EUROPEAN COMMISSION

DG Competition

Case M.7873 - WORLDLINE / EQUENS / PAYSQUARE

Only the English text is available and authentic.

REGULATION (EC) No 139/2004

MERGER PROCEDURE

Decision on the implementation of remedies - Art. 6(1)(b) in conjunction with 6(2) - Purchaser approval

Date: 14/3/2017

EUROPEAN COMMISSION

Brussels, 14.3.2017
C(2017) 1814 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

Subject: Case M.7873 – Worldline / Equens / Paysquare
Approval of BNPP (in conjunction with SIX) as purchaser of the Paysquare Divestment Business following your letter of 30 January 2017 and the Trustee's opinion of 24 February 2017

I. FACTS AND PROCEDURE

1. By decision of 20 April 2016 (the "Decision") based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the "Merger Regulation") the Commission declared the operation by which Worldline S.A. ("Worldline") ultimately controlled by Atos S.E. acquired sole control over Equens S.E. ("Equens"), including its subsidiary Paysquare, compatible with the internal market following modification by subject to conditions and obligations (the "Commitments").

2. As part of the Committments, Worldline committed to divest Paysquare's merchant acquiring business in Belgium, including its client portfolio, key assets and key personnel as detailed in Schedule 1 of the Commitments (the "Divestment Business") to a suitable purchaser.

3. By letter of 30 January 2017, Worldline proposed BNP Paribas Fortis ("BNPPF") for approval by the Commission as purchaser of the Divestment Business and submitted the proposed Sale and Purchase Agreement (signed on 21 December 2016) as well as the Interim Service Agreement (signed on 27 January 2017) (together, the "Proposed Agreements").

4. In Belgium, BNPPF acts an agent of SIX Payment Service (Europe) S.A. Europe ("SIX") on the Belgian merchant acquiring market on the basis of a partnership

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established between the two companies in 2014. On 31 January 2017, Mazars (the "Trustee") informed the Commission that, in view of this partnership, the acquiring operations with the merchants that are part of the Divestment Business will be transferred, together with the right to acquire, to SIX. On these premises, it was considered appropriate to conduct an assessment SIX's independence and suitability as a buyer, in addition to the assessment of BNPPF.

5. On 8 February 2017, the Trustee submitted an assessment of BNPPF's suitability as a purchaser (in conjunction with SIX) and, in particular, indicated that both companies fulfil the criteria of the purchaser requirements in Section I.C. of the Commitments attached to the Decision. In this assessment, the Trustee also indicated that, on the basis of the Proposed Agreements, the Divestment Business would be sold in a manner consistent with the Commitments. The final version of the Trustee's reasoned opinion (the "Reasoned Opinion") was submitted on 24 February 2017.

II. ASSESSMENT OF THE PROPOSAL

6. As set in Section I.C. of the Commitments, in order to be approved by the Commission, the Purchaser must fulfil the following criteria:

   a. The Purchaser shall be independent of and unconnected to Worldline and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

   b. The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other market players;

   c. The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor does it give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

7. This section provides a description of BNPFF (the "Purchaser") as well as an assessment of its suitability as a buyer (taking its partnership with SIX into account). In view of the partnership with the proposed purchaser BNPPF in Belgium and its consequent inherent connection with the acquisition of the Divestment Business, this section will also provide a description of SIX and an assessment of its independence from Worldine.

Description of the Purchaser

8. BNPPF, i.e. the Purchaser of the business, is part of the BNPP Group, one of the largest banking groups in Europe and is 99.94% owned by BNP Paribas SA. BNPP Group's main areas of activity are Retail Banking & Services (RBS) and Corporate Institutional Banking (CIB). BNPP's turnover at group level in 2015 amounted to EUR 42.9 billion (with a net profit of EUR 6.7 billion); it employed 190,480 staff in 2015. BNPFF covers the BNPP Group's RBS and CIB activities in Belgium.

9. SIX is a subsidiary of SIX Group Ltd., an unlisted public limited company domiciled in Switzerland with its registered office in Zurich, which provides a wide range of services in various areas of the financial sector, including securities trading and post-trading, financial information processing and cashless payment transactions. SIX describes itself as the market leader in the card business in Switzerland, Luxembourg and Austria and offers transborder acquiring and issuing services in Europe. SIX processes approximately 9.3 million transactions each day and holds licences of all major card brands.

a. Independence

Independence of BNPPF

10. There are no cross-shareholdings between BNPFF and Worldline. In addition, there are no joint ventures or entities in which both BNPPF and Worldline have a share interest. Finally, there is no cross membership in the management boards of BNPFF and Worldline.

11. As regards the commercial relationships between the two companies, Worldline supplies certain services to BNPP (including to BNPFF),[1] generating revenues for approximately EUR […].

12. Revenues stemming specifically from the contracts between Worldline and BNPFF in Belgium amounted to approximately EUR […] in 2015.[2] These revenues mostly consist of issuing processing (for credit and debit cards) and related services. Contracts between Worldline and BNPFF will end in […]. The Trustee considers that, based on its review, these contracts appear to be normal course client/supplier contracts that are unlikely to undermine the independence of the two companies. More specifically, BNPFF usually insources the services that are provided to it by Worldline on the basis of these contracts and could, in any event, also easily source these services from other large issuing processors that are active in Belgium or neighbouring markets such as Germany and the Netherlands. Finally, the value of these contracts is minimal if compared to the turnover of Worldline and BNPFF (for the latter, around [0-5]% of its global turnover).

13. In view of the above, the Commission considers that there are no structural links or material commercial links that could cast doubts on BNPFF's independence from Worldline. Therefore, based on the information provided, the Commission considers BNPPF to be independent of and unconnected to Worldline.

Independence of SIX

14. There are no cross-shareholdings between Worldline and SIX. In addition, there are no joint ventures in place between the two companies. Finally, there is no cross membership in the management boards of SIX and Worldline.

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1 […].

2 The remaining EUR […] are generated by Worldline in relation to commercial contracts with the BNPP outside Belgium and relate to various services provided by Worldline to BNPP including acquiring processing, internet payment, issuing processing, online banking and payment software licencing.

15. With respect to the existing commercial relationships between the two companies, Worldline is one of SIX's suppliers of POS terminals both in the EEA and worldlwide.[3] Based on the information submitted by Worldline to the Trustee, SIX has been distributing Worldline (formerly Banksys) terminals since the 1990s. The arrangements between the two companies were formalised in a distribution agreement that was concluded in 2013.[4] This agreement can be terminated by both parties subject to an 18 months notice; it does not impose any volume commitment on SIX that, in any event, has contracts in place with other terminal suppliers. In any event, revenues generated by Worldline from these contracts and the value of the supply contract with Worldline is nearly insignificant if compared with Worldline's 2015 turnover and SIX's 2015 operating income respectively (in the range of 1% in both instances).

16. In view of the above, the Commission considers that there are no structural links or material commercial links that could significantly undermine SIX' independence from Worldline. Therefore, based on the information provided, the Commission considers SIX to be independent of and unconnected to Worldline.

b. Financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force

i. Financial resources

17. As one of the largest banks in Belgium, BNPPF has a solid balance sheet and has experienced a growth in revenues from 2014 to 2015 (from approximately EUR 7 billion to approximately EUR 7.23 billion) This growth trend appears to have been confirmed by the results of 2016 (EUR 3.6 billion in the first half of 2016).

18. BNPPF received an A rating (more specifically A/Stable Outlook/A-1) from rating agency Standard & Poor's ("S&P") and hence is considered (under the S&P definitions) to have a "*strong capacity to meet its financial commitments*".

19. The purchase price[5] that BNPFF has agreed to pay for the Divestment Business (including the assumption of liabilities) amounts to EUR […]. The expected investments / project costs amount to EUR […] (of which EUR […] in 2017). It is evident that, compared the overall financial resources available to BPNPP, both the purchase price that BNPFF for the Divestment Business and the expected investments that will be required are insignificant and can be paid in their entirety out of BNPP's cash resources.

20. Based on the above, the Commission considers BNPFF to have the sufficient resources to complete the transaction and to maintain and develop the Divestment Business as a viable and active competitive force.

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[3] SIX also supplies terminals from other providers in the EEA, namely Ingenico and Verifone.

[4] Adjacent contracts for the provision of certain ancillary terminal management services ("Xenturion" application and other repair services) are in place between SIX and Worldline. The revenues generated by Worldline from these services amount to approximately [5-10]% of Worldline's sales generated with SIX.

[5] This price includes VAT.

ii. Proven expertise

21. BNPPF is one of the largest banks in Belgium and has therefore not only the financial capacity, but also a natural expertise and insight in the Belgian payments sector, holding a licence for the issuance of Bancontact, Visa & Mastercard payment cards and issuing several products under this license. BNPFF is also the legal issuer of the electronic money for its prepaid cards and has launched an e-commerce offering in 2016.

22. BNPPF is a relatively recent entrant in the merchant acquiring market in Belgium. It entered the market in 2014 through the establishment of a partnership with SIX. Under this technical and commercial partnership (which is still in place), BNPPF acts as an agent of SIX and perfoms a commercial role towards clients/merchants, while SIX holds the acquiring licence and carries out the processing of the transactions.

23. It follows that, although not currently holding an acquiring licence in Belgium, BNPPF can rely on a very experienced partner to manage the technical aspects of the contracts with the merchants, most importantly the processing of the transactions. The merchants included in the Divestment Business will be serviced under the scheme licence of SIX and on its platform.

24. While BNPPF still holds a low market share in the merchant acquiring market in Belgium, it has been continuously attracting new customers since its entry, both through its partnership with SIX and thanks to its own efforts.

25. Based on the above, the Commission considers that BNPFF, especially in view its partnership with SIX, which is a very experienced player in the merchant acquiring space also in terms of technical capabilities, has the proven expertise to maintain and develop the Divestment Business as a viable and active competitive force in competition with the merged entity and other competitors.

iii. Incentive to maintain and develop the Divested Business as a viable and active competitor

26. The acquisition of the Divestment Business fits with BNPPF's plans to expand its activities in the Belgian merchant acquiring market. This expansion plan is also coherent with the strategy implemented by BNPP at group level in other European countries.

27. The acquisition of the Divestment Business provides BNPPF with an opportunity to significantly increase its presence on the Belgian market and to integrate its Belgian merchant acquiring business with the Divestment Business' client portfolio which is more than three times larger than BNPFF's current portfolio (in terms of transaction volume).

28. In addition, the acquisition will allow BNPPF to reach and gain visibility with new customers (especially large merchants) with a view to increase its overall profitability by offering them not only merchant acquiring services, but also BNPFF's overall range of bank products.

29. BNPFF has developed detailed plans to achieve its targets in relation to the acquisition of the Divestment Business, as well as a detailed migration plan for the

Divestment Business which covers the period from Day 1 to the first four months after the acquisition has closed (when the migration is expected to be completed).

30. Based on the above, the Commission considers that BNPPF has the incentive to maintain and develop the Divestment Business as a competitive business.

c. Absence of *prima facie* competition problems

31. Based on the information provided by the Notifying Party in the Form CO and as acknowledged by the Commission in its Decision dated 20 April 2016, in the market for merchant acquiring in Belgium, Worldline has a market share between 85 and 90%.

32. On the other hand, BNPFF is a recent entrant and, through its partnership with SIX, has a market share of approximately [0-5]%-[0-5]% in the Belgian merchant acquiring market. In the same market, the Divestment Business holds a similar market share, i.e. approximately [0-5]%.

33. Finally, BNPPF confirmed to the Trustee, that its is not subject to any restrictions stemming from its State aid restructuring plan of 12 May 2009; notably, its acquisition ban expired on 12 May 2013.

34. On this basis, no *prima facie* concern arises in the EEA.

35. This *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudge the competition assessment of the acquisition of the Divestment Business stemming from a a deeper enquiry by a competent competition authority under applicable merger control rules, including the Commission.

III. ASSESSMENT OF THE PROPOSED AGREEMENTS

36. The Sale and Purchase Agreeement ("SPA") was signed between Worldline and BNPFF on 21 December 2016. On 27 January 2017, Worldline and BNPFF signed the final Interim Service Agreement ("ISA") (the two agreements together are referred hereinafter as the "Proposed Agreements").

37. The Trustee has reviewed and provided an assessment of the Proposed Agreements, and concluded that both agreements generally fulfil the requirements of the Commitments and the condition of the Commitments to transfer the Divestment Business to a suitable purchaser. However, in the Reasoned Opinion, the Trustee highlighted the following issues:

    a. *Non-compete clause.* Paragraph 6 of the Commitments provides for a non-compete period of five (5) years after closing, during which Worldline shall not neither directly approach nor directly contract with the customers of the Diverstment business. The SPA between Worldline and BNPFF, however, only includes a non-compete clause of the duration of two (2) years. The Trustee reports that, upon its specific enquiry on the inconsistency described above, Worldline responded that BNPFF had only requested to include two (2) year non-compete during the negotiations of the SPA, suggesting that this clause was the results of the discussions between the Parties. According to Worldline, in any event, the Commitments were sufficient to bind Worldline to a 5 (five)-year non-compete clause. The Trustee, in agreement with the Commission, considered that the non-compete clause as included in the SPA was non consistent with the Committments and that merely invocating the Commitments text was not sufficient to comply with the 5 (five) year non-compete obligation undertaken by Worldline. By letter dated 7 March 2017 signed by both Worldline and BNPPF, Worldline committed to a customer non-solicit obligation of 5 years, pursuant to the Commitments.

b. *Termination of for "material breach" of the ISA.* The Trustee reports that, under the ISA, BNPFF has the right to terminate the ISA for convenience, while both parties to the agreement have the right to terminate the agreement in case of (i) material breach of the agreement with a failure to remediate the breach in 15 calendar days; (ii) material breach of a major obligation under the ISA which is not capable of being remedied (the concept of "major obligation" is not specifically defined in the ISA); (iii) insolvency of one of the parties and (iv) requirement of the regulator. In its Reasoned Opinion, the Trustee noted that, while the clauses on the termination for material breach are generally usual and legitimate clauses, the termination right of Worldine should not undermine its obligation under the Commitments to offer a service agreement to the purchaser. The Trustee, therefore, requested Worldline to agree to send a copy of any breach notices under the ISA also to the Trustee to avoid the situation whereby Worldline would terminate the ISA for a breach by BNPFF without the Trustee being informed. By letter dated 7 March 2017 signed by Worldline and BNPFF, Worldline committed to inform the Trustee should such instances occur.

c. *Best efforts to procure customers' consent.* The Trustee notes that the SPA does not contain a provision reflecting paragraph 5 of the Commitments which provides that Worldline will employ its best effors to procure customer's consent (with regards to customer contracts requiring the customer's consent to be transferred to a third party). Although the Trustee takes the view in its Reasoned Opinion that none of the other provisions of the SPA prevents Worldline from complying with this specific commitment, the Commission considers that this provision is relevant to ensure that a maximum number of contracts is transferred. By letter dated 7 March 2017 signed by Worldline and BNPFF, Worldline specifically committed to employ its best efforts to procure the customer consent pursuant to paragraph 5 of the Commitments.

d. *Non-solicitation of key personnel (territorial limitation).* In its Reasoned Opinion, the Trustee notes that clause 14.1 of the SPA (non-solicitation of key personnel) is not in line with the wording of paragraph 17 of the Commitments as it contains a territorial limitation (Belgium) as regards the obligation not to solicit the two individuals identified as key personnel other than the Hold Separate Manager ("HSM"). Upon request by the Commission, by letter dated 7 March 2017 signed by Worldline and BNPFF waived the territorial limitation included in the SPA.

38. Based on the above, the Commission concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

IV. CONCLUSION

39. On the basis of the above assessment, the Commission approves BNPPF (in conjunction with SIX) as a suitable purchaser for the above-mentioned reasons.

40. On the basis of the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

41. This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreements. This decision does not constitute a confirmation that Worldline has complied with its Commitments.

42. This decision is based on paragraphs 22 and 23 of the Commitments attached to the Commission Decision of 20 April 2016.

For the Commission

(Signed)

Johannes LAITENBERGER
Director-General