

***Case No COMP/M.4814 -
AIB / FDC / JV***

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/01/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES



Brussels, 11.01.2008

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

**Subject: Case No COMP/M.4814 – FDC / AIB / JV
Notification of 29.11.2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 29.11.2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which First Data Corporation ("FDC", USA) and Allied Irish Banks ("AIB", Ireland) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the merchant acquiring business currently owned by AIB by way of a purchase of shares.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation but does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. **AIB** provides a diverse range of banking, financial and related services primarily in Ireland but also in Poland, the UK and the US.
4. **FDC** is primarily active in electronic commerce and payment services for businesses worldwide. The company provides credit, debit, retail, smart card and stored-value card

¹ OJ L 24, 29.1.2004 p. 1.

issuing and merchant transaction processing services as well as internet commerce solutions. In Europe FDC cooperates with banks to provide merchant processing services through joint ventures and revenue sharing agreements.

5. The JV will be engaged in the provision of merchant acquiring and processing services, in particular, services relating to the use and acceptance of payment cards of all types, principally in Ireland but also in the UK and elsewhere in Europe. The specific activities in which the JV will be engaged in are usually referred to as “merchant card processing” and “merchant card acquiring”, where the term “merchant” means a retailer or other vendor of goods or services who accepts a card as the means of payment.

1. II. THE OPERATION

6. AIB and FDC (the parties) will enter into a joint venture agreement relating to the Irish merchant acquiring business currently owned by AIB. The JV will have an option to purchase AIB's UK merchant acquiring business.

III. CONCENTRATION

7. The proposed transaction amounts to the acquisition of joint control of the Irish merchant acquiring business currently owned by AIB. The JV will be co-owned by FDC [approximately 50%] and AIB [approximately 50%]. FDC will appoint [...] out of a total of 8 members of the Board of directors, including the Chairman which will have a casting vote. AIB will appoint [...] members and [...] members will be independent.
8. However, AIB and FDC will jointly control the JV due to the nature and extent of the veto rights held by AIB over several critical issues which are strategic for the commercial behaviour of the JV. The business objectives and 10-year financial projections have been jointly agreed between AIB and FDC as part of the JV agreement and will be appended to the Shareholders Agreement. The initial budget and business plan for the JV (until 31 December 2010) will also be agreed jointly by AIB and FDC. [...] However, a dispute resolution mechanism to settle disputes between AIB and FDC in relation to the annual budget and annual business plan as well as any disagreement on any "material" issue will be put in place. This dispute resolution mechanism finally results in a deadlock situation [...].
9. Thus, the transaction constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

10. The transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation. The parties have a combined aggregate worldwide turnover in excess of € 5,000 million (FDC € 5.6 billion, AIB € 8.4 billion), and their respective aggregate Community-wide turnovers exceed €250 million (FDC: [...] and AIB: [...]). They do not achieve more than two thirds of their Community-wide turnover in one and the same Member State.

V. COMPETITIVE ASSESSMENT

A. RELEVANT PRODUCT MARKETS

11. The proposed transaction concerns the activities of payment card processing and merchant acquiring. According to previous Commission decisions, processing is a product market distinct from merchant acquiring (and card issuing).²
12. Payment card acquiring is the business of contracting merchants for payment card acceptance on own account and risk. The notifying parties submit that this product market should not be subdivided further.
13. In most cases, the Commission has left it open whether the acquiring business should be divided further according to the type of scheme organisation (national/international), the type of card (credit/debit cards) or the brand (Visa/VPay or MasterCard/Maestro).³
14. Since the concentration does not raise serious doubts as to the existence of a significant impediment of effective competition on any of the alternative markets considered, the precise market definition for merchant acquiring can be left open also for the purpose of this decision.
15. Processing of payment card transactions includes services of a technical nature such as the routing of transactions, requests for authorisations including the verification of stop lists (for stolen or counterfeited cards), card identifications, generation of statements and invoicing etc. The notifying parties submit that the market for transaction processing services should not be subdivided into separate markets for issuing processing and acquiring processing or into separate markets for issuing processing for international cards and issuing processing for domestic cards.
16. The Commission in previous decisions indicated that the processing market might be further subdivided into a product market for issuing processing and a product market for acquiring processing but finally left this question open.⁴ Whether issuing and acquiring processing services are separate product markets can be left open for the purpose of the current transaction, since the concentration does not raise serious doubts in any of the alternative market definitions considered.

2. B. RELEVANT GEOGRAPHIC MARKETS

17. Regarding the acquiring business, the notifying parties submit that that the geographic scope of the market is at least national but increasingly EEA-wide due to the broadening scope of international and national card schemes as well as the implementation of the Single European Payment Area (SEPA).

² Commission Decision Comp/M.4316 Atos Origin/Banksys/BCC of 29 September 2006.

³ Commission Decision Comp/M.4316 Atos Origin/Banksys/BCC of 29 September 2006.

⁴ Commission decision COMP/M.4316 – Atos Origin/Banksys/BCC of 29 September 2006.

18. The Commission has previously found that the acquiring service for domestic cards was national in scope and indicated that this probably also applied to the acquiring services for international cards, but finally left the geographic definition of the latter open.⁵
19. With respect to the activities of transaction processing, the notifying parties submit that the market is at least EEA-wide in scope due to the absence of any regulatory or other restrictions. The Commission in previous decisions found that transaction processing may be national in scope, but finally left the question of the precise geographic market definitions open.⁶
20. There are indications that the acquiring and the processing markets – also with respect to international cards - are still national in scope. However, the precise geographic market definition can be left open for the purpose of the current transaction since the concentration does not raise serious doubts as to the existence of a significant impediment of effective competition on any of the alternative market definitions considered.

3. C. COMPETITIVE ASSESSMENT

21. For (overall) merchant acquiring activities and transaction processing the activities of the parties overlap in three countries: the UK, Italy and the Netherlands. None of these markets are affected, because the parties' joint market shares in these countries do not exceed 15%.⁷
22. If the relevant geographic market for merchant acquiring services is considered to be EEA-wide, the Parties combined shares for merchant acquiring activities would be approximately [0-5]%.
23. If the merchant acquiring market were subdivided according to type of scheme, type of card or brand, the combined market share of the parties would be below 15% with the exception of the international card sub-segment in the Netherlands, where the combined market share is significantly higher⁸. However, the increments of the combined market shares in merchant acquiring activities would be very small (less than [0-5]%) due to the limited presence of AIB.
24. Regarding transaction processing there are no significant overlaps. There are no overlaps between the parties for transaction processing services in relation to domestic cards at national level because AIB's transaction processing activities are located in

⁵ Commission Decision COMP/M.4316 Atos Origin/Banksys/BCC of 29 September 2006. In Commission Decision COMP/M.4844 Fortis/ABN AMRO, the Commission analysed the market for the acquiring of national (debit) cards.

⁶ Commission decision COMP/M.2567 - NordBanken/Postgirot, of 8 November 2001; Commission decision COMP/M.4316 – Atos Origin/Banksys/BCC of 29 September 2006.

⁷ Market shares quoted in this decision are based on the parties' estimates unless stated otherwise.

⁸ The parties estimate their combined market share to [20-30]%. The market investigation suggests that the combined market share is above [30-40]%. Both confirm very small increments (below [0-5]%).

Ireland and FDC is not active in transaction processing of domestic or international cards for any customers in Ireland.

25. If the relevant geographic market for all transaction processing services is considered to be EEA-wide, the Parties' combined shares for any segment of these activities would be less than 15%. These conclusions would hold if the transaction processing market would be split between acquiring processing (for domestic and international cards respectively) and total processing (for domestic and international cards respectively) and examined at national level. In addition, there are strong competitors in all three countries where the activities for transaction processing of the parties overlap.
26. Since the JV will not be active in card issuing and FDC is not present in debit or credit card issuing, the parties consider that the only potential vertical relationship of relevance is that between the merchant acquiring services to be offered by the JV and the transaction processing activities of FDC. AIB has a market share of [40-50] % in the Irish market for merchant acquiring. FDC owns 70% of Omnipay, a processing platform in Ireland which provides processing services for transactions originating from locations across Europe. [...]. Moreover, the parties argue that potential competition concerns of a vertical nature would be alleviated by the fact that AIB has a clear incentive to ensure high quality, low cost card-related services to its customers since it is competing on various banking markets in Ireland and elsewhere. In addition, the JV will face competition from a substantial number of existing competitors in Ireland and other EEA countries.
27. The overwhelming majority of the respondents to the Commission market investigation were neutral or positive about the proposed transaction. They stated that the creation of the JV is likely to intensify competition for card transaction processing and that it will possibly drive prices down due to the existence of economies of scale.
28. Based on the above considerations, the Commission concludes that the concentration does not raise serious doubts as to the existence of a significant impediment of effective competition on the markets for merchant acquiring and for transaction processing services.

VI. CONCLUSION

29. 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