the operation in relation to the market for payment systems services and related technical services, Nordbanken has submitted undertakings to the Commission that will remove the serious doubts raised by the original transaction regarding its compatibility with the common market.
59. Nordbanken submitted a package of undertakings on 16 October 2001 that included an undertaking to reduce Nordbanken's influence as a shareholder of Bankgirot by means

of conclusion of a shareholders agreement with the other shareholders of Bankgirot with the exception of SHB, FSB and SEB, which would essentially confer the exercise of Nordbanken's shareholder's rights to the other shareholders with would be parties of that shareholders agreement. Following the result of the Commission's market test of these undertakings, on 30 October 2001 Nordbanken submitted a modification to the undertakings with a view to improving the undertaking concerning Bankgirot by proposing to reduce Nordbanken's shareholding in Bankgirot to no more than 10% and refrain from any shareholder rights going beyond minority protection rights safeguarding the financial value of its stake. This limited modification of the original undertaking, presented as an immediate response to the result of the market test, includes an improvement which ensures that the commitment is workable and effective.⁴ The text of the undertaking is annexed and forms an integral part of this decision.

60. Nordbanken undertakes (1) to cease to exercise any rights it derives from its participation to the Bankgirot Shareholders' agreement and from its shareholding in Bankgirot, except that, for the latter, it remains entitled to exercise the rights recognised under Swedish company law to a 10% minority shareholder, (2) to see to that all current representatives of Nordbanken in the Board of Directors, working groups or other for a of Bankgirot resign from these bodies, and no commercial information available to the Board, the working groups and other fora be made available to Nordbanken, and (3) to divest itself of the part of its shareholding in Bankgirot in excess of 10% to one or more purchasers to be approved by the Commission in the manner set out in detail in the commitments.
61. Regarding Privatgirot, Nordbanken undertakes to cease to exercise its voting rights attached to its shareholding, to cease to be represented on the Board of Directors and to withdraw from any working groups and other for a within Privatgirot. As soon as [...], Nordbanken will withdraw from Privatgirot.
62. The undertakings will thus remove the structural links that would otherwise be created between Postgirot and Bankgirot as well as between Postgirot and Privatgirot. The Commission considers that by removing these structural links, the undertakings will ensure the continued existence of two independent payment systems and technical services providers and keep competition between them on the current level, thus avoiding the possibility of creation of a jointly-dominant position of Postgirot and Bankgirot, or Postgirot and Privatgirot, respectively.
63. The Commission thus concludes that the undertakings submitted by Nordbanken are sufficient to remove the serious doubts raised by this concentration as far as the markets for payment systems services and technical services are concerned.
64. In order to ensure that Nordbanken complies with these undertakings, the Commission attaches conditions and obligations to this decision. The undertakings set out in sections 2.1. and 2.2. of the commitments annexed to the present decision constitute conditions, since only by fulfilling them the structural change on the relevant markets may be achieved. The other undertakings constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended.

⁴ Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98, paragraph 37 (OJ C 68, 02.03.2001, p. 3).

VI. CONCLUSION

65. 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, subject to the condition of full compliance with sections 2.1 and 2.2. of the commitments annexed to the present decision and to the obligation of full compliance with the other sections of the said commitments. This decision is adopted in application of Article 6.2 of Council Regulation (EEC) No 4064/89, as amended by Regulation 1310/97, and of Article 57 of the EEA Agreement.

For the Commission,
(signed :
Mario MONTI
Member of the Commission)

CASE COMP/M.2567 NORDBANKEN/POSTGIROT
COMMITMENTS OFFERED BY NORDBANKEN AB (PUBL) TO THE
EUROPEAN COMMISSION
6 NOVEMBER 2001

1. INTRODUCTION

The present document is submitted in the framework of the Commission's investigation of the proposed acquisition by Nordbanken AB (publ) ("Nordbanken"), which forms part of the Nordea Group ("Nordea"), of Postgirot Bank AB (publ) ("Postgirot") (hereinafter "the Concentration").

The commitments set out hereunder will take effect upon the date of the Commission Decision declaring the Concentration compatible with the Common Market pursuant to Article 6 of Council Regulation 4064/89 (hereunder referred to as "the Effective Date").

2. COMMITMENTS

2.1. Regarding Bankgirot

Nordbanken undertakes to, immediately after the Effective Date:

- I. cease to exercise any rights it derives from its participation to the Bankgirot Shareholders' agreement and from its shareholding in Bankgirot, except that, for the latter, it remains entitled to exercise the rights recognised under Swedish company law to a 10 per cent minority shareholding, as well as to receive dividends. Compliance herewith shall be monitored by the Trustee;
- II. see to that (i) the Member and the alternate Member of the Board of Directors of Bankgirot nominated by Nordbanken resign from the Board of Directors, (ii) Nordbanken and Postgirot representatives in the Bankgirot working groups or other fora resign from them, and (iii) no commercial information available to the Board, the working groups and other Bankgirot fora be made available to Nordbanken.

The above is without prejudice to Nordbanken's right to submit proposals to working groups or other fora, to the same but under no circumstances to any greater extent than any other customer of Bankgirot. Compliance herewith shall be monitored by the Trustee;

- III. use its best endeavours to divest itself of the part of its shareholding in Bankgirot in excess of ten (10) per cent ("the Bankgirot Shares"), to one or more purchaser(s) to be approved by the Commission in the manner set out below ("the Purchasers"). This divestment shall take place as follows:

First stage

- a) Nordbanken shall use its best endeavours to find Purchasers for the Bankgirot Shares within [...] of the Effective Date ("the First Divestment Period");
- b) the Purchasers shall be existing undertakings, independent of and unconnected to any undertaking within Nordea. Nordbanken shall be able to demonstrate to the Commission that the Purchasers meet the requirements set out above;
- c) Nordbanken shall report in full in writing in the English language to the Commission on developments in the negotiations with potential purchasers of the Bankgirot Shares within ten days of the end of every calendar month following the Effective Date (or as the Commission may request);
- d) at a time when Nordbanken has reached or is about to reach an agreement with a Purchaser, it shall submit a fully documented and reasoned proposal enabling the Commission to verify, within two weeks of receipt of said proposal, that the criteria above with regard to the identity of the Purchaser are fulfilled and that the Bankgirot Shares are sold in a manner consistent with this commitment. For the avoidance of doubt, the verification that the Bankgirot Shares are sold in a manner consistent with the commitment, shall include an approval of the Purchaser and of the final binding sale and purchase

agreement. If the Commission has not reacted to Nordbanken's proposal within the aforementioned two week period, such approval shall be deemed to have been given.

Second stage

- a) If Nordbanken has not, within the First Divestment Period, entered into a binding agreement for the sale of all Bankgirot Shares with one or more Purchasers, the Trustee appointed under Section 2.3 below shall carry out the sale of the remaining Bankgirot Shares. The Trustee shall for this purpose, on the first working day following the day of expiry of the First Divestment Period, receive an irrevocable mandate to sell the remaining Bankgirot Shares within [...] ("Second Divestment Period"). [...].
- b) the Trustee shall report in full in writing in the English language to the Commission on developments in the negotiations with potential purchasers of the Bankgirot Shares within ten days of the end of every calendar month following the Effective Date (or as the Commission's may request);
- c) the Trustee shall carry out the sale of the Bankgirot Shares to a Purchaser approved by the Commission according to the procedure set out above. Nordbanken shall be deemed to have complied with this commitment if an agreement for the sale of the Bankgirot Shares has been entered into within the Second Divestment Period, provided that the closing of the sale takes place within [...] of the entering into of such agreement.

Other points

- a) Nordbanken shall not, subsequent to the divestment set out herein, acquire shares in Bankgirot resulting in its shareholding exceeding ten (10) per cent.

2.2. Regarding Privatgirot

Nordbanken undertakes the following:

Nordbanken shall, immediately after the Effective Date, cease to exercise all voting rights attached to the shares Nordbanken holds in Privatgirot, shall cease to be represented on the Board of Directors, shall withdraw from any working groups and other fora within Privatgirot and shall withdraw as party to the shareholder's agreement regarding Privatgirot [...]. Compliance with this commitment shall be monitored by the Trustee.

2.3. Trustee

Nordbanken undertakes to appoint a Trustee to monitor the present commitments as follows.

Appointment

Nordbanken shall appoint an independent trustee or trustees (the "Trustee"), such as an investment bank or consultant or auditor, subject to approval by the Commission. The Trustee shall be independent of Nordea, shall possess the necessary qualifications to carry out the duties set out below and shall not be, or become, exposed to a conflict of interest. Nordbanken shall propose a trustee or list of proposed trustees and the terms of the mandate for approval to the Commission with adequate information for the Commission to verify that the Trustee fulfils these requirements. This proposal shall be made at the latest one week after the Effective Date. The Trustee will be remunerated in such a way as not to impede its independence and effectiveness in fulfilling the mandate. The mandate must include all provisions necessary to enable the Trustee to fulfil its duties required by the commitments accepted by the Commission.

The Commission shall have the discretion to approve or reject the proposed trustee or trustees, and to approve the proposed mandate subject to modifications, that the Commission deems reasonably necessary for the Trustee to fulfil its obligations. If only one name is approved, Nordbanken shall appoint or cause the individual or institution concerned to be appointed as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Nordbanken shall be free to choose the Trustee to be appointed from among the names approved.

If all the proposed trustees are rejected, Nordbanken will submit the names of at least two further such individuals or institutions within one week of being informed of the rejection, together with the full terms of the proposed mandate as agreed with the proposed trustees as well as all information

necessary for the Commission to verify that the proposed trustees possess the necessary qualifications to carry out the task and shall not be, or become, exposed to any conflict of interest. If only one name is approved, Nordbanken shall appoint or cause the individual or institution concerned to be appointed as Trustee, in accordance with the mandate approved by the Commission. If more than one further name is approved, Nordbanken shall be free to choose the Trustee to be appointed from among the names approved.

If all further proposed trustees are rejected by the Commission, the Commission shall nominate a suitable Trustee which Nordbanken will appoint or cause to be appointed. In such case, the Trustee shall be a reputable investment bank or consultancy/auditing firm.

The Trustee may be removed by Nordbanken with the prior approval of the Commission in the event that the Trustee has not acted in accordance with the provisions of this commitment or for any other good cause.

Following the Commission's approval of a proposed Trustee, Nordbanken shall immediately enter into a mandate with the Trustee whose terms shall have previously been agreed with the Commission and which shall include the functions set out hereunder.

Duties

The Trustee shall assume its specified duties in order to ensure compliance in good faith with the commitments on behalf of the Commission and taking into account the legitimate interests of Nordbanken.

In this function, the Trustee shall:

- under the circumstances set out in Section 2.1 *supra*, carry out the sale of the Bankgirot Shares and shall ensure that [...].
- monitor that, where so provided and to the extent foreseen in this commitment, Nordbanken refrains from exercising the voting rights attached to shares Nordbanken holds in Bankgirot or Privatgirot;
- attend, together with Nordbanken, any meeting of Bankgirot's working groups (or other fora where Nordbanken would make a proposal) and monitor Nordbanken's compliance with its commitment as set out at Section 2.1;
- provide the Commission with a written report in the English language every quarter about proposals which Nordbanken may have submitted to working groups and fora within Bankgirot; and
- monitor Nordbanken's overall compliance with the present commitments and shall, at the end of each year, provide the Commission with a written report thereon in the English language.

2.4. Review clause

Nordbanken reserves 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.

Brussels, 6 November 2001

On behalf of Nordbanken AB (publ)

Mats Johnsson

A. Vandencastele