

***Case No COMP/M.5968 -
ADVENT/ BAIN CAPITAL/ RBS
WORLDPAY***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/10/2010

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EUROPEAN COMMISSION

Brussels, 14.10.2010

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.5968 - ADVENT/ BAIN CAPITAL/ RBS WORLDPAY
Notification of 9 September 2010 pursuant to Article 4 of Council
Regulation No 139/2004¹
Publication in the Official Journal of the European Union No C 249,
16.09.2010, p. 26**

1. On 9 September 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which funds controlled by Advent International Corporation ("Advent", USA) and funds controlled by Bain Capital Investors, LLC ("Bain Capital", USA), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control over the merchant payment services business of The Royal Bank of Scotland Group plc and its affiliates ("RBS WorldPay", UK) by way of purchase of shares and assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES

3. Bain Capital is one of the largest private equity investment firms in the world, based in the US. Its funds invest in companies across a variety of industries, including

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

information technology, healthcare, retail and consumer products, communications, financial and industrial/manufacturing.

4. Advent is also a private equity investor based in the US. It has holdings in various sectors, including industrial, retail, media, communications, information technology, internet, healthcare and pharmaceuticals.
5. RBS WorldPay is active in the provision of merchant acquiring and payment card processing services and operates through the business divisions: *Streamline* (providing merchant acquiring and processing services in the UK and Ireland), *Streamline International* (providing these services globally), the internet based interface *eCommerce*, and *RBS WorldPay US*, which comprises the aforementioned activities and Automated Teller Machine (ATM) driving in the US.
6. RBS WorldPay is one of the businesses which the Royal Bank of Scotland Group plc ("RBS") was required to divest in connection with the Commission's state aid approval decision on the group's restructuring.³

II. THE OPERATION

7. This concentration involves the indirect acquisition, through a series of intermediate acquisition vehicles, of joint control by Advent and Bain Capital over RBS WorldPay, by way of purchase of shares and assets.
8. Pursuant to the investment agreements, each of Advent and Bain Capital will indirectly own ca. [35 – 40]% of the shares of the investment vehicle TopCo and thereby indirectly of RBS WorldPay⁴. Together, Advent and Bain Capital will own a majority of the voting equity and be entitled to jointly appoint 6 out of the 10 directors of TopCo's decision making body and the Chairman. By means of a number of agreements signed between Advent and Bain Capital, certain decisions cannot be taken without the consent of both Advent and Bain Capital. These relate, *inter alia*, to the appointment or removal of directors and the adoption of the annual business plan and budget of RBS WorldPay, giving each of them a right to veto these strategic business decisions. No decision on these matters can be taken unless both Advent and Bain Capital are in agreement⁵. The other shareholders do not have veto rights over strategic business decisions.
9. It can therefore be concluded that Advent and Bain Capital will exercise joint control over RBS WorldPay and hence, the proposed transaction is a concentration within the meaning of Article 3(1) of the Merger Regulation.

III. EU DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶ (Advent: EUR [...] million; Bain Capital: EUR [...] million; RBS

³ See Commission's State Aid decision of 14 December 2009 in case numbers N 422/2009 and N 621/2009 - United Kingdom - *Restructuring of Royal Bank of Scotland following its recapitalisation by the State and its participation in the Asset Protection Scheme* (14 December 2009).

⁴ [...] The remaining ca. [20 – 30]% will be held by RBSG and the existing management team of RBS WorldPay ("Management").

⁵ [...].

⁶ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

WorldPay: EUR [...] million). Each of them has a EU-wide turnover in excess of EUR 250 million (Advent: EUR [...] million; Bain Capital: EUR [...] million; RBS WorldPay: EUR [...] million). Advent and Bain Capital do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension under Article 1 of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

1. Market definition

Activities of the JV

11. RBS WorldPay is active in the field of merchant acquiring and processing of payments for retail transactions. In previous decisions, the Commission distinguished between merchant acquiring and payment card processing services for market definition purposes.⁷ Whereas merchant acquiring comprises the contracting of merchants for payment card acceptance and the provision of respective services, the business of payment card processing relates to the provision of technical services for payment card transactions.
12. The Commission in previous decisions indicated that merchant acquiring might be further sub-divided according to the type of card organisation (national or international), the type of cards (credit or debit cards) or the brand (e.g. Visa or MasterCard) but generally left the precise market definition open.⁸ Similarly, with respect to processing services, the Commission has left open whether issuing processing and acquiring processing constitute different product markets.⁹ With respect to the geographic scope, the Commission has indicated that merchant acquiring markets are still national in scope, but has left the precise definition for international cards open; similarly, the Commission has left open whether processing activities are national or EEA-wide in scope.¹⁰
13. As the concentration does not raise serious doubts under any possible alternative definition, the product and geographic delineation of the relevant markets can be left open for the purpose of this decision.

Activities of Advent and Bain Capital

14. The notifying parties have identified one horizontal overlap between the activities of two of their fund companies. This concerns the Italian activities of Clear Channel Communications, Inc., (“Clear Channel”), a company that Bain Capital controls jointly with the private equity company Thomas H.Lee Partners, and Avip, S.p.A. (“Avip”), an Advent portfolio company. Both companies are active in the area of outdoor advertising in Italy which concerns the provision of outdoor advertising space ranging from billboards and street furniture (e.g. bus shelters, free standing panels or kiosks) to airports and football stadiums.

2. Assessment

⁷ See, for example, COMP/M.4814 - *AIB/FDC/JV* and COMP/M.4316 - *Atos Origin/Banksys/BCC*.

⁸ See, for example, COMP/M.4814 - *AIB/FDC/JV* and COMP/M.4316 - *Atos Origin/Banksys/BCC*.

⁹ See, for example, COMP/M.4814 - *AIB/FDC/JV* and COMP/M.4316 - *Atos Origin/Banksys/BCC*.

¹⁰ See, for example, COMP/M. 4844 - *Fortis/ABN AMRO*; COMP/M.4814 - *AIB/FDC/JV* and COMP/M.4316 - *Atos Origin/Banksys/BCC*.

15. Neither of the parents' fund companies carries out any business activities in the merchant acquiring or payment processing services where RBS WorldPay is active, nor is engaged in activities in a product market which is upstream, downstream or otherwise closely related to these markets. For these reasons, the Commission concludes that the concentration will not lead to a significant impediment of competition in those markets.
16. Furthermore, spill-over effects within the meaning of Article 2(4) of the Merger Regulation as a result of the proposed transaction can be discarded.
17. The parents' activities only overlap in outdoor advertising in Italy. These activities are unrelated to RBS WorldPay's markets: neither do they form part of RBS WorldPay's markets, nor of a market which is up- or downstream of those of RBS WorldPay or of neighbouring markets closely related to these markets. Furthermore, RBS WorldPay only represents a small part of the parents' portfolio, so that coordination between independent undertakings that restricts competition within the meaning of Article 101(1) of the TFEU is highly unlikely.
18. The present decision under the Merger Regulation in no way prejudices RBS' obligations according to the above mentioned state aid decision of the Commission of 14 December 2009.

V. CONCLUSION

19. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission,

(Signed)

Joaquín ALMUNIA

Vice-President of the Commission