

***Case No COMP/M.5241 -
AMERICAN EXPRESS /
FORTIS / ALPHA CARD***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/10/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03/10/2008
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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: COMP/M.5241 - AMERICAN EXPRESS/ FORTIS/ ALPHA CARD
Notification of 29 August 2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 29.08.2008 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking American Express Company ('American Express', U.S.) and Fortis Bank S.A. / N.V. ('Fortis', Belgium) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Alpha Card S.C.R.L./ C.V.B.A. ('Alpha Card', Belgium) by way of restructuring a joint venture.

I. THE PARTIES

2. **American Express** is active in payment card issuing and merchant acquiring worldwide.
3. **Fortis** is an international provider of banking and insurance services to personal, business and institutional customers.
4. **Alpha Card** is issuing American Express branded payment cards in Belgium and Luxembourg. Through its wholly owned subsidiary Alpha Card Merchant Services S.C.R.L./C.V.B.A. ('ACMS') it also provides merchant acquiring services in Belgium

¹ OJ L 24, 29.1.2004 p. 1.

and Luxembourg to merchants who wish to accept payments through American Express branded payment cards.

II. THE OPERATION

5. Alpha Card/ACMS is an existing joint venture under joint control of American Express and Fortis. Alpha Card is not carrying out all the functions of an autonomous economic entity and is not therefore considered a full-function joint venture.
6. American Express and Fortis have agreed to change the underlying agreements of Alpha Card and to grant it greater autonomy. Due to these changes Alpha Card would become a full-function joint venture.
7. Accordingly, the transaction is notifiable under Article 3(4) of the Merger Regulation and paragraph 109 of the Jurisdictional Notice².

Full functionality

8. Alpha Card is a joint venture licensed by American Express to operate a payment card issuing business and a merchant acquiring business for American Express branded cards.
9. The joint venture operates from facilities which are separate from those of its parent companies and it has its own management dedicated to the operation of its business. Alpha Card sets up its own annual business plan and is responsible for most of its investment decisions in order to expand its issuing and acquiring activities. Alpha Card does not act as a mere agent of American Express, but is a named “issuer” (carries out all sales, marketing and operational activities, in particular sets prices, credit and financial criteria, decides which cards to issue, enters into contractual arrangements with cardholders) pursuant to its license agreement with American Express.
10. In Belgium and Luxembourg the cards issued by Alpha Card are distributed through Fortis [...]. Alpha Card is operating on the market on a lasting basis.
11. In the same way Alpha Card, *via* its subsidiary ACMS, acts as an “acquirer” in its contracts with merchants (signs up the merchants, sets merchant discount rate, sets credit and financial criteria, manages receivables) pursuant to its license agreement with American Express.
12. Currently Alpha Card outsources certain processing services, [...] to American Express. Although Alpha Card has the possibility to obtain the necessary processing services from a third party, this option requires the express consent of American Express and is subject to a veto by American Express at the meetings of the board of directors of Alpha Card.
13. Therefore, in the past Alpha Card did not operate as a full function joint venture within the meaning of Article 3(4) of the Merger Regulation. However, as a result of the present transaction, i.e. the change of certain Alpha Card's corporate governance and

² Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings of 10 July 2007.

contractual provisions³, Alpha Card will acquire autonomy to select an independent provider of the processing services that are currently provided by American Express.

14. According to the Amended and Restated Card Operator Agreement and the Merchant Acquirer Agreement the requirement to obtain the prior written consent of American Express before outsourcing card processing functions would be removed. The Shareholders Agreement would be amended to delegate to the General Manager of Alpha Card the power to terminate the services agreements with American Express and appoint an alternative provider [...]. The Amended and Restated Financial Services Agreement and the Merchant Acquirer Agreement would also be amended to permit Alpha Card and ACMS to terminate the agreementson [...] notice. [...].
15. On the basis of the above it has to be concluded that American Express would no longer be able to veto a decision on selecting an independent processing services provider. Alpha Card would be able to exercise full autonomy in its choice of third party service provider and it would gain further independence from its parent company. This would result in Alpha Card being a full function joint venture.

Joint control

16. According to the Amended and Restated Shareholders Agreement American Express and Fortis each hold 50 % of the voting shares of Alpha Card. Board resolutions are made on the basis of a majority vote. Each of American Express and Fortis appoint four of eight directors in the board of directors of Alpha Card. A quorum for a meeting is [...] directors, [...] from each of American Express and Fortis.
17. The board of ACMS comprises [...] directors,[...] and requires [...]for board resolutions (with a quorum of [...] directors) [...]. In the event of deadlock at the board level that cannot be resolved at the level of senior executives or through mediation, [...].
18. The notifying parties confirmed that the ownership structure would remain unchanged post transaction.
19. Based on the above, the notified operation leads to the acquisition of joint control and constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. CONCENTRATION

20. As a result of the notified transaction involving restructuring of the Alpha Card joint venture, the notifying parties would acquire joint control over the full-function joint venture. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

³ Pursuant to the transaction the following agreements will be amended: the Amended and Restated Card Operator Agreement, the Merchant Acquirer Agreement, the Shareholders Agreement, the Amended and Restated Financial Services Agreement and the Merchant Acquirer Financial Services Agreement.

IV. COMMUNITY DIMENSION

21. The operation has a Community dimension pursuant to Article 1(2) of the Merger Regulation. The parties have a combined aggregate worldwide turnover in excess of EUR 5,000 million (American Express EUR 20,234 million, Fortis EUR 120,457 million, Alpha Card EUR [...] million), and two of them have a Community-wide turnover in excess of EUR 250 million (American Express EUR [...] million, Fortis EUR [...] million). Each of the undertakings does not achieve more than two-thirds of its Community-wide turnover in one and the same Member State.
22. The transaction thus has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

V. RELEVANT MARKETS

23. In the previous decisions⁴ the Commission has defined the payment card issuing market as being separate from the merchant acquiring market. The proposed transaction concerns the markets for payment card issuing, and its possible sub-segments, and merchant acquiring in Belgium and Luxembourg.

Payment Card Issuing

24. In previous decisions⁵ the Commission ultimately left open whether the market for payment card issuing should be further sub-divided. The Commission considered in those decisions that payment card issuing could possibly be split into the following markets:

- cards issued to households and cards issued to commercial customers⁶;
- international⁷ and national cards;
- debit⁸ and credit cards;

⁴ See Commission decisions of 3 October 2007 in Case COMP/M.4844 Fortis/ABN AMRO Assets, 2 June 2005 in Case M.3740 Barclays Bank/Foreningssparbanken/JV, para. 11. In the context of antitrust proceeding see Commission decision of 19 December 2007 in Cases COMP/34.579 MasterCard, COMP/36.518 EuroCommerce and COMP/38.580 Commercial Cards.

⁵ See COMP/M.4844 Fortis/ABN AMRO Assets, cited above, at para.48, Commission decisions of 29 September 2006 in Case COMP/M.4316 Atos Origin/Banksys/BCC, para. 22-23, 18 October 2005 in Case COMP/M.3894 Unicredito/HVB, para. 13, and of 8 November 2001 in Case Nordbanken/Postgirot, para.15-16 and following.

⁶ The cards issued to commercial customers consist of the cards issued to SMEs and large corporate customers.

⁷ Cards that belong to international network and/or carry international acceptance trademark such as MasterCard/Maestro, Visa/Electron, American Express or Diners and can be used at POS and ATMs internationally. *National cards* can only be used within one country whereas international cards may be used in several countries.

- selective and general cards.⁹

25. In addition, the previous cases may also suggest the possibility of alternative market segmentation in respect of intra-brand competition, where the issuing market would comprise issuing cards of a particular brand only.¹⁰
26. The Commission has previously defined the market of payment card issuing as being likely national in scope¹¹, although it has also recognized the possibility of widening the market in the future. The notifying Parties followed this approach and provided data based on national geographic markets.
27. For the purposes of the present case the exact product and geographical market definitions can be left open since the proposed transaction does not raise serious competition concerns in the narrowest market definition.

Merchant Acquiring

28. In a similar vein in the previous case practice¹² it has been indicated that the merchant acquiring market may further be subdivided according to the type of scheme organisation (international / domestic), customer type (consumer/commercial), type of card (debit/credit) or according to the brand (American Express Personal Green Card/Personal Gold Card/Personal Platinum Card/Corporate Card/Visa/Visa electron/V pay/MasterCard/Maestro etc.).
29. The previous cases also suggest the possibility of alternative market segmentation in respect of intra-brand competition, where the acquiring market would comprise acquiring of merchants for a particular brand of cards.¹³

⁸ The only distinguishing feature of *credit/charge cards* vis-à-vis *debit cards* is that the former allows the cardholder to defer payments. *Store cards* are marketed via retailers to help to finance specific purchases and although they may have revolving credit functionality they are typically used by consumers only to fund the original transaction.

⁹ *General cards* can be used at all points of sales that accept cards belonging to the system as a method of payment and to make withdrawals from automatic teller machines. *Selective cards* however can only be used with certain merchants.

¹⁰ In antitrust context see the Commission decision of 17 October 2007 in case COMP/38606 Groupement des Cartes Bancaires. A similar approach in the context of merchant card acquiring has been taken in the Commission decisions of 19 December 2007 in Cases COMP/34.579 MasterCard, COMP/36.518 EuroCommerce and COMP/38.580 Commercial Cards (the "MasterCard decision") and 3 October 2007 in case COMP/37860 Morgan Stanley/Visa International and Visa Europe.

¹¹ See cases COMP/M.2567 Nordbanken/Postgirot, COM/M.3740 Barclays Bank/Föreningsparbanken/JV, and COMP/M.4844 Fortis/ABN AMRO Assets.

¹² See cases COMP/M.4316 Atos Origin / Banksys / BCC, paras. 21-23, COMP/M.2567 Nordbanken/Postgirot, para.18 Commission investigation in Case COMP/M.2390 SEB/Föreningsparbanken (the case was closed before a formal decision was taken due to the withdrawal of the merger notification). In context of antitrust proceedings the Commission has recently identified a market for merchant acquiring in the MasterCard decision (id. footnote 9), but it was stated that further subdivision of the market can be left open.

¹³ In antitrust context see, *inter alia*, the "MasterCard decision"

30. In line with previous Commission decisions¹⁴ the notifying Parties provided data based on national geographic markets, although the Commission has acknowledged the possibility of widening the market in the future.
31. For the purposes of the present case the questions on whether the merchant acquiring market should be further segmented and what is its exact geographic market definition can be left open, since the proposed transaction does not raise serious doubts as to the existence of a significant impediment of effective competition on any of the alternative markets.

VI. COMPETITIVE ASSESSMENT

Horizontal effects in payment card issuing

32. The activities of the Parties overlap in the overall payment card issuing market and in its potential segments, i.e. segment for credit card issuing, segment for card issuing to commercial customers and segment for card issuing to consumers. In essence, by having joint control over Alpha Card, Fortis, which is active in the issuing of other debit and credit cards in Belgium and Luxembourg, will also have a decisive influence on the issuing of American Express credit cards in those Member States.
33. If the overall payment card issuing market definition is to be considered, Alpha Card, American Express and Fortis are active in this market in Belgium and in Luxembourg. The combined market share of the Parties in Belgium is [40-50] %% (Fortis [40-50] %, Alpha Card [0-5%] and American Express [0-5] %). The combined market share in Luxembourg is [30-40] % (Fortis [30-40] %, Alpha Card [0-5] %, American Express [0-5] %).
34. The market share increment "added" by the transaction to the market share of Fortis in the market for payment card issuing is small on both national markets (Belgium: [0-5] % and Luxembourg: [0-5] %). Furthermore, there is a number of payment card issuers active both in Belgium (Dexia: [20-30] %, KBC Bank: [10-20] % and ING Groep: [10-20] %) and in Luxembourg (Banque and Caisse d'Epargne pour Etat: [30-40] %, Dexia: [20-30] %, ING Groep: [5-10] %).
35. Considering the possible segments of payment card issuing as indicated above, the only relevant overlaps between the parties would occur in the segment of credit card issuing, and in particular in credit card issuing for commercial and consumer cards.
36. Alpha Card and American Express issue only American Express cards that are general international credit cards for consumers and commercial customers, whereas Fortis issues both credit and debit general international cards for consumers and commercial customers.¹⁵ Therefore there is no overlap between Alpha Card and the Parent companies in the segments of national cards, debit cards and selective cards.

¹⁴ See cases COMP/M.2567 Nordbanken/Postgirot, COM/M.3740 Barclays Bank/Föreningsparbanken/JV, and COMP/M.4844 Fortis/ABN AMRO Assets. In the context of antitrust proceeding see the MasterCard decision (id. footnote 9).

¹⁵ Fortis issues Visa, MasterCard, Maestro, Bancontact/Proton, the latter being co-branded with the Visa or MasterCard international schemes.

37. In the possible segment of credit card issuing the market share of the Parties in Belgium is [40-50] % (Fortis [30-40] %, Alpha Card [5-10] % and American Express [0-5] %).
38. Considering that both American Express and Alpha Card are only active in the segment of credit card issuing, the narrower segment where the overlap between the Parties could occur would be the segments of credit cards issued to commercial customers and credit cards issued to consumers.
39. If the market would be sub-divided into further sub-segments, in the segment of payment card issuing to commercial customers the Parties would have combined market share of [40-50] % (Fortis [30-40] %, Alpha Card [5-10] %, American Express [0-5] %) in Belgium, whereas in the segment of payment card issuing to consumers the market share of the Parties in Belgium would be [40-50] % (Fortis [30-40] %, Alpha Card [10-20] %, American Express [0-5] %). Concerning the market shares for all relevant segments, the Parties confirmed that their market shares in Luxembourg do not differ significantly from their market shares in Belgium. This approach has been also reflected in the overall market shares on the payment card issuing market in Luxembourg.
40. In any event, Alpha Card has been active already in the past in the issuing of American Express cards under joint control of Fortis and American Express as the present transaction is notifiable under the Merger Regulation only since Alpha Card will become a full-function joint venture. The present transaction will not change the incentives of Fortis in relation to the issuing of other (credit) cards itself or of American Express cards by Alpha Card. Therefore, the transaction does not constitute a significant change in the market compared to the past.
41. Furthermore, in the course of market investigation the majority of respondents did not raise any competition concerns with regard to the transaction, namely no increase in fees or product availability has been foreseen. A number of respondents stated that the impact of the transaction on the payment card issuing market in Belgium and in Luxembourg would be limited due to a small market share of American Express in the above mentioned markets.
42. Even in case of hypothetical market segmentation for cards of the American Express brand, where Alpha Card and American Express are already issuing American Express branded cards (American Express has retained its issuing business only for cards in respect of certain multi-national accounts, whereas it has transferred the majority of its business in Belgium and Luxembourg to Alpha Card), the transaction would not have impact in the alternative segment of the market, as Fortis is not active in issuing American Express branded cards.

Horizontal effects in merchant acquiring

43. The activities of the Parties (American Express and Alpha Card) could only overlap in respect of merchant acquiring for the American Express cards. Fortis itself does not carry out any acquiring activities in Luxembourg and Belgium.
44. The Parties have provided the market shares for the overall merchant acquiring markets in Belgium and Luxembourg. Any possibly overlapping activities in this field would come from acquiring for American Express cards as American Express has retained its acquiring business only for cards in respect of certain multi-national

accounts, whereas it has transferred the majority of its business in Belgium and Luxembourg to Alpha Card. The combined market shares of the Parties are very low: in Belgium [0-5] % (Alpha Card [0-5] % and American Express [0-5] %) and in Luxembourg around [0-10] % (Alpha Card: [0-5] % and American Express: [0-5] %). Furthermore, there is a number of very large competitors active on the markets: Atos Worldline ([80-90] %) and Elavon ([10-20] %) in Belgium and CETREL ([80-90] %) in Luxembourg.

45. Also on any other delineation of the market the transaction does not raise competition concerns as combined market shares are low and Fortis is anyhow not active on any of those possible markets. Furthermore, even in case of hypothetical market segmentation for cards of the American Express brand, where Alpha Card and American Express are already acquiring merchants for American Express branded cards, the transaction would not have impact in the alternative segment of the market, as Fortis is not active in acquiring for American Express branded cards (and neither for any other cards in Belgium and Luxembourg).
46. In the course of market investigation, none of the competitors of the Parties identified any competitive concerns related to the transaction in both markets for payment card issuing and for merchant acquiring. The respondents found that the notified transaction is not likely to give rise to any competitive concerns due to the fact that it only constitutes a restructuring of Alpha Card and the current market shares of American Express in Belgium and in Luxembourg remain low.
47. In view of the above, the proposed transaction does not raise serious doubts as to its compatibility with the common market.

VII. CONCLUSION

48. 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