



EUROPEAN COMMISSION
DG Competition

***Case M.9015 - PENTA INVESTMENTS / ASSECO POLAND /
PROSOFT***

Only the English text is available and authentic.

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

Article 4(4)
Date: 19.11.2018

Brussels, 19.11.2018
C(2018) 7771 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties:

Subject: Case M.9015 – PENTA INVESTMENTS / ASSECO POLAND / PROSOFT
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to Slovakia and Article 57 of the Agreement on the European Economic Area².

Date of filing: 12.10.2018

Legal deadline for response of Member States: 15 working days from receipt of the Form RS by the Member States (6.11.2018)

Legal deadline for the Commission decision under Article 4(4): 20.11.2018

Dear Sir or Madam,

1. INTRODUCTION

- (1) On 12 October 2018, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of Slovakia.
- (2) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on 19 October 2018.

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').

- (4) By letter of 5 November 2018 the Antimonopoly Office of the Slovak Republic as the competent authority of Slovakia informed the Commission that Slovakia agrees with the proposed referral.

2. THE PARTIES

- (5) ASSECO Poland S.A. ("Asseco") is a Polish IT company active in the development and provision of IT services and software solutions for different sectors of the economy, including for the providers of healthcare services.
- (6) PENTA INVESTMENTS LIMITED ("PENTA") is an investment firm based in the UK with investments in healthcare, financial services, retail, manufacturing, media and real estate.
- (7) PROSOFT, spol. s.r.o. Kosice ("PROSOFT") is a Slovak company active in the development of software products for healthcare centres in Slovakia. PROSOFT is currently controlled by [...]. [...] is the owner of a [50-60]% business share of PROSOFT. However, as per the shareholder agreement, [...] makes the strategic decisions of PROSOFT.

3. THE OPERATION AND CONCENTRATION

- (8) Prior to the Transaction, Asseco had [...] a sole control over the strategic decisions of PROSOFT. The Transaction consists of [...] PENTA acquires joint control over PROSOFT, along with Asseco.
- (9) PROSOFT is an undertaking that, already prior to the Transaction, has been performing on a lasting basis all the functions of an autonomous economic entity by being active in the development and sale of software products for healthcare centres in Slovakia. The Transaction does not change the scope of the business activities of PROSOFT. It constitutes a change in the quality of control, from sole to joint control, of an already existing undertaking. While Penta owns a number of outpatient healthcare centers and hospitals in Slovakia, the Parties did not submit that post-Transaction PROSOFT's business would be limited to developing and selling software only to Penta's outpatient healthcare centers and hospitals. The Parties submit that post-Transaction PROSOFT shall remain as an autonomous economic entity.
- (10) The transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

4. EU DIMENSION

- (11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million ([...]; [...]). Each of them has an EU-wide turnover in excess of EUR 250 million ([...]; [...]). The undertakings concerned do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (12) The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

5. ASSESSMENT

- (13) The transaction gives rise to a vertical link between an upstream market for software solutions for healthcare industry (Asseco) and a downstream market for provision of hospital services and outpatient healthcare in Slovakia (PENTA).

A Relevant product markets

- (14) The Commission has previously considered a product market for the provision of diagnostic and hospital care services³.
- (15) For the purpose of the assessment of the referral request, the exact product market definition of the provision of diagnostic and hospital care services can be left open as the outcome of the assessment would not be different under any of the abovementioned plausible market definitions.
- (16) The Commission has previously considered that software markets could be segmented on the basis of (i) the different functionalities of the software and the sector concerned, and (ii) the end uses offered by the particular software.⁴ In addition, the Commission has also segmented in the past the software market on the basis of the industry sector of the application.⁵ In a case which concerned healthcare software only, the Commission left the exact product market definition open.⁶
- (17) For the purpose of the assessment of the referral request, the exact product market definition for the provision of software solutions for healthcare industry can be left open as the outcome of the assessment would not be different under any of the abovementioned plausible market definitions.

B Relevant geographic markets

- (18) Per established Commission precedents, the market for the provision of diagnostic and hospital care services is national or narrower in scope. Indeed, in previous decisions, the Commission has considered that the market for the provision of diagnostic and hospital care services is of a local dimension, within a radius of a 30-minute drive, but has left its exact geographic scope open.⁷
- (19) As concerns the healthcare software market it is noted that the software commercialised by PROSOFT is designed specifically for the Slovak market, and it is not directly transposable to other national jurisdictions, given that it is adapted to

³ See Cases M.5805 – 3i/Vedici Groupe; M.7221 – Bridgepoint Capital/Médi-Partenaires; M.7322 – Ramsay Health Care/Crédit Agricole/Générale de Santé; M.7725 – Vedici/Vitalia; and M.7833 – CDC International Capital/Mubadala Development Company/Vivalto Bel/Groupe Vivalto Santé.

⁴ See e.g. Cases M.5763 – Dassault Systemes/IBM DS PLM Software Business; M.5904 SAP/Sybase.

⁵ See e.g. Cases M.5763 – Dassault Systemes/IBM DS PLM Software Business; M.5904 SAP/Sybase.

⁶ See e.g. Case M.6237 – Computer Sciences Corporation/iSoft Group.

⁷ See Cases M.5805 – 3i/Vedici Groupe; M.7221 – Bridgepoint Capital/Médi-Partenaires; M.7322 – Ramsay Health Care/Crédit Agricole/Générale de Santé; M.7725 – Vedici/Vitalia; and M.7833 – CDC International Capital/Mubadala Development Company/Vivalto Bel/Groupe Vivalto Santé. Vivalto Santé has defined such local markets as catchment areas ("bassins de population") within a 60-minute or a 30-minute drive around the cities where the Parties' healthcare facilities are established.

the regulatory framework which is specific to each country due to a number of factors in particular the reimbursement systems.

- (20) For the purpose of the assessment of the referral request, the exact geographic scope of the relevant markets can be left open as the outcome of the assessment would not be different under any of the abovementioned plausible market definitions.

C Assessment

- (21) Based on the information provided in paragraphs 17-19 above, the Commission considers the markets in question present all the characteristics of a distinct market. In addition, the transaction does not give rise to any affected markets outside of Slovakia as a result of which the competitive effects of the proposed transaction appear to be restricted to this single Member State.
- (22) On the basis of the information submitted in the Reasoned Submission, in the downstream hospital markets PENTA has high market shares in certain local markets in Slovakia. Specifically, in some local markets PENTA controls the only hospital providing care to patients in that specific area. As a result, the proposed transaction may affect competition in these markets as it gives rise to a potentially vertically affected market.
- (23) In view of the high market shares on the downstream market, the proposed operation may significantly affect competition in these markets within the territory of Slovakia.

6. REFERRAL

- (24) On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market.
- (25) Point 17 of the Commission notice on case referral in respect of concentrations⁸ ("Notice on case referral") indicates that, in seeking a referral under Article 4(4), *"the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny"*, and that *"such indications may be no more than preliminary in nature..."*.
- (26) The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in Slovakia, and that the requested referral would be consistent with point 20 of the Notice on case referral.
- (27) In addition, the Antimonopoly Office of the Slovak Republic has sufficient knowledge of the possible affected markets, mainly with defining and assessment of hospital providing care markets/outpatient care markets, due to its experience in merger control concerning several acquisitions of local hospitals by Penta Investments and also by other acquirers.

⁸ OJ C 56, 5.3.2005, p. 2.

7. CONCLUSION

- (28) For the above reasons, and given that Slovakia has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the Slovakia. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Johannes LAITENBERGER
Director-General