EUROPEAN COMMISSION
DG Competition

Case M.7950 - EGB / GP

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 19/04/2016

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EUROPEAN COMMISSION

Brussels, 19.4.2016
C(2016) 2440 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

MERGER PROCEDURE

To the notifying parties:

Dear Sir/Madam,

Subject: **Case M.7950 - EGB / GP**
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 10/03/2016, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Česká spořitelna, a.s. ("CSAS", the Czech Republic); Slovenská sporiteľňa, a.s. ("SLSP", Slovakia) and Banca Comercială Română S.A. ("BCR", Romania), belonging to the Erste Group Bank AG ("EGB", Austria) on one hand, and Global Payments Inc. ("GP", USA) on the other, acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of Global Payments s.r.o. ("the JV",) by way of transfer of assets and purchase of shares in a newly created company constituting a joint venture, hereinafter "the Transaction".[3]

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 the Official Journal of the European Union No C 103, 18.03.2016, p.5.

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(2) EGB and GP are collectively being referred to as "the Notifying Parties". The Notifying Parties and the JV are collectively referred to as "the Parties".

1. THE PARTIES

(3) EGB is a provider of banking, financial services and payment card services, including merchant acquiring services in Central and Eastern Europe.

(4) GP is a provider of card payment processing services, including merchant acquiring services, issuing processing services and POS installation and maintenance services in the EEA, and also globally.

(5) The JV will provide merchant acquiring services in the Czech Republic, Slovakia and Romania, which are, pre-transaction, being provided by EGB and its subsidiaries.

2. THE OPERATION AND THE CONCENTRATION

(6) The Notifying Parties entered into a Framework Agreement based on which EGB will contribute the merchant acquiring businesses of CSAS, SLSP, and BCR to the JV. GP will subsequently acquire shares in the JV. EGB and GP will indirectly hold 49% and 51% of the JV respectively.

(7) In addition, the EGB and GP will enter into a Marketing Alliance Agreement ("MAA"), which provides for a long-term alliance. As a central element foreseen in the MAA, CSAS, SLSP, BCR will refer merchants to the JV.

On joint control

(8) All strategic decisions, including the budget and the business plan are taken at the level of a steering committee composed by 7 members. GP can nominate and remove 4 members, including the Chairman. EGB can nominate and remove 3 members. EGB has a veto right over the nomination, renewal and the removal of the chairman, proposed by GP. The Chairman's term is renewed […].

(9) The Chairman has a casting vote in all issues requiring simple majority. The decisions on the annual budget and business plan are taken at simple majority i.e. no shareholder can outvote the other without the positive vote of the chairman. Given that his term is renewed […], he must constantly try to accommodate both shareholders.

(10) Based on the veto right of the minority shareholder over the appointment, renewal and removal of the chairman, together with the chairman's casting vote as to the adoption of the business plan and the budget, it can be concluded that the Notifying Parties jointly control the JV.

On full –functionality

(11) The Notifying Parties submit that the Transaction will involve the transfer of pre-existing businesses which are already fully operational on the market as merchant acquirers. The JV will take-on and continue these existing businesses.

(12) The JV will have sufficient resources to operate independently on the market. It will be bestowed with: all the existing merchant agreements of CSAS, SLSP, BCR with merchants in their respective countries and the commercial income generated thereof; equipment for running a merchant acquiring business (POS terminals, computer equipment and software etc.); and contracts, legal certifications licences and approvals necessary. Finally, the JV will receive all other resources, including finance, staff and tangible/intangible assets as well as all required functionalities in order to operate its business activities on a lasting basis as a standalone merchant acquirer.

(13) The JV will have a presence on the market, it will provide merchant acquiring services to merchants and will engage in marketing activities for payment card acceptance on its own name. The JV's turnover will be generated entirely by sales to third parties and it will have no sales relationship with the parent companies.

(14) The JV will use the acquiring processing platform of GP under a commercial agreement on an arms' length basis. In particular, GP will provide the following services: […], which will be provided at arm's length basis. Merchant acquirers typically rely on third parties for these services.

(15) The Notifying Parties underline that the some transition services will be provided by EGB to the JV temporarily, during the transfer of the Merchant Acquiring Business. The Transaction documents foresee the completion of this phase will take place within a […] years' timeframe.

(16) Based on these elements, it can be concluded that the JV qualifies as a full function JV.

(17) Therefore, the Transaction constitutes a concentration within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation.

3. EU DIMENSION

(18) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] (EGB: EUR 6 878 million, GP: EUR 2 622 million. Each of them has an EU-wide turnover in excess of EUR 250 million (EGB: EUR […] million, GP: EUR […] million), but they 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.

4. ASSESSMENT

4.1. Preliminary considerations

(19) The turnover of the transferred activities (i.e. Merchant Acquiring Business) is less than EUR 100 million in the EEA territory (EUR […] million), i.e. EUR […] million (CZK […] billion)[5] in the Czech Republic, EUR […] million (RON

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 Based on the ECB 2014 annual exchange rate EUR/CZK=27.536.

[…]million)[6] in Romania and EUR […] million in Slovakia and (b) the total value of the assets transferred to the JV (joint ventures) is less than EUR 100 million in the EEA territory (EUR […] million), i.e. EUR […]million (CZK […] million), EUR […] million (RON […] million) in Romania and EUR […] million in Slovakia.

(20) Therefore, the conditions set out in paragraph 5(a) of the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 are met. However, the Parties' combined market shares resulting from the transaction are in some instances significant and it could not be excluded at the outset that the concentration would raise serious doubts as to its compatibility with the internal market. For this reason, the Commission assessed the case under a normal first phase procedure by virtue of paragraph 14 of the same Notice.

4.2. Markets involved by the Transaction and activities of the Notifying Parties

(21) EGB provides merchant acquiring services in the Czech Republic, Slovakia and Romania via CSAS, SLSP, and BCR respectively. The three banks have licences to provide merchant acquiring services to MasterCard, VISA, Diners Club and JCB payment cards on POS terminals and on a web-enabled basis (e-Commerce). These merchant acquiring services will be contributed to the JV as part of the Transaction. EGB has no other market-offering for payment acquiring processing in the Czech Republic, Slovakia and Romania. It presently carries out acquiring and issuing processing in-house for its own card issuing and merchant acquiring activities. The acquiring processing activities will cease following the Transaction, while EGB will continue to process in-house their respective card-issuing activities (issuing processing), which consequently will not be transferred to the JV.

(22) GP provides merchant acquiring services via its subsidiaries in the Czech Republic, albeit on a very limited scale and only with respect to the American Express, UnionPay and JCB (Japan Credit Bureau) payment cards. In Slovakia and Romania GP offers no merchant acquiring services. In the Czech Republic and (to a limited extent) in Slovakia[7], GP provides processing (acquiring and issuing[8]) services to acquiring banks and other financial institutions.

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6 Based on ECB 2014 annual exchange rate EUR/RON=4.443.

7 GP provides acquiring processing services in Slovakia only […].

8 Issuing processing is the issuer oriented side of processing a card transaction. It includes the financial and technical requests for payment authorization from the issuing entity, maintenance of local and international blocking lists, verification of card limits, management of card accounts, generation of cardholder statements and invoicing.

4.3. *Product Market Definitions*

4.3.1. <u>Merchant acquiring</u>

(23) The Commission has previously considered that the market for merchant acquiring consists in the activity of contracting merchants for payment card acceptance and the provision of the respective services.[9]

(24) The Commission has also considered the possible sub-segments: (i) by payment card schemes (domestic/international), (ii) by payment card brands (Visa, Visa Electron, MasterCard, Maestro, etc), (iii) by the type of payment card (credit/debit) and (iv) by platform, distinguishing physical POS terminals and web-enabled interfaces (e-Commerce).[10]

(25) The Notifying Parties provided market share data for all of the above segmentations.

(26) For the present case, the exact product market definitions for merchant acquiring can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market, whatever the product market definition.

4.3.2. <u>Acquiring processing services for payment cards</u>

(27) The acquiring processing services market belongs to the market for payment card processing services.

(28) The Commission has previously defined a distinct market for payment card processing services which is further sub-segmented at acquiring processing and card issuing processing services.[11] Acquiring processing is the merchant oriented side of processing a payment transaction. It includes network routing of payments towards the corresponding issuing entity and the POS authorisation.

(29) In the past, the Commission considered that the market for acquiring processing services can be further sub-segmented based on (i) the payment card scheme (national/international) and (ii) the platform, distinguishing between physical POS terminals and through web-enabled interfaces (e-Commerce).[12]

(30) The Notifying Parties provided market share data for all of the above segmentations.

(31) For the present case, the exact product market definitions for acquiring processing can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market, whatever the product market definition.

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9 See COMP/M.5241 – *AmericanExpress/Fortis/Alpha Card*, para 23; COMP/M.4844 – *Fortis/ABN AMRO Assets*; M.3740 – *Barclays Bank/Foreningssparbanken/JV*, para 11.

10 COMP/M.7241 – *Advent International / Bain Capital Investors / Nets Holding*.

11 COMP/M.4316 – *Atos Origin/Banksys/BCC*, para 17; COMP/M.4814 – *AIB/FDC/JV*, para 15; COMP/M.5968 – *Advent/Bain Capital/RBS WorldPay*, para 12. COMP/M.7241 – Advent International / Bain Capital Investors / Nets Holding para 33.

12 COMP/M.7241 – *Advent International / Bain Capital Investors / Nets Holding*, para 36.

4.4. Geographic Market Definitions

4.4.1. *Merchant acquiring*

(32) In a previous decision the Commission has considered that the geographic market for merchant acquiring through physical terminals is most likely national in scope, while for web-enabled transactions the market could be at least EEA wide, however the precise scope of the geographic market definition was left open for all product markets.[13]

(33) The Notifying Parties suggest that the market environment for merchant acquiring services has changed dramatically in the light of the recent developments in the regulatory and legislative framework for payment card services. They argue that these changes paved the way for EEA-wide markets (also) for merchant acquiring through physical POS terminals. In fact, these efforts are very much driven by the aim to achieve a pan-European level playing field in the payment card space (initiated by the SEPA initiative, leading to the PSD/PSD2[14], and more recently the IFR[15]).

(34) The Notifying Parties also point out that merchants with operations across the EEA are increasingly reverting to merchant acquirers who are able to provide cross-border services, in order to reduce, ideally to one, the number of merchant acquirers they have a contract with.

(35) Finally, the Notifying Parties argue that a broader than national market definition is particularly warranted from the perspective of the Czech, Slovak and Romanian markets. These markets are comparatively small, there are only international card schemes and merchant acquiring providers in these countries form mostly part of international banking groups.

(36) Consequently, the Notifying Parties submit that merchant acquiring services are provided in an EEA-wide market. However, they provided market share both at the national level and at the EEA level.

(37) The results of the market investigation indicated, on the supply side, that cross-border merchant acquiring for POS terminals is not really a reliable way for a merchant acquiring service provider to expand its presence into a market on a mass scale. On the demand side, customers also confirmed that for the time being they select their merchant acquirer for POS terminals among providers having an established country presence. For many customers the choice of the acquirer remains still country specific.

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13 COMP/M.7241 – Advent International / Bain Capital Investors / Nets Holding, para 23 *et seq*.

14 The Payment Services Directive (PSD) and the revised directive on Payment Services (PSD2). The original PSD aimed at establishing a modern and comprehensive set of rules applicable to all electronic payment services, including with respect to SEPA services, across the EU. Importantly, the PSD allowed Payment Institutions, once authorized in their "home" state, to "passport" that authorization across the EU and provide these licensed payment services on a cross border basis. PSD2 modernizes this framework towards a pan-European payment services.

15 Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, OJ 2015 L 123/1.

(38) For the purpose of this case, the precise scope of the geographic market for merchant acquiring service can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market, whatever the geographic market definition.

4.4.2. Acquiring processing services for payment cards

(39) The Notifying Parties note that the Commission has in the past found that the markets for payment acquiring processing are national in scope.[16] They also submit that, in a recent decision the Commission has recognised that acquiring processing for web-enabled transactions could be EEA-wide.[17]

(40) The Notifying Parties put forward several arguments that the market for acquiring processing services is wider than national. The Notifying Parties argue that processors operating outside a country are equally well positioned to serve a new customer as processors operating in the same country because, on one hand, existing infrastructure can be used for cross-border services, and, on the other, security standards and certification apply internationally. The Notifying Parties also submit that, from the demand side, processing services are procured by means of international tenders or request for quotes. This is the case in particular in the Czech Republic, Slovakia and Romania since customers are mainly international banks and will naturally tend to look for a service provider covering their needs in a number of countries. GP further submits that it bids for projects in countries where it does not have a strong presence or a presence at all.

(41) Therefore, the Notifying Parties conclude that relevant geographic market for acquiring processing services is at least EEA-wide. They nevertheless also provide market share data for the Czech Republic, which is the only market where both Parties are active in the commercial market.[18]

(42) The results of the market investigation indicated that large international banks could tender for acquiring processing services for more than one country at the same time. The main reason is that they prefer to deal with similarly big international acquiring processing providers. However, this evidence points more to the creation of regional groupings of countries for a specific group of customers, namely big international players, than to an EEA-wide market for acquiring processing available to all merchants. Moreover, even large customers stressed the need for a local presence of their acquiring processing provider in each and every country they are active in.

(43) Nevertheless, for the purpose of this case, the precise scope of the geographic market for acquiring processing can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market, whatever the geographic market definition.

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16 COMP/M.4316 – *ATOS ORIGIN / BANKSYS / BCC*, para 25; COMP/M.2567 – *NORDBANKEN / POSTGIROT*, para 17; COMP/M.4814 – *AIB/FDC/JV*, para 20.

17 COMP/M.7241 – *Advent International / Bain Capital Investors / Nets Holding*, paras 37-40.

18 It is recalled that in Slovakia, […], see footnote 7.

4.5. Competitive Assessment

(44) The Transaction leads to a number of horizontal overlaps in the market for merchant acquiring in the EEA and in the Czech Republic and potential vertical links between GP's acquiring processing activities and the JV's merchant acquiring activities downstream in the Czech Republic and in Slovakia.[19]

4.5.1. Merchant acquiring

(45) At the EEA level, under all possible POS terminals based market definitions, the combined market shares of the Parties is below [5-10]%, either in terms of value, or volume of transactions. The increments are always below 1%.

(46) For web enabled merchant acquiring, under all possible product market definitions, the combined market shares of the Parties are at around [10-20]% and again the increments are always below 1%.

(47) On a national level, the Parties' activities overlap only in the Czech Republic. On a hypothetical overall market comprising merchant acquiring services at POS and web-enabled transactions, the combined market share is [40-50]% in value and [40-50]% in volume (with increment brought over by GP of [0-5]% and [0-5]% respectively).

(48) With regard to the sub-segments, the Parties overlap only in the physical POS segment for merchant acquiring service, where their combined market shares, which result in affected markets, are the following: [40-50]% in value and [40-50]% in volume (with increments brought over by GP of [0-5]% and [0-5]% respectively).

(49) On the different sub-segments at physical POS level: the combined market shares of the Parties, which result in affected markets, are the following: (i) for debit cards [40-50]% in value and [40-50] % in volume (with increments brought over by GP of below [0-5]% in both cases); for credit cards [40-50]% in value and [30-40]% in volume (with increments brought over by GP of [0-5]% and [0-5]% respectively). Should the market be further segmented by card brand/scheme there will be no overlap.

(50) The Notifying Parties argue that it is clear that no competition concerns arise in the market for merchant acquiring services at physical POS level, especially because of the very low increments. In the credit cards segment, where an increment above 1% appears, they indicate that there are three competitors with market shares well above the increment: CSOB [20-30]%, KB [10-20]% and UniCredit [10-20]%.

(51) Moreover, they submit that CSAS and GP are not close competitors, since CSAS offers merchant acquiring for the mainstream payment cards in the Czech Republic

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19 GP entered the Czech Republic market in 2004 through the acquisition of the incumbent processor MUZO, a.s. ("MUZO"), which was originally founded and co-owned by Czech domestic acquirers with the exception of CSAS. […]

(i.e. VISA and MasterCard), while GP offers merchant acquiring services solely with respect to American Express, UnionPay and JCB.[20]

(52) Finally, the Notifying Parties stress that the merchant acquiring activities of GP will not be contributed to the JV, but will remain with GP. This means that GP and the JV will act as separate players on the market. Thus, GP notably with its (mainly American Express) offering and the JV notably with its (mainly Visa and MasterCard) offering will continue to operate separately from each other.

(53) Neither competitors (other commercial banks), nor customers (merchants) of the Parties expressed any competition concerns for merchant acquiring in the course of the market investigation. It has been largely confirmed that the Parties are not close competitors on the market for merchant acquiring. GP is in fact not really considered as active on this market because the card acceptance it offers typically corresponds to less than 1% of the turnover of the merchants generated by card payment. Customers confirmed that the Transaction would not remove an important competitive force and there will be enough merchant acquirers in the Czech Republic. Some customers even consider the Transaction pro-competitive since the JV will combine the scale of CSAS with the innovative approach of GP in this industry.

(54) In the light of the above, the Commission concludes that these horizontal overlaps in the merchant acquiring market in the EEA and the Czech Republic, do not give rise to serious doubts as to the compatibility of the Transaction with the internal market.

4.5.2. Acquiring processing services for payment cards

The Czech Republic

(55) Regarding the market for acquiring processing services in the Czech Republic, GP's market share is [30-40]% in value and [30-40]% in volume. SIA is currently the market leader with [50-60]% and [50-60]% respectively. The remaining market is shared among smaller participants, including Six and EVO.

(56) GP provides currently acquiring processing services to […] as well as to […]. In addition, it started to provide acquiring processing services to […].

(57) The Notifying Parties submit that […]. KB has recently announced that it will form a strategic alliance with ATOS Worldline and it is expected to migrate all of its processing requirements from […] to ATOS Worldline. Raiffeisen Bank has

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20 VISA and MasterCard are the main brands used by the vast majority of Czech cardholders, and, hence, virtually all merchants in the Czech Republic offer acceptance of both MasterCard and Visa. American Express, UnionPay and JCB payment cards, in turn, are used only to a very limited extent in the Czech Republic, mainly by high-end foreign cardholders and tourists. Moreover, American Express payment cards are not issued to private customers in the Czech Republic, but only to corporate clients. Similarly, UnionPay and JCB are almost exclusively used by foreign cardholders (predominantly from China and Japan). Therefore, merchants in the Czech Republic offer acceptance of American Express, UnionPay and JCB payment cards primarily as a supplementary service to MasterCard and VISA payment cards; this also only in businesses where merchants expect foreign cardholders to use these cards, such as hotels or travel agencies. Thus, merchants it is unlikely that merchants would replace the acceptance of Visa / MasterCard by these other brands.

entered into an alliance with EVO in 2015 pursuant to which it will migrate its processing requirements to EVO.[21] […] is currently migrating its acquiring processing ([…]) requirements from in-house to […]. This will lead to a situation, as portrayed below, where GP will lose […] customers.

(58) In addition, the Notifying Parties submitted documents demonstrating that […].

(59) These market changes have been fully confirmed by competitors and customers of the Notifying Parties, in the course of the market investigation.

(60) Therefore in the foreseeable future, GP will only serve […].[22]

(61) Moreover, the results of the market investigation, and recent switching patterns, have indicated that many alternative solutions to GP exist in the Czech Republic. Therefore, GP has no ability to foreclose input (of acquiring processing) to any merchant acquirers.

(62) As to the incentives to foreclose, GP puts forward the argument that the reputational risks involved to its payments cards processing business worldwide are too high. It submits that it would risk its entire payments cards processing business world-wide, which it owns entirely and does not transfer to the JV, for a theoretical, small, local and partial, benefit to the JV. GP therefore argues that it does not have the incentive to foreclose input for acquiring processing services. As no ability to foreclose has been identified in the course of the market investigation, it is not necessary to assess these arguments regarding incentives in the present decision.

Slovakia

(63) GP provides acquiring processing services in Slovakia […]. These services are provided […]. GP's share in Slovakia is not significant ([0-5%] in terms of volume and value). The market share of the JV on the downstream market for the provision of merchant acquiring services is [10-20%] . Accordingly the Transaction does not lead to an affected market.

Conclusion

(64) In the light of the above, the Commission concludes that the vertical relationships in payments cards processing in the EEA, in the Czech Republic and in Slovakia, do not give rise to serious doubts as to the compatibility of the Transaction with the internal market.

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21 COMP/M.7679 – *EVO PAYMENTS INTERNATIONAL / RAIFFEISEN BANK POLSKA / RAIFFEISENBANK / JVS*; see also News Release, "*EVO Payments International and Raiffeisenbank form strategic alliance for payment card acceptance*", available under https://www.evopayments.eu/fileadmin/bilder/Content-Documents/Presse/PRI_REVO-CZ_2015-08-12_EN.pdf.

22 […]

5. CONCLUSION

(65) 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