EUROPEAN COMMISSION
DG Competition

Case M.7944 - CREDIT MUTUEL / GE CAPITAL'S FACTORING AND EQUIPMENT FINANCING BUSINESSES IN FRANCE AND GERMANY

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 14/06/2016

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

Subject: Case M.7944 - CREDIT MUTUEL / GE CAPITAL'S FACTORING AND EQUIPMENT FINANCING BUSINESSES IN FRANCE AND GERMANY
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

(1) On 4 May 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the Banque Fédérative du Crédit Mutuel ("BFCM", France) within the Crédit Mutuel Group ("Crédit Mutuel", France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the factoring and equipment financing activities of the General Electric Group ("GE", USA), organised through their subsidiary GE Capital ("GE Capital") in France and Germany ("Target Businesses") by way of purchase of shares and assets (the "Transaction").[3] Crédit Mutuel and the Target Businesses are designated hereinafter as the "Parties".

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 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 Publication in OJ C 174, 14.05.2016, p. 15.

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1. THE PARTIES

The Notifying Party

(2) Crédit Mutuel is a French bank and insurance group, active in corporate and retail banking as well as life and non-life insurance activities. It is organised in a decentralised structure based on three levels: (i) local banks, (ii) regional groups, and (iii) a national confederation. It includes two divisions: the mutual banking division and the capital division. The capital division consists of BFCM and its various subsidiaries specialised by business line (insurance, factoring, consumer credit, real estate, equipment leasing, etc.) both in France and abroad.

(3) The activities relevant for the Transaction involve factoring and equipment financing for business customers in France and Germany. In France, Crédit Mutuel provides (i) factoring via CM-CIC Factor and (ii) equipment finance services via CM-CIC Bail, Arkea Crédit Bail and Bail Actea. These entities also offer, to a lesser extent, insurance distribution services in relation to their equipment finance activities.

(4) In Germany, Crédit Mutuel is not active in factoring but offers equipment financing, albeit limited to financial leasing in form of "crédit-bail" through its local subsidiaries.

The Target Businesses

(5) GE is a multinational technology company, headquartered in the US. GE ultimately controls GE Capital, a provider of financial services and products to businesses of all sizes and households around the world. GE Capital intends to sell parts of it activities, namely its factoring and equipment financing businesses in France and Germany to BFCM.

(6) In France, the Transaction encompasses the following two target companies that are currently 100% controlled by GE Capital: (a) Titrifact notes ("Titrifact", France), a securitisation special purpose vehicle ("fonds commun de titrisation"), and (b) Factofrance SAS ("Factofrance", France) which in turn has a shareholding of (i) 100% in Société d'Assurance de Courtages et d'Études de Risque SARL ("SACER", France), (ii) 100% in GE Capital Equipment Finance SAS ("GE Capital Equipment Finance", France), (iii) 50% in Factor Soft SAS ("Factorsoft", France) and (iv) 64% in Cofacrédit SAS ("Cofacrédit", France).

(7) In Germany, the Target Businesses are currently 100% subsidiaries of GE Capital and consist of (i) GE Capital Leasing GmbH ("GE Capital Leasing", Germany), (ii) GE Capital Solutions Investment GmbH ("GE Capital Solutions", Germany), and (iii) Heller GmbH ("Heller", Germany). Heller operates its business via two subsidiaries: GE Capital Factoring GmbH ("GE Capital Factoring", Germany) and GE Capital Bank AG ("GE Capital Bank", Germany) that are both part of the transaction.

(8) In addition, GE Capital will transfer 100% of shares of Quanta Grundstücksverwaltungsgesellschaft mbH & Co. oHG ("Quanta", Germany) and a 49% shareholding in Commerz Factoring GmbH ("CommerzFactoring", Germany), the rest of the shareholding being owned by Commerzbank.

2. THE OPERATION

(9) The Transaction will be implemented through a share and asset purchase agreement between BFCM on the one hand and the current holding companies of the Target Businesses within GE Capital on the other hand. These are (i) GE Capital SAS, (ii) Heller Netherlands Holding BV, (iii) GE Business Services GmbH, and (iv) GE Capital International Holdings Limited.

3. EU DIMENSION

(10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] (Crédit Mutuel: [Business secrets: turnover]; Target Businesses: [Business secrets: turnover]). Each of them has an EU-wide turnover in excess of EUR 250 million (Crédit Mutuel: [Business secrets: turnover]; Target Businesses: [Business secrets: turnover]). While Crédit Mutuel achieves more than two-thirds of its aggregate EU-wide turnover in France, this is not the case for the Target Businesses. The notified operation therefore has an EU dimension under Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

(11) The Parties' commercial activities overlap in relation to factoring in France and equipment financing in the form of leasing to business customers in France and Germany. They also offer insurance distribution services but only in connection with their leasing activities and therefore have limited activities in this area. Insurance distribution services will consequently not be further analysed.

4.1. Relevant Product Markets

4.1.1. Factoring

(12) Factoring is a type of financing intended to provide liquidity to business customers. It is structured as a form of lending against all kinds of receivables. It involves a business client contracting to assign some or all of the invoices for sales made to its own customers to a factoring company. In return, the factoring company provides one or more of the following: (i) a prepayment or advance on the value of the invoices; (ii) invoice collection and sales ledger management services; and (iii) credit insurance protecting the client against a customer's inability to pay an invoice within a period of time.[5] Services comprising a package of all the above can be referred to as "full factoring".

(13) Factoring has previously been considered by the Commission and the French Competition Authority as a separate market from other financing services. The question whether the market should be further sub-divided was left open.[6]

4 Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

5 Cases COMP/M.4844 – Fortis / ABN Amro Assets; COMP/M.2577 – GE Capital / Heller Financial.

6 Cases COMP/M.4844 – Fortis / ABN Amro Assets, paragraph 30; COMP/M.4155 BNP Paribas / BNL, paragraph 15; see the decision of the FCA n 09-DCC-16 of 22 June 2009 on the merger between the Caisse d'Epargne and Banque Populaire groups, §122.

(14) Most suppliers of factoring services provide similar types of services, according to both customers and competitors that responded to the market investigation,[7] which is indicative of supply-side substitutability.

(15) For the purpose of the present case, it can be left open whether the market should be further sub-divided since the transaction will not raise serious doubts as to the compatibility with the internal market in any alternative product market definition.

4.1.2. Leasing

(16) Equipment financing enables customers to acquire the use of a wide range of assets, ranging across office equipment, IT/telecoms equipment, medical equipment, vehicles, etc.[8] Companies and individuals can finance the use of equipment through a variety of financing means, including leasing, loans, etc. In this case, the overlapping activities of the Parties are restricted to leasing to business customers.

(17) The Commission has analysed the market for leasing services in several past cases. In COMP/M.5384 – *BNP Paribas / Fortis*, the Commission considered the potential distinction between operating and financial leasing products due to their distinct business models and offerings to the business customer, particularly in relation to the ownership status of the leased assets and the risks associated.[9] In addition, a major differentiating criterion from a lessee perspective is the intention and the associated price to buy the leased assets at the end of the leasing period. While this purchasing option is usually attractive and regularly executed for financial leasing, operating lease contracts usually do not contain special residual value purchase options.[10] In COMP/M.5384 – *BNP Paribas / Fortis*, the Commission also considered that car fleet leasing could be distinguished from other types of leasing but ultimately left the question open.[11] The French Competition Authority analysed the leasing market in several cases, distinguishing between leasing to individuals and leasing to businesses. It also considered the various options (operating leasing, financial leasing, hire purchase leasing, car fleet leasing), as well as other potential segmentations (by type of assets leased or by size of customers), but ultimately left the definition open.[12]

(18) Although some types of assets are leased by specialised providers, most customers to the market investigation consider that suppliers are in general able to provide all types of leasing assets they need.[13] All suppliers that responded to the market investigation also indicated that they lease all types of assets such as office equipment, IT hardware and software, healthcare equipment, passenger cars, other transportation equipment (such as heavy vehicles, commercial vans, etc.), construction and material handling equipment, agriculture equipment, etc.

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7 Questionnaires on factoring, Q1 to competitors (Question 1) and Q2 to customers (Question 5).

8 Case COMP/M.2577 – GE Capital / Heller Financial, paragraph 12 and following.

9 Case COMP/M.4844 – Fortis / ABN Amro Assets, paragraph 61 and following.

10 Case COMP/M.5217 – GEFA / PEMA, paragraph 8.

11 Case COMP/M.5384 - BNP Paribas / Fortis, paragraph 61 and following.

12 Décision of the FCA n 10-DCC-128 of 30 September 2010 on the acquisition of sole control of Sodelem by CIC; Decision of the FCA n 10-DCC-150 of 28 October 2010 on the acquisition of sole control over Leasecom Group by Crédit Mutuel Arkea.

13 Questionnaires on leasing, Q3 to competitors (Question 1) and Q4 to customers (Question 5).

(19) The Parties claim that the market for leasing services is not structurally different for different sizes of customers and that all relevant competitors serve small, medium and large sized companies. The market investigation did not give any indications that the Parties would be particularly close competitors for any specific type of customer nor does any competitive concern arise in any of these three potential sub-segments. The question of further sub-segmentation by size of customer can therefore be left open for the purpose of the present case.

(20) In light of the above, the question of whether leasing services should be further subdivided (i) between operating leasing, financial leasing (itself split between hire purchase leasing/crédit-bail and other financial leasing), and car fleet leasing, (ii) by type of assets, or (iii) by size of customers can be left open in the case at hand, as the Transaction does not give rise to competition concerns in any of these segments.

4.2. Relevant Geographic Markets

4.2.1. Factoring

(21) In its past decisions, the Commission has considered the geographic market definition for factoring to be national in scope.[14] In the present case, the Parties only overlap in factoring in France, given that Crédit Mutuel does not offer factoring services in Germany, unlike the Target Businesses. The geographic scope for factoring for this case can therefore be restricted to France.

4.2.2. Leasing

(22) In previous decisions, the Commission has considered the market for leasing services to be at least national in scope.[15] In the present case the market will be analysed on a national basis in view of the fact that the Parties' activities only overlap in France and Germany, but the exact definition of the geographic market can be left open.

5. COMPETITIVE ASSESSMENT

5.1. Factoring

(23) Based on the figures provided by the Parties, the combined market shares of the Parties for factoring in France amount to approximately [20-30%], with [10-20%] for Crédit Mutuel and [10-20%] for the Target Businesses.[16] Although the Parties will become the largest player in the market for factoring in France post-merger, they will continue to face competition from three additional competitors that account for more than 15% market share each (BNP Paribas, Crédit Agricole, and Société Générale) and one player with a market share […] below 15% (BPCE).

(24) Under a hypothetical separate assessment of several sub-types of factoring, the highest market share would arise in a separate "full-factoring" segment. In this case, the combined shares of the Parties would amount to approximately [30-40%].

14 Cases COMP/M.3894 – Unicredito / HVB, paragraph 42; COMP/M.4155 – BNP Paribas / BNL; COMP/M.4844 – Fortis / ABN Amro Assets, paragraph 23.

15 Case COMP/M.5384 – BNP Paribas / Fortis, paragraph 76.

16 Parties' estimations based on "Affacturage – Activité annuelle 2015" (Annex 5b of the Form CO, confidential statistics of the "Association Française des Sociétés Financières").

(25) From a demand-side perspective the results of the market investigation indicate that companies can choose from different providers with comparable offers. Competitors consider that the top players on the market are BNP Paribas, Crédit Agricole and Société Générale.[17] Customers mention an even larger number of alternative suppliers to which they could switch and therefore expect a limited impact on their ability to source leasing services from different suppliers.[18] In general, market participants do not perceive the Parties to be particularly close competitors to each other.[19]

(26) In light of the above, the proposed transaction will not lead to a significant impediment to effective competition in the market for factoring in France.

5.2. Leasing

(27) The combined market shares of the Parties for leasing services to businesses in France are below [20-30%] in any plausible sub-segmentation. With regards to financial leasing, Crédit Mutuel's market share of [10-20%] will increase by less than [0-5%]. The effect with regards to "credit-bail" (which is a segment of financial leasing) is of comparable magnitude. In a hypothetical segment of operating leasing the Target Businesses are stronger with a market share of [10-20%]. However, Crédit Mutuel's share in this segment is [5-10%] so that the combined entity accounts for [10-20%] also in this segment.

(28) Four large competitors that account for 10% or more each will remain in the market (Crédit Agricole, Société Générale, BPCE, and BNP Paribas). Together, these competitors represent [40-50%] of the overall market for leasing services. All of these banks offer all three types of leasing mentioned above.[20]

(29) While there is a certain specialisation with regards to specific types of assets leased by specific providers, the market investigation did not unveil any segment where both Parties are particularly strong.[21] In spite of this specialisation, all competitors mentioned above provide leasing for all types of assets. In addition, the Parties are not perceived by market participants as close competitors for leasing of any specific type of asset.[22]

(30) While car fleet leasing could be considered as a separate market, this is not relevant for the present case as the Target Businesses are not active in this segment. The market shares provided above exclude this segment accordingly.

(31) While both Parties overlap with regards to leasing services to businesses in Germany, their combined market share amounts to only [0-5%] overall. There are no indications for any plausible sub-segment within the German leasing market where the combined Parties' position could have a significant impact on competition.

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17 Questionnaires on factoring, Q1 to competitors (Question 3).

18 Questionnaires on factoring, Q2 to customers (Question 12).

19 Questionnaires on factoring, Q1 to competitors (Questions 5-6) and Q2 to customers (Questions 10-11).

20 Questionnaire on leasing, Q3 to competitors (Question 2).

21 Questionnaires on leasing, Q3 to competitors (Question 4) and Q4 to customers (Question 9).

22 Questionnaires on leasing, Q3 to competitors (Questions 5-6) and Q4 to customers (Questions 10-11).

(32) In light of the above, the proposed transaction will not lead to a significant impediment to effective competition in the market for leasing in France or Germany.

6. CONCLUSION

(33) 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 and Article 57 of the EEA Agreement.

For the Commission
(signed)
Margrethe VESTAGER
Member of the Commission