

***Case No COMP/M.3027 -
STATE STREET
CORPORATION /
DEUTSCHE BANK
GLOBAL SECURITIES***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/01/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16/01/2003

SG (2003) D/228155

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3027 - State Street Corporation / Deutsche Bank Global Securities

Notification of 5 December 2002 pursuant to Article 4 of Council Regulation No 4064/89¹

I. THE PARTIES AND THE CONCENTRATION

1. On 05.12.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings State Street Corporation, USA, acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the undertaking Deutsche Bank Global Securities, Germany, by way of purchase of shares and of assets.
2. State Street is active in the field of financial services, and more specifically in the provision of domestic and global securities services to support sophisticated individual and institutional investors in developing and executing their global investment strategies.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

3. Deutsche Bank is organised primarily into two groups: its Corporate and Investment Bank (CIB), and Private Clients and Asset Management (PCAM). CIB then contains four business units, one of which includes the GSS business unit, which currently provides financial services to corporate and institutional investors. In particular, GSS is active in global custody, global fund services and securities lending.
4. State Street is proposing to acquire sole control of GSS, but for the following listed activities : sub-custody in mainland Europe, Asia and Latin America (through Deutsche Bank's local branch in each location); fund accounting and administration in the US; some cash money market funds managed on behalf of Deutsche Bank's asset management arm (DeAM).

II. COMMUNITY DIMENSION

5. The worldwide turnover of State Street in the financial year 2001 was approximately € 6 billion and the worldwide turnover of GSS for the year 2001 was € [...] million. As such, the combined worldwide turnover of the parties is above € 5,000 million. In addition, the two undertakings have each a EU turnover in excess of € 250 million: State Street has a EU turnover of € [...] million, and GSS € [...] million. Moreover, neither State Street nor GSS achieved more than two thirds of their EU turnover in one single Member State. The concentration therefore has a Community dimension pursuant to Article 1(2) of the Merger Regulation.

III. COMPETITIVE ASSESSMENT

Relevant Product and Geographic Markets

6. The markets in which both parties are active would include the following three services: global custody, fund administration and securities lending. The concentration would give rise to affected markets only in global custody and fund administration. The parties propose that these services should be considered as separate markets.

i. Custody

7. Custody services include the following types of activity: safekeeping of the assets; presentation of securities for, and reception of securities from, clearing and settlement platforms ; income and dividend processing ; arranging of withholding tax relief and tax reclaim ; other corporate actions such as notification and dealing with bonus issues, rights issues and takeovers ; proxy voting services ; sweeping of uninvested cash ; and transaction and portfolio reporting services. Custodians may also provide the following types of "value added" services to their custody clients: foreign exchange trading services; securities lending; performance measurement and risk analysis; and management of cash accounts and cash funds linked to securities held in custody.
8. In several previous decisions, the Commission has discussed custody services as one relevant segment within the financial services aspect of the banking sector overall². However within custody services, the parties propose to draw a distinction between global and domestic (or sub-) custody services. On this basis global custody would be

² *Deutsche Bank/Bankers Trust*, Case No M.1384 ; *Bank of New York/Royal Bank of Scotland*, Case No M. 1618 ; *CDC/Banco Urquijo/JV*, Case No M. 1979

defined as a service provided to investment entities which own or manage investments from a variety of international markets. Domestic (or sub-) custody services would be those, according to the parties, which are provided to institutions and/or individual clients which require only "domestic assistance".

9. The parties point out that global custody services, as the name suggests, are provided on a world wide basis that global custodians are typically major international banks and other financial services companies, and that their clients are sophisticated investment institutions which own or manage securitised investments from a variety of international markets. However, sub-custodian services are provided on a national basis.
10. Such a delineation fails to take account of the fact that custody services are by their nature services which are provided locally, at the location where the funds are held. Global custody services may not therefore be clearly distinguishable from a collection of domestic custody services . However since the concentration does not give rise to competition concerns on the basis of either a domestic custody services market or a global custody services market the question can be left open in this particular case.

ii. Fund administration

11. These services, which are often provided together with custody services, typically include: acting as trustee, depositary or depotbank of mutual funds ; accounting services and net asset valuations; share registration and taxation services; transfer agency; trustee and record keeping services ; ancillary legal and secretarial services and transaction and portfolio reporting services. Additional “value-added services” may be offered, as providing middle and back office services for fund managers; benefit payment services; performance measurement and risk analysis; and consolidated recordkeeping (i.e. preparing a consolidated report, statement and sometimes performance analysis for client assets not held exclusively by the custodian bank). In this regard, a large part of fund administration can be seen as a clear example of the outsourcing of some functions which were previously provided in-house by fund managers. It should be noted that not all fund administration is actually outsourced. The market shares provided below are based on current levels of outsourced fund administration only.
12. The Parties consider that fund administration should be considered as a global market as most of the competitors and customers are active worldwide and manage their financial assets portfolio on a global basis. However some of the activities included in the fund administration services have specific national regulations or require a national presence following the UCIT Directive².
13. However, no competition concern is likely to arise whichever geographic market definition is retained and consequently the market definition could be left open.

Competitive Effects

² Directive 85/611/EEC as amended sets out an EU-wide framework for the establishment and regulatory oversight of funds investing in transferable securities (“UCITs”) which can, on the basis of “home state” regulation in the country in which they are established, be marketed throughout the EU. The Directive requires that each fund has a depositary established in the same home state as the fund manager, which implies that some fund administration duties have to be performed in this very home state.

i. Custody

14. This Transaction concerns only the acquisition by State Street of GSS' global custody services business, together with its domestic sub-custody business in the UK and the US. Thus the relevant horizontal overlaps within the EU to consider further are as regards: (i) global custody services; and (ii) UK domestic sub-custody services.
15. As far as global custody is concerned, two methods are proposed by the parties to estimate market shares : by considering total assets under custody (total AuC), i.e. adding the value of the assets held for each client in its home country, or by considering cross-border assets under custody (cross-border AuC), where cross border refers to assets held for the client outside of his home country.
16. Under the total AuC approach, State Street's world-wide market share is [10-20] % and GSS [0-10] %. Under the cross-border AuC, these markets shares are respectively [5-15] % and [5-15] %. Overall, the parties' combined market share is around [15-25] % under either method.
17. Three competitors, JP Morgan Chase, Bank of New York and Citibank NA have between [10-20] % market shares under either approach. Such figures clearly indicate that no single dominant position can arise from this concentration, and this has been confirmed by market investigation, as all three competitors are credible alternative to the parties and switching of custody supplier is easy.
18. The fact that prices for these services are not observable as they result from private negotiations is sufficient to discard any scenario of a creation of a collective dominance. In addition, there are several global competitors with market shares comprised between 4 % and 10 % which could readily benefit from any theoretical attempt of price increase by the four largest players as this industry faces nearly no capacity constraint and as customers are not usually locked with suppliers into long term contracts. Indeed most of the customers have several suppliers of securities services in order to avoid being dependent on a single supplier and to mitigate financial risk.
19. In the United Kingdom, total added AuC of State Street and GSS represent less than 10 % and is therefore not affected by the concentration.

ii. Fund Administration

20. As far as fund administration is concerned, the Parties are of the opinion that the best estimate for market shares is given by AuC. Therefore, if the fund administration market is regarded as world wide, the same reasoning as the one applied to global custody can be applied to conclude that it is likely that no dominant position would arise from the transaction.
21. If fund administration is considered to be national in scope, then three markets are affected: Germany, Ireland and the UK. The added markets shares of the Parties are respectively [15-25] %.
22. In Germany, State Street has a market share of [< 5] %. This increment is small and several competitors such as Sparkassen and Volksbanken hold more than 10 % market shares. Market investigation confirmed that no competition concern would arise from this concentration in the German market for fund administration, as customers can easily switch of supplier for such services.

23. In Ireland the increment attributable to State Street is [< 10] %. AIB/Bank of New York, a global player, has [10-20] % market share. In addition, another global player, JP Morgan, has [5-15] % market share. These two players constitute a credible competitive threat to State Street, and as for the German market, market investigation has confirmed that no competition concern would arise from this concentration in the Irish market for fund administration.
24. In the United Kingdom, GSS will add [< 10] % market shares to the [5-15] % already held by State Street. However, a range of global players such as JP Morgan Chase, Royal Bank of Scotland, Citicorp and HSBC are present on the market and constitute a credible competitive alternative to State Street, as it has been confirmed by market investigation.

IV. CONCLUSION

25. 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 (EEC) No 4064/89.

For the Commission

Signed,
Mario MONTI
Member of the Commission